

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 February 2025

DOCKET NUMBER: AR20240007906

APPLICANT REQUESTS: an upgrade of character of service from "Under Conditions Other Than Honorable" to "Honorable."

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Newspaper article
- Self-authored letters
- DA Form 2479 (Application for Compassionate Reassignment), 20 June 1971
- DA Form 258A, (Undesirable Discharge Certificate), 16 December 1975
- Medical documentation

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states his unstable mental health condition was a contributing factor to the behavior which prompted his undesirable discharge from military service. The applicant further notes that his mental health conditions were the result of his request for a compassionate reassignment during the Vietnam War being denied. The applicant submitted his request in order to be closer to his family.
3. A review of the applicant's service records reflects the following:
 - a. On 21 June 1968, the applicant enlisted in the Regular Army for 3 years with duty as a 76A (Supply Clerk).
 - b. On 22 November 1968, the applicant was advanced to private first class (PFC)/E
 - c. On 3 November 1969, Special Court Martial Orders Number 15 was issued documenting the applicant being arraigned, tried and found guilty of violating Article 86

of the Uniformed Code of Military Justice in that on or about 3 June 1969, he, without authority was absent without leave until 12 August 1969. The applicant was reduced to private/E-1, to be confined at hard labor for 3 months and fined \$82.00 per month. This sentence was adjudged on 29 August 1969. The sentence was subsequently approved and duly executed.

d. A review of the applicant's DA Form 20 (Enlisted Qualification Record), item 44 (Time Lost Under Section 972, Title 10, U.S.C. and Subsequent to Normal Date ETS) reflects multiple periods of AWOL or a change in duty status:

- 30 June 1969 – 29 July 1969 (AWOL)
- 30 July 1969 – 12 August 1969 (Drop from Roll (DFR))
- 14 August 1969 – 9 November 1969 (Pre-Trial Confinement)
- 10 November 1969 – 27 November 1969 (Confinement)
- 20 January 1970 – 11 November 1975 (AWOL)

e. On 14 November 1975, the applicant voluntarily requested to be discharged for the good of the service. He understood that if his request was approved, he may be discharged under Other Than Honorable Conditions and furnished an Undesirable Discharge Certificate.

f. On 24 November 1975, the General Court Martial convening authority approved the applicant's request and directed that he be reduced to the lowest grade, discharged, and furnished an Undesirable Discharge Certificate. The Reason and Authority for Separation would be in accordance with Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) with a Separation Program Designation (SPD) Code of "KFS – For the Good of the Service in Lieu of Court Martial."

g. On 16 December 1975, the applicant was discharged from active duty. DD Form 214, item 9e. (Character of Service) reflects "Under Conditions Other Than Honorable." The applicant completed 1 year 3 months 25 days of service with 696 days of lost time; 2270 days lost under 10 U.S.C. 972, 14 days of Excess Leave and 1604 days lost following his normal expiration term of service.

h. On 28 April 1977, the Department of Defense, Special Discharge Review Program reviewed the applicant's request for a review of his discharge. The board advised the applicant that he was not eligible under this program because he was not discharged between 4 August 1964 – 28 March 1973. The applicant was further advised that he could submit a request to the Discharge Review Board.

4. The applicant provides:

a. Newspaper article, reflective of an article titled "Freedom is Not a Soft Way of Life – It's an Opportunity." This article further highlights some of the applicant's thoughts on freedom.

b. Self-authored letters from various persons to include the applicant's son, father, health care provider and a State Senator. The applicant's son notes that the applicant's mental health condition declined while he was serving in Germany, upon receiving news of his younger sister's diagnosis of terminal brain cancer; she later died on 18 July 1970. The applicant requested to be compassionately reassigned to AK in order to assist his parents with matters associated with his sister's condition. His request was denied so the applicant took matters into his own hands and attempted to make his way back to AK when he was detained and ultimately court-martialed. He further notes that during his imprisonment, he had completely lost his sense of reality while being treated like a caged animal, mistreated and placed in solitary confinement. These actions only increased his emotional stress and his depression worsened making it hard for him to be fully dedicated to the Army, which ultimately resulted in his discharge. The other provided letters express a recommendation for the applicant to be reassigned in order to stabilize his family situation. These letters are further provided in their entirety for the board members review within the supporting documents.

c. DA Form 2479 (Application for Compassionate Reassignment), 20 June 1971, reflective of the applicant's submitted request to be compassionately reassigned to assist his family with the care of his terminally ill sister.

d. Medical documentation (2023) reflective of a list of the applicant's previously prescribed medication(s) to include medication for anxiety.

5. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions discharge. He contends he was experiencing mental health conditions that mitigate his misconduct. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 21 June 1968; 2) On 3 November 1969, court martial orders documented that the applicant was found guilty of being AWOL from 3 June-12 August 1969; 3) The applicant was found AWOL multiple times between 30 June 1969-11 November 1975; 4) On 16 December 1975, the applicant was discharged, For the Good of the Service in Lieu of Court Martial. His character of service was under other than honorable conditions. The applicant completed 1 year 3 months 25 days of service with 696 days of lost time.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) and hardcopy civilian medical records were also examined.

c. The applicant asserts he was experiencing mental health conditions as a result of family trauma while on active service, which mitigates his misconduct. There is evidence the applicant was experiencing family stress due to his sister being diagnosed with cancer, and he requested a transfer to be closer to his family. However, there was insufficient evidence the applicant was diagnosed with a mental health condition during his active service.

d. A review of JLV provided insufficient evidence the applicant has ever been diagnosed with a mental health condition by the VA, and he does not receive any service-connected disability. The applicant provided a list of medications from 2023, which were prescribed to him. One medication is a psychiatric medication for symptoms of anxiety. There was insufficient evidence provided on the history of the applicant's history of anxiety symptoms or their relation to the applicant's military service.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a mental health condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions which mitigates his misconduct. The applicant provided evidence of experiencing anxiety symptoms in 2023.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions that mitigates his misconduct while on active service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition, while he was on active service. There is evidence the applicant was experiencing family stress during his military service, and he did go AWOL repeatedly for various lengths of time. However, the presence of misconduct and reported stress are not sufficient evidence of the presence of a mitigating mental health condition during active service. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration the contention alone is sufficient for the board's consideration.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the short term of honorable service completed prior to the pattern of misconduct leading to the applicant's separation, as well as the following findings outlined in the medical review:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions that mitigates his misconduct while on active service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No

the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

:XXX :XXX :XXX DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

X //SIGNED//

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a provides that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.
 - b. Paragraph 3-7b provides that a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Paragraph 3-7c provides that a discharge under other than honorable conditions is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry; homosexual conduct, security reasons, or in lieu of trial by court-martial. An under other than honorable conditions discharge will be directed only by a commander exercising general court-martial authority.

d. Chapter 10 states in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

3. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged Under Other Than Honorable Conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//