

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 March 2025

DOCKET NUMBER: AR20240007961

APPLICANT REQUESTS: reconsideration of his request for upgrade of his under other than honorable conditions (UOTHC) discharge. Additionally, he requests appearance before the Board, via video/telephone.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20130001303 on 22 August 2013.
2. The applicant states the judge said he was not guilty; however, he was forced to sign paperwork that he did not understand.
3. On his DD Form 149, the applicant notes other mental health issues are related to his request.
4. On 24 November 1981, the applicant enlisted in the Regular Army, for 4 years. His record shows he was not awarded a military occupational specialty.
5. Court-martial charges were preferred against the applicant on 27 April 1982, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with:
 - one specification of larceny of a cassette player, on or about 28 March 1982
 - one specification of receiving and concealment of stolen property, on or about 21 March 1982
6. Additional court-martial charges were preferred against the applicant on 4 May 1982, for violations of the UCMJ. His DD Form 458 shows he was charged with:
 - one specification of stealing a cassette player, on or about 21 March 1982

- one specification of unlawfully receiving a cassette player, the property of another Soldier, on or about 21 March 1982
- one specification of unlawfully concealing a cassette player, the property of another Soldier, on or about 21 March 1982
- one specification of unlawfully destroying the serial number on a cassette player, on or about 28 March 1982

7. On 2 June 1982, the applicant accepted non-judicial punishment (NJP) under Article 15 of the UCMJ, for absenting himself from his unit, on or about 1 June 1982. His punishment included forfeiture of \$128.00 for one month, and seven days extra duty and restriction.

8. On 8 July 1982, the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a bad conduct discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

b. He declined to submit a statement in his own behalf and waived a separation physical.

9. On 14 July 1982, the applicant's commander recommended approval of his request for discharge, and further recommended the issuance of an UOTHC discharge.

10. On 17 August 1982, the applicant accepted NJP under Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty, on or about 16 August 1982.

11. Consistent with the chain of command's recommendations, the separation authority approved the applicant's request for discharge on 7 September 1982, and directed his reduction to the lowest enlisted grade with issuance of a UOTHC discharge.

12. The applicant was discharged on 13 September 1982. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for conduct triable by court-martial. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He completed 9 months and 20 days of net active service this period.

13. The applicant petitioned the ABCMR requesting upgrade of his UOTHC discharge. On 22 August 2013, the Board voted to deny relief and determined that the overall merits of this case are insufficient as a basis for correction of the applicant's records.

14. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

15. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his prior request for an upgrade of his under other than honorable conditions (UOTHC) discharge. He selected OMH on his application as related to his request.

b. 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:

- The applicant enlisted in the Regular Army on 24 November 1981.
- Court-martial charges were preferred against the applicant on 27 April 1982, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with:
 - one specification of larceny of a cassette player, on or about 28 March 1982
 - one specification of receiving and concealment of stolen property, on or about 21 March 1982
- Additional court-martial charges were preferred against the applicant on 4 May 1982, for violations of the UCMJ. His DD Form 458 shows he was charged with:
 - one specification of stealing a cassette player, on or about 21 March 1982
 - one specification of unlawfully receiving a cassette player, the property of another Soldier, on or about 21 March 1982
 - one specification of unlawfully concealing a cassette player, the property of another Soldier, on or about 21 March 1982
 - one specification of unlawfully destroying the serial number on a cassette player, on or about 28 March 1982
- On 2 June 1982, the applicant accepted non-judicial punishment (NJP) under Article 15 of the UCMJ, for absenting himself from his unit, on or about 1 June

1982. His punishment included forfeiture of \$128.00 for one month, and seven days extra duty and restriction.

- Applicant was discharged on 13 September 1982. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for conduct triable by court-martial. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He completed 9 months and 20 days of net active service this period.
- Applicant petitioned the ABCMR requesting upgrade of his UOTHC discharge. On 22 August 2013, the Board voted to deny relief and determined the overall merits of this case were insufficient as a basis for correction of the applicant's records.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, the judge in his case said he was not guilty; however, he was forced to sign paperwork that he did not understand. No evidence of judicial irregularity was submitted.

d. Due to the period of service no active-duty electronic medical records were available for review and the applicant did not submit any hardcopy medical documentation.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and there is no evidence he has been diagnosed with or has participated in treatment for any behavioral health condition.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition that mitigates his misconduct. However, regardless of BH condition the applicant's misconduct is unlikely to be mitigated.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected OMH on his application as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant selected OMH on his application as related to his request, there is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. In addition, the VA electronic record indicates the applicant has not been diagnosed or treated for any mental health condition. And while the applicant selected OMH on his application, he did not provide any medical documentation substantiating any BH diagnosis. However, regardless of BH condition, his misconduct of theft, concealment, and destruction of evidence is not part of the natural sequelae of any BH condition and would not be mitigated. The applicant clearly demonstrated purposeful, conscious decision-making with planful behavior to conceal his misconduct and avoid consequences.

h. Per Liberal Consideration guidelines, his selection of OMH on his application is sufficient to warrant consideration by the Board.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military record and medical review, the Board concurred with the advising official finding insufficient evidence to support the applicant had a behavioral health condition that mitigates his misconduct. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the pattern of misconduct.

2. The Board noted, the applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board found the applicant's service record exhibits numerous instances of misconduct during his enlistment period for 9 months and 20 days of net active service this period. Furthermore, the Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge. Therefore, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20130001303 on 22 August 2013.

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 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

2. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

c. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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. 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.

4. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, to carefully consider the revised post-traumatic stress disorder (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.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs 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.

//NOTHING FOLLOWS//