

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 March 2025

DOCKET NUMBER: AR20240008093

APPLICANT REQUESTS:

- upgrade of his under conditions other than honorable discharge to honorable
- a video appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Report of Separation from Active Duty)
- Medical Records – the applicant's medial history (7 pages)

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 he is requesting an upgrade to an honorable discharge. He asserts that he sustained a back injury during service and developed arthritis. He waited a long time to file a claim because of his anxiety.
3. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 22 October 1976.
  - b. He accepted multiple nonjudicial punishments:
    - on 13 October 1977, absent without leave (AWOL) from on or about 15 September 1977 until on or about 28 September 1977
    - on 16 March 1978, property offenses within the US military
    - on 16 August 1978, failure to obey a lawful order, he was reduced to private/E-2

- on 4 January 1979, AWOL from on or about 6 November 1978 until on or about 22 November 1978, AWOL from on or about 21 December 1978 until on or about 22 December 1978, and failure to report on 16 February 1979; he was reduced to private/E-1

c. His record is void of the separation packet.

d. He was discharged 23 March 1976, under other than honorable conditions under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-33b for “Patterns of Misconduct.” He completed 2 years, 5 months, and 7 days of active service with 38 days of lost time.

4. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

5. In reaching its determination, the Board can consider the applicant’s petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

#### 6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable. On his DD Form 149, the applicant indicated Other Mental Health Issues are related to his request. 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 22 October 1976, 2) he received nonjudicial punishment (NJP) on several occasions to include on 13 October 1977 for being absent without leave (AWOL) from on or about 15 September 1977 until on or about 28 September 1977; on 16 March 1978 for property offenses within the US military; on 16 August 1978 for failure to obey a lawful order; on 4 January 1979 for being AWOL from on or about 6 November 1978 until on or about 22 November 1978; on 4 January 1979 for being AWOL from on or about 21 December 1978 until on or about 22 December 1978; and on 4 January 1979, failure to report on 16 February 1979, 3) his record is void of the separation packet, 4) the applicant was discharged 23 March 1976, under other than honorable conditions under the provisions of AR 635-200, paragraph 14-33b for “Patterns of Misconduct.”

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant’s military service and available medical records. The VA’s Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during

the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. In-service medical records included as part of his application were reviewed. A Report of Medical Examination dated 09 January 1979 for the purposes of Chapter 14 separation shows item number 42, psychiatric, as 'normal,' on clinical evaluation. He was medically cleared for separation. The associated Report of Medical History dated 09 January 1979 shows the applicant stated his health was 'excellent,' and he marked 'no' to all BH-related symptoms on the form.

d. A review of JLV shows the applicant is not service-connected through the VA for any conditions. It is of note that his UOTHC discharge renders him ineligible for VA clinical services. There was a VA Compensation and Pension (C&P) examination and associated Medical Opinion in JLV pertaining to Hearing Loss and Tinnitus. There were no other medical records available for review in JLV.

e. As part of his application, the applicant included a document titled "FollowMyHealth" (undated) showing a list of his medical diagnoses. As it pertains to BH-related conditions, it lists Tobacco Dependence, Insomnia, Generalized Anxiety Disorder (GAD), and Chronic Insomnia [*Advisor's Note*: The date of onset of these conditions were not documented]. A medical note from the Jennie Stuart Medical Center-Continuity of Care Document dated 09 March 2019 was reviewed; however, there was no BH-related information documented in the note.

f. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. Although the applicant provided civilian health records showing he has been diagnosed with a potentially mitigating BH condition since being discharged from the military, GAD, the documentation did not specify the date of onset of his condition nor was it associated with his military service. However, he contends that his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of records was void of any BH diagnosis or treatment history for the applicant during his military service. Although the applicant provided civilian health records showing he has been diagnosed with a potentially mitigating BH condition since being discharged from the military, GAD, the documentation did not specify the date of onset of his condition nor was it associated with his military service. In absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

#### BOARD DISCUSSION:

1. After thorough review of the application, supporting documents, and the applicant's military record, the Board determined that relief was not warranted in this case. The Board carefully considered the applicant's request for an upgrade of his discharge characterization and conducted a comprehensive review in accordance with published Department of Defense guidelines for liberal consideration of discharge upgrade requests.

a. In concurrence with the medical advisor's findings, the Board acknowledges the applicant's assertion that he sustained a back injury, developed arthritis, and experiences anxiety. Although the applicant's claims are noted, the absence of medical documentation during his time in service or after his discharge, and the lack of corroborating evidence, led the Board to conclude that his misconduct was not mitigated by mental health conditions or other medical factors.

b. The applicant's record shows a consistent pattern of misconduct, including multiple instances of nonjudicial punishment. These violations, which spanned several years of his military service, significantly impacted the Board's decision to deny relief.

2. 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 |
| :XX | :XX | :XX | 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. 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.

3. Army Regulation 635-200 (Personnel Separation – Enlisted Personnel;), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. 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 member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed. Paragraph 14-12c further states commission of a serious offense includes abuse of illegal drugs or alcohol.

4. 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 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 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences. The guidance further describes evidence sources and criteria and requires boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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.

a. 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 based on 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.

b. 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//