

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 March 2025

DOCKET NUMBER: AR20240008562

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his under conditions other than honorable discharge.

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

- DD Form 149 (Application for Correction of Military Record), 29 April 2024
- Department of Veterans Affairs Statement in Support of Claim, 29 April 2024

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 AR20140005492 on 12 November 2014.
2. The applicant states he should have never been allowed to enter the military because he and his brother were involved in a traffic accident that took his brother's life and caused him to be admitted for intensive treatment. He had to provide medical records at the induction site, he never recovered from the stress of losing his younger brother and it caused him to not come to grips with reality. He was suffering with post-traumatic stress disorder (PTSD) over his loss, and it caused him to continually go absent without leave (AWOL).
3. On his DD Form 149, he annotates PTSD, traumatic brain injury (TBI), and other mental health conditions are related to his request.
4. The applicant enlisted in the Regular Army on 29 January 1968, for a 3-year period.
5. Court-martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice (UCMJ). The relevant DA Form 458 (Charge Sheet) is not available in the applicant's official military personnel file.
6. Before a special court-martial adjudged on 21 September 1968, the applicant was found guilty of AWOL on or about 19 April 1968 and remaining absent until on or about

9 September 1968. He was sentenced to confinement at hard labor for four months. The sentence was approved and ordered to be duly executed on 24 September 1968.

7. The applicant's service record is void of documentation containing the specific facts and circumstances surrounding his discharge processing. However, his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged on 10 August 1970, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in the grade of E-1. His service was characterized as under conditions other than honorable. He was credited with 9 months and 4 days of net active service this period. He had lost time from:

- 19 April 1968 to 8 September 1968
- 10 September 1968 to 26 November 1968
- 9 May 1969 to 19 May 1969
- 25 May 1969 to 3 July 1970

8. The ABCMR reviewed the applicant's request for an upgrade of his discharge on 12 November 2014. The Board determined the evidence presented did not demonstrate the existence of a probable error or injustice. His request for relief was denied.

9. The applicant provides a statement in support of his claim wherein he summarized the death of his brother before he received his draft notice to the Army. He decided to enlist for choice of which branch he could serve in; however, he did not know he was in no condition to be in the military. He believes the loss of his brother caused him to go AWOL multiple times.

10. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

11. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) characterization of service. The applicant's previous petition to the ABCMR is summarized in Docket Number AR20140005492 dated 12 November 2014. On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), and Other Mental Health Issues are related to his request. More specifically, the applicant asserted that he should have never been allowed to join the military due to involvement in a traffic accident prior to joining the military that resulted in the death of his brother. He said that he had to be admitted for intensive treatment and he never recovered from the loss of his brother. As a result, the applicant indicated that he was suffering from PTSD which caused him to continually go AWOL. 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 (RA) on 29 January 1968, 2) a special court-martial adjudged on 21 September 1968 shows the applicant was found guilty of AWOL on or about 19 April 1968 and remained absent until on or about 9 September 1968. He was sentenced to confinement at hard labor for four months. The sentence was approved and ordered to be duly executed on 24 September 1968, 3) The applicant's service record is void of documentation containing the specific facts and circumstances surrounding his discharge processing. His DD Form 214 shows he was discharged on 10 August 1970, under the provisions of AR 635-200, with a Separation Program Number (SPN) of 246 and reenlistment code of RE 4. He was credited with 9 months and 4 days of net active service this period. He had lost time from: 19 April 1968 to 8 September 1968; 10 September 1968 to 26 November 1968; 9 May 1969 to 19 May 1969; and 25 May 1969 to 3 July 1970, 4) the ABCMR denied the applicant's previous petition for relief on 12 November 2014 as it was determined the evidence presented did not demonstrate the existence of a probable error or injustice.

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. The applicant's DA Form 4, Enlistment Contract, shows his PULHES as 111111A, indicative that there were no BH conditions identified at the time of enlistment which did not meet procurement standards. There were no in-service medical records available for review.

d. A review of JLV shows the applicant is not service-connected through the VA for any conditions. It is of note that the applicant's UOTHC discharge renders him ineligible for VA clinical services. There was one clinical note through the VA dated 09 October 2001, showing the applicant presented to the Emergency Room (ER) which appears to be related to an ID card. No BH-related concerns were noted.

e. 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. However, he contends that his misconduct was related to PTSD, TBI, and Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

f. 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 PTSD, TBI, and 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 or after service and he provided no medical documentation supporting his assertion of PTSD, TBI, or Other Mental Health Issues. In absence of documentation supporting his assertion there is insufficient evidence to establish his misconduct was related to or mitigated by PTSD, TBI, or Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his misconduct was related to PTSD, TBI, or Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant 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 and the following findings outlined in the medical review:

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

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? 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.

//SIGNED//

X

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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by Army Review Boards Agency (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 ABCMR applicants (and/or their counsel) prior to adjudication.
2. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of this regulation provided a member who has committed an offense or offenses, the punishment for which, under the Uniform Code Military Justice and the Manual for Courts-Martial, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the Service. The discharge request may be submitted after court-martial charges are preferred against the member, or, until final action on the case by the court-martial convening authority. A member who is under a suspended sentence of a punitive discharge may also submit a request for discharge for the good of the Service. An under other than honorable conditions discharge certificate normally is appropriate for a member who is discharged for the good of the Service.

b. 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.

c. 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.

3. 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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including Post-Traumatic Stress Disorder; Traumatic Brain Injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

4. 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//