

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 April 2025

DOCKET NUMBER: AR20240008921

APPLICANT REQUESTS:

- an upgrade of his dishonorable discharge to under honorable conditions (general)
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Doctor's Letter, date 2 May 2024
- Character Reference Email, dated 9 May 2024
- DD Form 214 (Report of Separation from Active Duty)

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 that he was discharged from the military for going absent without leave (AWOL). After his discharge, he was diagnosed with clinical depression, which his doctor identified as the root cause of his struggles. The depression led him to turn to alcohol, which worsened his condition and eventually drove him to go AWOL. Although his mental health issues were not diagnosed before his discharge, he feels that his command and others were aware that something was wrong but did not take steps to refer him for medical evaluation or support.

3. The applicant provides:

a. A letter from Dr. MS dated 2 May 2024 which states the applicant is currently under treatment for refractory major depressive disorder with anxiety.

b. A character statement from his uncle RB which described a challenging upbringing marked by an abusive father who struggled with alcoholism. Without a positive male role model, the applicant faced significant hardships, adopting some of his father's habits, such as smoking, drinking, and fighting, prior to joining the military. Despite the difficulties, the applicant made the decision to enlist in the military, due to few options he had at the time. However, the emotional and psychological scars from years of abuse persisted, continuing to affect the applicant's life to date.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 13 November 1973.

b. On 8 March 1974, he accepted nonjudicial punishment for one specification of being AWOL from on or about 11 February 1974 to 1 March 1974.

c. On 1 April 1974, the applicant was reported AWOL. He was returned to military control on 16 October 1974.

d. On 30 October 1974, court-martial charges were preferred against the applicant for being AWOL from 1 April 1974 to 16 October 1974, according to the DD Form 458 (Charge sheet).

e. On 1 November 1974, after consultation with legal counsel, the applicant voluntarily requested discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- he was making the request of his own free will
- maximum punishment
- he was guilty of at least one or more of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other conditions other than honorable
- he would be deprived of many or all Army benefits, he may be ineligible for many, or all benefits administered by the Veterans Administration,
- he may be deprived of his rights and benefits as a Veteran under both Federal and State law
- he must apply to the Army Discharge Review Board or the Army Board for the Correction of Military Records for a review of discharge, but there was no automatic upgrading
- he may expect to encounter substantial prejudice in civilian life

f. A statement from the applicant dated 1 November 1974 states he had a completely different understanding of the Army. He was not aware of what it was really like and did not believe he was "Army material." He went AWOL because he did not like the Army and his attempts at trying to adjust to military life were unsuccessful. He hated military life and was depressed. He further noted his father had cancer of the throat and would not be able to continue working and his mother had a heart condition that prevented her from working. He did not believe he could benefit from the Army nor the Army benefit from his service.

g. On 5 November 1974, the separation authority approved the applicant's request for discharge for the good of the service. He would be issued an Undesirable Discharge Certificate.

h. On 14 November 1974, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 4 months and 29 days of active service with 216 days lost.

5. On 22 March 1979, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

6. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

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

8. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his dishonorable discharge to (general) under honorable conditions. He contends Other Mental Health (OMH) is 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:

- Applicant enlisted in the Regular Army on 13 November 1973.
- On 8 March 1974, he accepted nonjudicial punishment for one specification of being AWOL from on or about 11 February 1974 to 1 March 1974.

- On 30 October 1974, court-martial charges were preferred against the applicant for being AWOL from 1 April 1974 to 16 October 1974 according to the DD Form 458 (Charge sheet).
- Applicant was discharged on 14 November 1974. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, Conduct triable by court-martial, under other than honorable conditions (UOTHC) with separation code KFS, and RE code 3B.

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 he was discharged from the military for going absent without leave (AWOL). After his discharge, he was diagnosed with clinical depression, which his doctor identified as the root cause of his struggles. The depression led him to turn to alcohol, which worsened his condition and eventually drove him to go AWOL. Although his mental health issues were not diagnosed before his discharge, he feels that his command and others were aware that something was wrong but did not take steps to refer him for medical evaluation or support. In addition, a character statement from the applicant's uncle describes a challenging upbringing marked by an abusive father who struggled with alcoholism.

d. Due to the period of service no active-duty electronic medical records were available for review and the applicant did not provide any hardcopy medical documentation. However, a note signed by the applicant dated 1 November 1974 shows he reported an inability to adjust to military life. "Since I have been in the Army I have a nervous condition, I am depressed, I just hate military life and do not want any other part of the Army".

e. The Veterans Affairs (VA) Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and he has not participated in treatment for any behavioral health condition. The applicant provides a note dated 2 May 2024, nearly five decades post military service. The note indicates the applicant has been treated for Major Depressive Disorder with anxiety by this provider for the past two years and was previously treated by another physician for depressive disorder, three years prior to initiating treatment with his current provider. The note does not indicate the applicant's symptoms are related to military service nor were present during his time in service.

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 during military service that mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts 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 Behavioral Health (BH) condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant contends OMH as related to his request, however, 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. The VA electronic record shows the applicant has not participated in any behavioral health treatment. The applicant provides a note from his medical provider indicating he is treated for symptoms of depression. However, the note is nearly five decades post-military service and does not indicate his symptoms are related to military service or were present during his time in service.

h. Per Liberal Consideration guidelines, his assertion of OMH is sufficient to warrant consideration by the 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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with being absent without leave from 1 April 1974 to 16 October 1974, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board concurred with the medical advisor's review finding insufficient evidence the applicant had an BH condition that mitigated his misconduct. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration, the Board determined relief was not warranted.

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts 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 Behavioral Health (BH) condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant contends OMH as related to his request, however, 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. The VA electronic record shows the applicant has not participated in any behavioral health treatment. The applicant provides a note from his medical provider indicating he is treated for symptoms of depression. However, the note is nearly five decades post-military service and does not indicate his symptoms are related to military service or were present during his time in service.

2. The applicant's request for a video/telephonic 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 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.

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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, United States 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 Army Board for Correction of Military Records (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.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. 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.

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

a. Paragraph 3-7a (Honorable Discharge) states 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. Paragraph 3-7b (General Discharge) states 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 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or

dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

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.

7. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//