

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 April 2025

DOCKET NUMBER: AR20240009049

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) characterization of service.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Self-Authored Letter
- Certification of Vital Record (Certificate of Death), dated 26 January 1999
- Certification of Vital Record (Certificate of Fetal Death), dated 1 September 1999
- Medical Review of Depression and Anxiety

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 while waiting (delayed entry program) to leave for basic training, his wife gave birth to their daughter, and she passed away. That was the second daughter that passed away within months of each other. He was suffering from Post-Traumatic Stress Disorder (PTSD), depression and anxiety at the time he began training. Further, he was unable to seek medical help for conditions or the grief that led to his separation. He is asking for a Character of Discharge review due to mental illness and PTSD from the death of his two daughters in the weeks prior to leaving for training. Lastly, he has included a letter of explanation and death certificates of his daughters.
3. The applicant enlisted in the Regular Army on 1 October 1999, for 3 years.
4. On 5 January 2000, the applicant was reported absent without leave (AWOL) and remained absent until he returned to military authorities on 19 November 2000.

5. Court-martial charges were preferred against the applicant on 22 November 2000 for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL on or about 5 January 2000 and remained absent until on or about 19 November 2000.

6. On 22 November 2000, 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, request for discharge in lieu of trial by courts-martial. 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.

b. 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. He did not submit a statement in his own behalf.

7. The applicant's commander recommended approval of the request for discharge on 27 June 2001. His commander noted that the Soldier had become disillusioned with the military and retention was not in the best interest of the Army.

8. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 18 July 2001 and directed his discharge UOTHC.

9. The applicant was discharged on 13 August 2001. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. He completed 11 months and 23 days of net active service this period with 319 days of lost time.

10. The applicant provides:

a. An undated self-authored letter, stating that the emotional turmoil of grief and hopelessness became apparent, and he could no longer continue with his military service. He sought medical attention while home on leave in late 1999 to early 2000 and was diagnosed with depression, anxiety, and PTSD. He was immediately prescribed medication. While out of the service, he has four biological healthy children, he began a long running career as an engineer in the oilfield industry and he is currently a district

manager for an oilfield manufacturing company. Lastly, he does have a son that is proudly serving in the U.S. Army and his youngest son plans to join the U.S. Air Force when he becomes of age

b. Two Certification of Vital Records (Certificates of Death), dated 26 January 1999 and 1 September 1999. Both certificates shows the passing of the applicant's daughters.

11. A Medical Review of Depression and Anxiety, dated 7 November 2023. The document shows the applicant has a history of depression and anxiety.

12. 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.

13. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. He contends PTSD and OMH 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:

- Applicant enlisted in the Regular Army on 1 October 1999.
- On 5 January 2000, the applicant was reported absent without leave (AWOL) and remained absent until he returned to military authorities on 19 November 2000.
- Court-martial charges were preferred against the applicant on 22 November 2000 for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL on or about 5 January 2000 and remained absent until on or about 19 November 2000.
- Applicant was discharged on 13 August 2001. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial, under other than honorable conditions (UOTHC) with separation code KFS, and RE code 4.

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 while waiting (delayed entry program) to leave for basic training, his wife gave birth to their daughter, and the child passed away. That was the second daughter that passed away within months of each other. He was suffering

from Post-Traumatic Stress Disorder (PTSD), depression and anxiety at the time he began training. Further, he was unable to seek medical help for conditions or the grief that led to his separation. He is asking for a Character of Discharge review due to mental illness and PTSD from the death of his two daughters in the weeks prior to leaving for training. Lastly, he has included a letter of explanation and death certificates of his daughters.

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 memorandum signed by the applicant dated 22 November 2000 shows he declined a medical examination for the purpose of separation. In addition, a request for discharge in lieu of trial by court-martial memo states, "Soldier has become disillusioned with the military" as the rationale for his AWOL. There was no indication of any behavioral health condition. The applicant does provide two Certificates of Death, dated 26 January 1999 and 1 September 1999. Both certificates show the passing of the applicant's daughters due to prematurity/miscarriage.

e. The VA's 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 7 November 2023 of a medical encounter from his primary care provider for the purpose of a medication review. The note indicates the applicant was treated for symptoms of depression and anxiety via medication management and his symptoms are well controlled. The note does not indicate the applicant's treatment history, nor does it indicate his symptoms are related to military service or 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 PTSD and 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. The applicant contends PTSD and OMH as related to his request due to his wife's miscarriages. Although the applicant's experience of his wife having two miscarriages in

a short time span is a challenging life circumstance that could cause significant grief, this would not meet diagnostic criteria for PTSD. Overall, 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 prescribed medication for symptoms of anxiety and depression. However, the note is over two 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 PTSD and OMH 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. One potential outcome was to grant relief to upgrade the applicant's discharge to general, under honorable conditions based on the circumstances of losing two children in the same year and his spouse being distraught during the holidays which could lead to going AWOL. However, upon review of the petition, available military records and medical review, the Board majority concurred with the advisory 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.

2. The Board noted the evidence of record shows the applicant was AWOL from on or about 5 January 2000 and remained absent until on or about 19 November 2000, 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. Therefore, the Board denied relief.

3. The Board considered the following Kurta questions under liberal consideration:

a. Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts PTSD and OMH on his application as related to his request.

b. 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.

c. Does the condition or experience actually excuse or mitigate the discharge? No. The applicant contends PTSD and OMH as related to his request due to his wife's miscarriages. Although the applicant's experience of his wife having two miscarriages in a short time span is a challenging life circumstance that could cause significant grief, this would not meet diagnostic criteria for PTSD. Overall, 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 prescribed medication for symptoms of anxiety and depression. However, the note is over two decades post-military service and does not indicate his symptoms are related to military service or were present during his time in service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	XXX	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
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. Section 1556 of Title 10, U.S. Code, 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.
3. 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. 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.

4. 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.

c. Chapter 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

5. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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.

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/NR) 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//