

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 April 2025

DOCKET NUMBER: AR20240009296

APPLICANT REQUESTS:

- in effect, upgrade of his under other than honorable conditions (UOTHC) discharge
- personal 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), 28 June 2024

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 homeless, and he did serve his time for his country as well as possible.
3. On his DD Form 149, he annotates other mental health is related to this request.
4. A review of the applicant's service record shows the following:
 - a. He enlisted in the Regular Army on 28 November 1973, for a 3-year period.
 - b. The highest rank he attained was private/E-2.
 - c. He accepted nonjudicial punishments under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ):
 - (1) On 4 February 1974, for absenting himself without authority on or about 4 February 1974 and remaining absent until on or about 5 February 1974. His punishment imposed was forfeiture of \$45.00 for one month.

(2) On 28 February 1974, for absenting himself without authority on or about 19 February 1974 and remaining absent until on or about 26 February 1974. His punishment imposed was forfeiture of \$100.00 for two months.

d. On 6 January 1975, he was reported as absent without leave (AWOL). The relevant DA Form 3836 (Notice of Return of US Army Member from Unauthorized Absence) shows he was apprehended by civil authorities and returned on 27 January 1975.

e. He was reported as AWOL on or about 12 February 1975. The relevant DA Form 4187 (Personnel Action) shows on 12 March 1975 he surrendered to military control.

f. He was reported as AWOL on or about 20 March 1975. The relevant DA Form 4187 shows on 31 March 1975 he surrendered to military control.

g. On 3 April 1975, he was reported as AWOL. The relevant DA Form 3836 shows he was apprehended and returned to military control by the Federal Bureau of Investigation on 30 April 1976.

h. On 6 May 1976, court martial charges were preferred against him for violations of the UCMJ. The DA Form 458 (Charge Sheet) shows he was charged with four specifications of going AWOL for the following periods:

- on or about 6 January 1975 until on or about 21 January 1975
- on or about 12 February 1975 until on or about 12 March 1975
- on or about 20 March 1975 until on or about 31 March 1975
- on or about 3 April 1975 until on or about 30 April 1976

i. He consulted with legal counsel on 7 May 1976, he executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service). He acknowledged his understanding of the following in his request:

(1) He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

(2) Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an UOTHC character of service, and of the procedures and rights available to him.

(3) He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he elected to submit a statement in his own behalf; wherein he stated he could not adapt to the military life.

j. His immediate and intermediate commander's recommended approval of his request for discharge for the good of the service and further recommended issuance of an UOTHC discharge.

k. The separation authority approved his request for discharge, directed he be reduced to the lowest enlisted grade, and his discharge characterized as UOTHC.

l. He was discharged accordingly on 7 June 1976, under the provisions of AR 635-200, Chapter 10, in the grade of E-1. His DD Form 214 (Report of Separation from Active Duty) shows his service was characterized as UOTHC. He served 1 year and 2 months of net active service with 490 days of lost time.

5. 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.

6. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to something more favorable. He contends he experienced an undiagnosed mental health condition that mitigates his misconduct.

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 into the Regular Army on 28 November 1973.
- The applicant accepted NJP for absenting himself without authority from 4 to 5 February 1974; 19 to 26 February 1974; and for being AWOL on 6 January 1975.
- He was reported AWOL on three additional occasions, and on 6 May 1976 court martial charges were preferred against him for violations of the UCMJ. The DA Form 458 (Charge Sheet) shows he was charged with four specifications of going AWOL. He requested discharge for the good of the service.
- The applicant was discharged on 7 June 1976 and served 1 year and 2 months of net active service with 490 days of lost time.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The

applicant asserts he is homeless and did serve his time for his country as well as possible. He indicated "other mental health" as an issue or condition related to his request. The service record included a statement authored by the applicant indicating he was requesting discharge because "I cannot adapt to military life." The application was void of any medical or mental health records. There was insufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed the applicant initiated homeless services in April 2009, January 2017, December 2021, November 2022, and December 2023 while serving time in prison. Since May 2024, he has been provided with support from the "Health Care for Re-entry Veterans Program," which has included primary care, dental, and transitional housing, but there is no indication of any mental health services.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition at the time of the misconduct. There are no mental health records available for review.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service or after discharge. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. However, the applicant contends he had a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The Board carefully considered the applicant's request, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The applicant was charged with being absent without leave for numerous periods, with the last period on 3 to 30 April 1976, 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 noted the applicant's length of absence and concurred with the medical advisor's review finding insufficient evidence the applicant had a condition or experience during service that mitigated his misconduct. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

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
█	█	█	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, 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 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.

3. Army Regulation (AR) 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.

4. AR 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 that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

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.

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 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.

6. 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//