

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 March 2025

DOCKET NUMBER: AR20240009513

APPLICANT REQUESTS: an upgrade of his 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), 7 April 1981
- Character Reference Letter from B__ S__, 8 May 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 while serving in the Army he was about to deploy to Germany due to the war in Vietnam when he was notified that his father had colon cancer and did not have long to live. He was distraught and had all types of thoughts and emotions running through his head. He thought, what if he was forward deployed to Vietnam from Germany and never got to see his father alive again. Once he arrived home, he discovered that his parents were separated, and his father had no one to care for him. He had no choice but to pay homage to his father who raised him. He stayed and supported his father through his final stages in life. After his father passed, he went back to the Army and explained what happened, but unfortunately, he was discharged. He wanted to serve his country but needed to ensure his father was taken care of. He asks that the Board consider all situations that led to his discharge and upgrade his discharge.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 7 November 1978. The highest grade he held was private (PV2/E-2).

b. On 20 March 1979, he accepted nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for without authority, absenting himself from his unit from on or about 13 March 1979 to on or about 15 March 1979.

c. His duty status changed on the following dates:

- Assigned Not Joined to Absent Without Leave (AWOL) – 20 June 1979
- AWOL to Dropped from the Rolls (DFR) – 20 July 1979
- DFR to Present for Duty (PDY) – 19 February 1981 (apprehended by civil authorities)

d. Court-martial charges were preferred against the applicant on 20 February 1981. His DD Form 458 (Charge Sheet) shows he was charged with being AWOL from on or about 20 June 1979 to on or about 19 February 1981.

e. On 25 February 1981, after consulting with legal counsel, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial, under Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10. In doing so, he acknowledged that the charges preferred against him under the UCMJ, authorized the imposition of a bad conduct or dishonorable discharge.

f. On 25 February 1981, the immediate commander and intermediate commander recommended approval of the request for discharge in lieu of trial by court-martial, with characterization of service under other than honorable conditions. The immediate commander noted that the applicant stated during his personal interview that his approximate 609 days of AWOL were caused by family problems. His father killed a person and because of that, his mother became very depressed and sickly because the trial was more than she could bear, and because of that, he went AWOL to help his mother through her problems.

g. The separation authority approved the recommended discharge on 26 March 1981 and directed the applicant be issued an under other than honorable conditions discharge and be reduced to the lowest enlisted grade.

h. The applicant was discharged on 7 April 1981. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 10, in the lowest enlisted grade, and his service was characterized as under other than honorable conditions. He completed 11 months and 2 days of net active service this period.

4. On 4 October 1982, the Army Discharge Review Board denied the applicant's request to upgrade his discharge. The Board determined that he was properly discharged.

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 other than honorable conditions discharge. The applicant contends his request is related to his experience of mental health disorders that impacted the circumstances of his discharge. 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 into the Army of the United States on 07 November 1978; 2) On 20 March 1979, he accepted NJP for going AWOL from 13 March 1979 to 15 March 1979; 3) Court-martial charges were preferred against the applicant on 20 February 1981 for going AWOL from 20 June 1979 to 19 February 1981; 4) The applicant was discharged on 07 April 1981, Chapter 10 - for the good of the service in lieu of trial by court-martial. His service was characterized as under other than honorable conditions. He completed 11 months, and 2 days of net active service with 609 days lost. 5) On 4 October 1982, the ADRB previously reviewed and ruled that his discharge was proper and equitable.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service records. The VA's Joint Legacy Viewer (JLV) was also reviewed. No additional medical documentation was provided for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced mental health conditions which impacted his conduct resulting in his discharge. There is insufficient evidence that the applicant reported or was diagnosed with a mental health condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was examined, and no results were found. The applicant has not been diagnosed with a service-connected mental health condition at this time, and he does not receive any service-connected disability.

e. Based on the available information; it is the opinion of the Agency Medical Advisor that there is insufficient evidence the applicant has been diagnosed with a mitigating mental health condition. The applicant contends that his repeated misconduct was the result of difficulties in caring for his parents. However, there was no indication at this time that there was any evidence of a diagnosable mental health condition at the time of service that would mitigate his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant contends he was experiencing mental health conditions that mitigate the misconduct leading to his separation.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced a mental health condition at the time of his active service that mitigates his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, the applicant contends he experienced mental health conditions including depression and anxiety during his time in active service. However, there is insufficient evidence beyond self-report that the applicant was diagnosed with any mental health condition during his time in service. The applicant did repeatedly go AWOL for extended periods of time, and this type of avoidant behavior can be a natural sequelae for some mental health conditions. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. Yet, the applicant contends he experienced a mental health condition or experience while on active service, which mitigates his misconduct. The applicant's assertion is sufficient for consideration per the Liberal Consideration Policy.

BOARD DISCUSSION:

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 review based on law, policy, regulation, and published Department of Defense guidance for liberal and clemency determination requests for upgrade of his characterization of service.

a. The applicant seeks an upgrade of his discharge characterization from under other than honorable conditions, citing personal hardship and alleged mental health challenges during his time in service. He states that his extended absence from duty was driven by the need to care for his father, who was terminally ill, and later to support his mother through a difficult period. While the Board acknowledges the emotional weight of these circumstances, the applicant's explanation is not sufficiently supported by the record to warrant a change in discharge status.

b. The applicant was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service in lieu of trial by court-martial. His record reflects a significant period of unauthorized absence—609 days—following a prior instance of

AWOL and nonjudicial punishment. He voluntarily requested separation and acknowledged the seriousness of the charges against him. The separation authority appropriately directed a discharge under other than honorable conditions.

c. In concurrence with the medical advisor's review, the Board concluded there is insufficient evidence that the applicant was diagnosed with or treated for a mental health condition during his period of service. The VA's Joint Legacy Viewer shows no record of service-connected mental health conditions or treatment.

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 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 provided that a member who committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The request for discharge may be submitted at any time after court-martial charges are preferred against the member, regardless of whether the charges are referred to a court-martial and regardless of the type of court-martial to which the charges may be referred. The request for discharge may be submitted at any stage in the processing of the charges until final action on the case by the court-martial convening authority. Commanders will ensure that a member is not coerced into submitting a request for discharge for the good of the service. The member is given reasonable time to consult with a consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the member may elect to submit a request for discharge for the good of the service. The member will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a member who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the member's overall record during their current enlistment. For members who had completed entry level status, characterization of service as honorable was not authorized unless the member's record was otherwise so meritorious that any other characterization clearly would be improper.

b. An honorable discharge is a separation with honor. Issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. A general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. The recipient of a general discharge is normally a member whose military record and performance is satisfactory.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

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 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; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to 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 that misconduct which led to the discharge.

4. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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.

5. 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//