

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 March 2024

DOCKET NUMBER: AR20230002911

APPLICANT REQUESTS: Correction of his military records to show a different separation code.

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

DD Form 293 (Application for the Review of Discharge) in lieu of the DD Form 149

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 did not provide a statement in support of his request.
3. On the applicant's DD Form 293, he indicates other mental health issues as contributing and mitigating factors in the circumstances that resulted in his separation.
4. A review of the applicant's service record shows he enlisted in the Regular Army on 12 June 1979, completed training and was awarded military occupational specialty 63B (Light Wheel Vehicle/Power Generation Mechanic). The highest grade he held was E-4.
5. Summary Court-Martial Order Number 1, issued by Headquarters, 701st Maintenance Battalion, Fort Riley, KS, shows the applicant was found guilty of being absent without leave from on or about 0001 hours, 19 January 1980 until on or about 2310 hours 23 January 1980. His sentence was 30 days of extra duty and 30 days of restriction.
6. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice on the following dates for the indicated offenses:
 - 12 March 1980, for disobeying a lawful order; his punishment was confinement for 7 days in the Correctional Custody Facility

- 9 October 1980, for assault of two Soldiers; his punishment was reduction to E-2, forfeiture of \$130.00, and 14 days of extra duty
- 24 March 1982, for being drunk on duty on 8 March 1982 and failure to go to his place of duty on 8 March 1982; his punishment was reduction to E-1, forfeiture of \$275.00 pay per month for two months, and 30 days of extra duty

7. The applicant's immediate commander notified the applicant on 8 April 1982 of his intent to initiate actions to separate him under Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-31 and advised him of his rights and options, and that he was recommending the applicant receive a general discharge.

8. The applicant acknowledged the proposed action on 12 April 1982, and voluntarily consented to the separation, acknowledging the basis for the contemplated discharge, the possible effects of a general discharge, and the procedures and rights that were available to him. He elected not to submit a statement in his own behalf.

9. The applicant's immediate commander formally recommended his separation from service, on 12 April 1982, and recommended the applicant not be transferred to the Individual Ready Reserve.

10. The appropriate authority approved the discharge recommendation on 19 April 1982 and directed the applicant be issued a General Discharge Certificate.

11. The applicant was discharged on 23 April 1982, in the pay grade of E-1. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, paragraph 5-31h(2) for failure to maintain acceptable standards for retention, and his service characterization was under honorable conditions. He was credited with 2 years, 10 months, and 18 days of net active service with 4 days of lost time. His separation code is JGH.

12. The ABCMR denied the applicant's request for a related issue of a change of his reenlistment eligibility code on 11 June 1986. It was stated "There appears to be no basis to remove or waive those disqualifications, which established the basis for the reenlistment eligibility codes"...and "There appears to be no relationship between the applicant's acts of indiscipline and the illness of his child. Therefore, the Board does not consider his personal problems mitigating, so as to excuse his poor record of service."

13. In determining whether to grant relief the Boards for Correction of Military/Navy Records (BCM/NR) can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

14. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requests a correction of his military records to show a separation code which would allow reenlistment. He asserts he was experiencing mental health issues, which 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: 1) The applicant enlisted into Regular Army on 12 June 1982; 2) Summary Court-Martial Orders shows the applicant was guilty of being AWOL from 19-23 January 1980; 3) The applicant accepted nonjudicial punishment (NJP) three times between March 1980-March 1982 for not following orders, assault of two Soldiers, and being drunk on duty; 4) the applicant was discharged on 23 April 1982 for failure to maintain acceptable standards for retention. His service characterization was under honorable conditions. His separation Code is JGH.

c. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided by the applicant.

d. The applicant contends he experienced mental health conditions while on active service, which mitigates his misconduct and discharge. There is insufficient evidence the applicant reported mental health symptoms while on active service. A review of JLV of provided insufficient evidence the applicant has been diagnosed with a mental health condition, and he does not receive any service-connected disability.

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

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes, the applicant contends he was experiencing a mental health condition that mitigates his misconduct.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition while on active service. The applicant did go AWOL and engaged in

erratic behavior, which can be a sequela to some mental health conditions, but this is not sufficient to establish a history of a condition during active service. However, the applicant contends he was experiencing a mental health condition that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's mental health claim and the review and conclusions of the ARBA Medical Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding there being insufficient evidence to support a conclusion that his misconduct was mitigated by a mental health condition. Based on a preponderance of the evidence, the Board determined the reason for the applicant's discharge and the associated separation code were not in error or unjust.

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.

7/23/2024

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. 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. Title 10, USC, section 1556 provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 5 (Separation for Convenience of the Government) states unless the reason for separation requires a specific characterization, a Soldier being separated for the convenience of the Government will be awarded a character of service of honorable, under honorable conditions, or an uncharacterized description of service if in entry-level status.
 - b. Paragraph 5-31, in effect at the time, provided for the separation of personnel because of unsatisfactory performance or conduct (or both). This policy applied to individuals who had demonstrated that they were not qualified for retention because

they could not adapt socially or emotionally to military life, or because they lacked the aptitude, ability, motivation, or self-discipline for military service, or that they had demonstrated characteristics not compatible with satisfactory continued service.

4. Army Regulation 635-5-1 (SPD Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. It provides that the separation code "JGH" is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, paragraph 5-31, for failure to maintain acceptable standards for retention.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018 [Wilkie Memorandum], 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 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 grounds.

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 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

//NOTHING FOLLOWS//