

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 January 2024

DOCKET NUMBER: AR20230002981

APPLICANT REQUESTS:

- Upgrade of his general, under honorable conditions discharge to honorable
- Change the narrative reason for separation from “misconduct” to “medical”

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

DD Form 293, Application for the Review of Discharge from the Army Forces of the United States

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 was discharged while enrolled into a behavioral health and substance abuse program, from family relocation, because the Army failed to move him and his X-wife and daughter to his duty location. After discharge, the Department of Veterans Affairs awarded him 90% service connection for depressed mood and alcohol abuse, along with cannabis disorder. The way he sees things was that when he came to a new unit, leadership failed to make things happen for him. Dealing with family was not acceptable and caused him to be a different Soldier from the one who previously served for 3 and 6 months. He served an honorable contract before reenlisting, and he thinks that is the type of discharge he deserves. Also, the reason for his discharge should be changed from misconduct to medical because of the VA rating.
3. Review of the applicant's service records shows:
  - a. He enlisted in the Regular Army on 12 November 2014, and he held military occupational specialty 88M, Motor Transport Operator. He reenlisted on 25 May 2017.

b. On 18 March 2005, the applicant submitted a urine sample that tested positive for marijuana.

c. On 25 April 2018, the applicant accepted field grade nonjudicial punishment under Article 15 of the Uniform Code of Military Justice for wrongfully using marijuana. His punishment included reduction to private/E-2, suspended forfeiture of pay, and extra duty and restriction.

d. On or about 8 May 2018, the applicant underwent a mental status evaluation at Winn Army Community Hospital, Fort Stewart, GA. He was diagnosed with adjustment disorder, with Depressed Mood.

e. On or about 31 May 2018, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him in accordance with AR 635-200 (Active Duty Enlisted Separation), paragraph 14-12c, for misconduct - commission of a serious offense. The commander recommended a general, under honorable conditions discharge. The specific reasons: tested positive for marijuana on 5 March 2018.

f. On 7 June 2018, the applicant acknowledged receipt of the commander's intent to separate him and subsequently consulted with legal counsel. He was advised of the basis for the contemplated separation for misconduct, the type of discharge he could receive and its effect on further enlistment or reenlistment, the possible effects of this discharge, and of the procedures/rights that were available to him. He did not qualify for an administrative board because he had less than 6 years of total service. He further indicated that he understood:

- He could expect to encounter substantial prejudice in civilian life if a general discharge was issued to him
- He could be ineligible for many or all benefits as a veteran under Federal and State laws as a result of the issuance of an under other than honorable conditions discharge
- He could submit a person statement but elected not to do so

g. After the applicant's acknowledgement, the applicant's immediate commander formally initiated separation action against him in accordance with AR 635-200, paragraph 14-12c, for misconduct - commission of a serious offense. His chain of command recommended approval.

h. On 27 August 2018, the separation authority approved the applicant's discharge from the Army and ordered him discharged under the provisions of AR 635-200, chapter 14, by reason of misconduct - commission of a serious offense and directed his service

be under honorable conditions (general). On 11 September 2018, the applicant was discharged accordingly.

i. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under AR 635-200, chapter 14-12c, by reason of misconduct - commission of a serious offense \*Drug Abuse) with an under honorable conditions (general). (Separation Code JKK, Reentry Code 4). He completed 3 years and 10 months of active service. His DD Form 214 shows:

(1) He was awarded or authorized: Army Achievement Medal, Army Good Conduct Medal, National Defense Service Medal, Army Service Ribbon, and Driver and Mechanic Badge.

(2) The Remarks Block listed his immediate reenlistment and the fact that he completed first full term of service but did not list his continuous honorable service (for his first enlistment)

j. There is no indication the applicant has requested review of his administrative discharge by the Army Discharge Review Board.

4. By regulation, Soldiers are subject to separation under the provisions of paragraph 14-12c of AR 635-200 for a commission of a serious offense. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

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. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. Operating under different policies and laws, the VA may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

## 7. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions discharge to honorable, as well as a change in the narrative reason for separation from "misconduct" to "medical". The applicant indicated depression and substance abuse as mitigating factors.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- Applicant enlisted in the Regular Army on 12 November 2014.
- On 25 April 2018, the applicant accepted field grade nonjudicial punishment (NJP) for wrongfully using marijuana.
- On or about 31 May 2018, the applicant's immediate commander notified the applicant of his intent to initiate separation in accordance with AR 635-200, paragraph 14-12c, for misconduct - commission of a serious offense. The commander recommended a general, under honorable conditions discharge. The specific reasons: tested positive for marijuana on 5 March 2018. The applicant acknowledge receipt of the commander's intent to separate on 7 June 2018 and after the acknowledgment, his immediate commander formally initiated separation.
- The applicant was discharged on 11 September 2018 with an under honorable conditions (general) discharge.

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 293, his ABCMR Record of Proceedings (ROP), his DD Form 214, as well as documents from his service record and separation. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant asserts that he does not believe his discharge type fits his character of service. He noted that he was enrolled in behavioral health and substance abuse treatment. The applicant asserted that he was engaged in this care due to "family relocation because of the army failing to move my ex-wife and daughter to my duty location." He reported that after his service he was granted service connection for depression and substance use. Overall, he asserts his leadership failed him. He also asserted his reason for discharge should be changed to medical because of his VA medical ratings.

e. The applicant's engagement with health care, to include mental health, can be found in his electronic health record (EHR). The applicant's EHR shows the applicant first presented to behavioral health care on 19 January 2018, reporting concerns with feeling angry, sleep issues, being verbally abusive to his wife and drinking to sleep. During this encounter he was diagnosed with insomnia unspecified. He self-referred to substance use disorder clinical care (SUDCC) and began actively engaging in care until his discharge. He was diagnosed with alcohol dependence and cannabis use – unspecified. On 30 January 2018 he was diagnosed with an adjustment disorder with depressed mood. He re-engaged with mental health (aside from SUDCC) on 3 May 2018, after his positive UA and learning he had an STD, with both causing him increased stress. He engaged in individual therapy and group therapy until his discharge, with it deemed that he satisfactorily completed treatment (per a note 10 September 2018).

f. His supporting documents and service records also contained relevant medical information. He completed his separation medical examination on 3 May 2018. His Report of Medical Examination showed no psychiatric concerns. His Report of Medical History noted taking medication for insomnia, and also affirmed loss of memory or amnesia, frequent trouble sleeping, use of illegal drugs and receiving counseling. However, the applicant denied depression or excessive worry, nervous trouble of any sort, attempted suicide or being evaluated or treated for a mental condition. In addition, the applicant's periodic medical examinations marked normal for psychiatric and PULHES was 111111. In sum, the applicant was found fit for service in accordance with (IAW) AR 40-501. The applicant was seen for a separation mental status exam (MSE) on 8 May 2018 (a partial copy of his 3822 [page 1] is in his separation packet however this advisor was able to see the full record in his EHR). The applicant's presentation was unremarkable. The applicant was diagnosed with an adjustment disorder with depressed mood. The applicant was found to have the mental capacity to understand and participate in the proceedings and was cleared to participate in administrative proceedings deemed necessary by command. In addition, he was not found to "meet diagnostic criteria for PTSD or any other behavioral health condition with symptom severity failing AR 40-501 for a MEB. Similarly, he has no condition or diagnosis meeting criteria for expeditious psychiatric administrative separation IAW Chapter 5-17 of AR 635-200." His evaluation also noted that he'd been successfully participating in weekly SUDCC treatment at Fort Stewart.

g. Per the applicant's VA EHR, he is 100% service connected, to include 70% for chronic adjustment disorder. The applicant engaged in mental health care through the VA starting in 2019, though has only engaged in a few encounters in 2019 and one substance use related contact in 2021. He has been diagnosed with adjustment disorder with mixed anxiety and depressed mood, disruption of family by separation and divorce, cannabis dependence and alcohol dependence. He was seen for a compensation and pension (C&P) evaluation on 25 September 2019, where he was

diagnosed with adjustment disorder with depressed mood and it was also noted that he claimed an insomnia, alcohol use and cannabis use disorder. This C&P encounter indicated he was also seen for a first C&P on 9 September 2018 and had been diagnosed with an adjustment disorder. During the 2019 evaluation, he was asserting worsening symptoms and the evaluator concurred. Through review of Joint Legacy Viewing, this applicant did have "Community Health Summaries and Documents" available, though there was no record of a mental health treatment nor diagnoses.

h. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a condition or experience at the time of service that mitigated his discharge.

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 asserts other mental health (depression, substance use disorder) is related to his request for an upgrade to his discharge.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends the condition was present during his time in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant asserted other mental health mitigated his discharge. More specifically, the applicant asserted substance use disorders and depression. First and foremost, any substance use disorder, as a standalone diagnosis, is not currently a mitigating condition. Second, the applicant was only diagnosed with an adjustment disorder with depressed mood (in addition to substance use disorders) during his time in the service. An adjustment disorder is also not typically considered a mitigating condition. While chronic adjustment disorder is a boardable condition, the applicant only received this diagnosis after his second C&P evaluation in 2019, a full year after his discharge. Third, the applicant asserts he should have received a medical discharge given his service connection from the VA. The applicant had engaged in misconduct (positive UA for THC), leading to his misconduct discharge. The applicant was cleared for administrative separation during a mental status exam with the evaluation clearly stating he did not meet criteria for an MEB nor a chapter 5-17 (now 5-14). There continues to be no evidence the applicant should have received a medical board while in the service, nor would he be appropriate for a DES referral now (was not diagnosed with a boardable condition, did not fall below retention standards, was not on permanent profile, was not at the medical readiness to decision point). And while the applicant has been 70% service connected for a chronic adjustment disorder, VA examinations are based on

different standards and parameters; they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a post-discharge diagnosis and a VA disability rating does not imply failure to meet Army retention standards at the time of service, nor is it indicative of an injustice at the time of service. Overall, his separation process appears proper, equitable and free of error, and insufficient evidence has been provided to determine otherwise.

#### 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 contentions, the military record, and applicable regulatory guidance. The Board considered the severity and frequency of the misconduct which led to his discharge. The Board agreed the applicant was afforded proper evaluation. He was advised of the basis for the contemplated separation for misconduct, the type of discharge he could receive and its effect on further enlistment or reenlistment, the possible effects of this discharge, and of the procedures and rights that were available to him. Upon signing the receipt of separation notice he waived his right to an administrative separation board. After due consideration of the applicant's request, the Board determined the evidence presented does not meet the burden of proof in determining the existence of an error or injustice and a recommendation for relief is not warranted.
2. Prior to closing the case, the Board did note the analyst of record administrative notes below referencing corrections to the applicant's DD214 which will more accurately depict the military service of the applicant.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined 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.



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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows his DD Form 214 omitted administrative entries in the Remarks block. As a result, amend the DD Form 214 by adding in item 18 the entry "Continuous honorable service 2014-11-12 to 2017-05-25"

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 (Active Duty Enlisted Administrative Separations) set forth the basic authority for the separation of enlisted personnel. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally appropriate for a Soldier discharged under this chapter.

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.

3. Army Regulation 635-8 (Separation Processing and Documents) establishes the standardized policy for preparing and distributing the DD Form 214. The separation document provides the individual with documentary evidence of his or her military service. The DD Form 214 is a summary of a Soldier's most recent period of continuous active duty. The DD Form 214 provides a brief, clear-cut record of active duty service at the time of a Soldier's release from active duty, retirement, or discharge, and it is not intended to have any legal effect on termination of a Soldier's service. Chapter 2 states:

a. Block 18, (Remarks), Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable", enter "Continuous Honorable Active Service from" (first day of service for which DD Form 214 was not issued) Until (date before commencement of current enlistment).

b. Block 25, the separation authority, this is obtained from the regulatory directives authorizing the separation.

c. Block 26, separation code, this is obtained from AR 635-5-1, which provides the corresponding SPD code for the regulatory authority and reason for separation.

d. Block 28, narrative reason for separation, this is based on regulatory or other authority and can be checked against the cross reference in AR 635–5–1.

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 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; 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.

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. 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. 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//