

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 January 2024

DOCKET NUMBER: AR20230003587

APPLICANT REQUESTS: change his character of service from under other than honorable conditions to honorable.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the U.S.), 23 January 2023
- self-authored statement, undated
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 19 August 2005
- DD Form 2808 (Report of Medical Examination), page 1 of 3, undated
- Medical Record - 109 pages, 2005

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:

a. He was diagnosed with a personality disorder. He was allowed to go home for Christmas leave. When he returned from leave, he thought he was going to be discharged, instead he was kept in the Army. He found out his girlfriend was pregnant, so they got married. He was assigned to Headquarters and Headquarters Company, 117th Infantry Battalion, at Fort Wainwright, AK as a Medic. His wife stayed in AL while he was stationed at Fort Wainwright, AK; she had a miscarriage at five months. He went back to AL to get her. They started having marital issues and his wife called the police on him.

b. His section sergeant suggested he get help with some anger issues. He was put in an anger management class and marriage counselling. He was given several different kinds of narcotic medications to help with sleep, his mental health issues, as

well as his back and feet pain. His marriage was annulled, and his wife was sent back to AL. He was caught smoking marijuana and then he failed a drug test. He started smoking marijuana to numb his pain.

c. He was given an "Under Other Than Honorable" discharge. He is currently unemployed and in a drug treatment program. He spent a year in prison at the Limestone Correctional Facility in AL. He is seeking to have his discharge upgraded so he can get medical care through the Department of Veterans Affairs for his mental health, and back and feet problems; that he believes are service connected.

3. On 10 June 2003, the applicant enlisted in the Regular Army.

4. On 31 January 2005, the applicant received adverse counseling for wrongful use/possession of a controlled substance and failure to obey and order.

5. A CID report dated 4 February 2005, shows a search of the applicant's vehicle on 30 January 2005, revealed two bags containing suspected marijuana and two boxes of cigarette rolling papers.

6. A DD Form 2624 (Specimen Custody Document – Drug Testing) completed on 10 February 2005, shows the applicant tested positive for tetrahydrocannabinol (THC).

7. A memorandum, dated 22 February 2005, shows the Fort Wainwright Family Advocacy Case Review Committee (CRC) received a report of spouse abuse, emotional involving the H____ E____, allegedly perpetrated by the applicant. The CRC has determined the report to be substantiated and approved the following treatment plan:

- Anger - Attend ASC Anger Management Process group with D____ W____
- Marital/Family Discord - Participate in Marital/Family Counseling with Dr. G____
- Husband's Power and Control Issues Personal Issues and Wife's Co-dependence - Husband and Wife to attend ABC
- Suspected Substance Abuse - Referral to Army Substance Abuse Program for Husband

8. On 28 February 2005, the applicant accepted nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice for wrongfully possession of marijuana, on or about 30 January 2005. His punishment consisted of reduction to private (E-1), forfeiture of \$617.00 per month for two months; 45 days extra duty; and 45 days restriction.

9. On 1 March 2005, J____ M____ the Fort Wainwright, AK Clinical Director recommended the following treatment plan for the applicant:

- Anger and Domestic Abuse Prevention and Treatment (ADAPT) (Two Day Education Program) scheduled for 18 and 19 April 2005
- Out-Patient treatment and follow-up (90 days to 360 Days) - To Include participation in ADAPT, and alcoholics anonymous self-help groups. Outpatient treatment will begin directly after ADAPT

10. A DA Form 3975 (Military Police Report), shows on 10 March 2005, the Provost's Marshall Office (PMO) was notified by W____ E____ of a domestic disturbance, after the fact. The investigation revealed that the applicant and H____ E____ became involved in a verbal altercation over personal matters, which turned physical when the applicant put his arm around H____ E____ neck holding her in a head lock. Further investigation revealed that in a prior incident the applicant damaged their quarters by punching a hole in the living room closet door and breaking the door off the medicine cabinet. The applicant was apprehended, transported to the PMO, advised of his legal rights, which he waived, and he rendered a written sworn statement admitting to the damage but denying the assault. The applicant was further processed and released to his unit.

11. On 11 March 2005, the applicant received adverse counseling for wrongful use, possession of a controlled substance.

12. On 12 March 2005, A U.S. District Court Violation Notice, shows, the applicant was charged with driving under the influence and ordered to appear in court.

13. On 13 March 2005, the applicant was counseled for drunken or reckless driving, and failure to obey an order.

14. On 17 March 2005, a memorandum issued by O____ H____, an Interim Clinical Director, shows the applicant was screened on 1 March, 2005, at the Fort Wainwright Community Counseling Center as a result of a command referral for possession of illegal drugs. He was enrolled in the Fort Wainwright Community Counseling Center Outpatient Treatment Program. During this period of enrollment, the applicant continued to use mood altering substances as demonstrated by another blotter report for alcohol use. Due to the applicant's lack of motivation for treatment and desire to continue to use alcohol and drugs, no further treatment was recommended.

15. A DD 2807-2 (Medical Pre-Screen), completed on 30 March 2005, shows in part the applicant states he has recurrent back pain, frequent headaches, and took a lot of Motrin, he was treated for anger, depression, anxiety and marital problems, and his heart hurts at least twice a day.

16. On 30 March 2005, a DA Form 3822-R (Report of Mental Status Evaluation) shows in part, the applicant was command referred to Community Mental Health for a Mental Status Evaluation pursuant to a consideration for Chapter 14 administrative discharge from service. The applicant has sought treatment for irritability. He has been provided with anger management counseling and efforts to treat his depressed or irritable moods with a variety of medications. He has some features of personality disorder as well as chronic dysphoria. These conditions are not to the extent that he is unable to conform his behavior to the requirements of law. He has the mental capacity to understand administrative proceedings and cooperate with counsel. There is no mental condition or diagnosis that requires disposition through medical channels. The applicant was psychiatrically cleared for any administrative or judicial action deemed appropriate by command.

17. A DA Form 3975, shows on 2 April 2005, the PMO was notified by the Fort Wainwright Fire Department, of a damage to government property. The investigation revealed the applicant damaged government property when he kicked his barracks room door, breaking the hinges from the door frame. The applicant was transported to the PMO where he was advised of his legal rights, which he waived rendering a written sworn statement admitting to the above offense. The applicant was further processed and released to his unit.

18. His service record contains a history of additional counseling by his chain of command for a variety of infractions on 4 April 2005/for:

- Destruction of government property
- Underage drinking
- Violation of restriction
- Failure to report

19. On 16 June 2005, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations), paragraph 14-12c, for commission of a serious offense. The reason for his proposed action was for Commission of a Serious Offense. The reason for his proposed action is due to the applicant assaulting his wife, wrongfully possessing, and using marijuana, driving while impaired, consuming alcohol while underage, damaging military property on two occasions, and he failed to obey lawful orders and regulations. In addition, he broke restriction. He recommended a under other than honorable conditions characterization of service and advised the applicant of his rights.

20. On 16 June 2005, the applicant acknowledged receipt of his commander's intent to separate him for commission of a serious offense.

21. On the same day, the applicant's immediate commander-initiated separation action against the applicant under chapter 14-12c of AR 635-200 for commission of a serious offense. He recommended a Under Other than Honorable Conditions discharge. The intermediate commander recommended approval.

22. On 17 June 2005, the applicant consulted with counsel who advised him of the basis for the contemplated action to separate him under AR 635-200, Chapter 14-12c, and its effect; of the rights available to him; and the effect of any action taken by him in waiving his rights. He also included a statement on his own behalf. He acknowledged/elected:

a. He voluntarily waived consideration of his case by an administrative separation board contingent upon him receiving a General Discharge.

b. He understood that he may, up until the date the separation authority orders, directs, or approves his separation, withdraw this waiver and request that an administrative separation board hear his case.

c. He understood that if the separation authority refuses to accept this conditional waiver of a hearing before an administrative separation board his case, will be referred to an administrative separation board. In that case:

- He does not waive personal appearance before an administrative separation board
- He requests consulting counsel and representation by military counsel
- He understood that his willful failure to appear before the administrative separation board by absencing myself without leave will constitute a waiver of his rights to personal appearance before the board

d. He understood he may expect to encounter substantial prejudice in civilian life if a discharge/character of service any less favorable than honorable is issued to him and he understood that, as the result of issuance of a discharge certificate/ character of service which is less than honorable, he may make application to the Army Discharge Review Board or the Army Board for Correction of Military Records for upgrading; however, he realizes that consideration by either board does not automatically imply upgrading. He also understood that he is ineligible to apply for enlistment in the U.S. Army for a period of two years after discharge.

23. On 17 June 2005, he submitted a statement on his own behalf, wherein he requests a general discharge. The statement shows he understood that he can be separated from the Army for his misconduct, but he is young, and will need to find a job in the civilian world. He denied that he attacked his wife and stated that her allegations against him are not true. He admitted that he damaged government property, and he will pay for

the damages. He further states prior to getting his Article 15, he did not have any negative counseling. He understood that drugs and the Army did not mix and accepted his punishment for using marijuana. Unfortunately, things started to go downhill after the Article 15. He drank while underage and he should not have let drugs and alcohol ruin his Army career. He could not get hold of his life at that time. It was stupid and immature. He requested to stay in the Army. He would like to get a job after he gets out so that he can be a productive member of society. He knows he will lose the money he put into the GI Bill, and that is his fault. He is only 20 years old and can overcome the stupid mistakes he made while in the Army.

24. On 6 July 2005, Brigadier General J____ H____, disapproved the applicant's request dated 17 June 2005, to voluntarily waive his case by an administrative separation board; contingent upon him receiving a general under honorable conditions discharge. He further stated under the provisions of AR 635-200, Chapter 14-12c, an Administrative Separation Board, as appointed by the enclosed memorandum, dated 28 January 2005, will convene to determine an appropriate disposition of the recommendation that [applicant] be separated from the Army and to determine the appropriate characterization of service.

25. On 19 July 2005, the applicant consulted with counsel who advised him of the basis for the contemplated action to separate him under AR 635-200, Chapter 14-12c, and its effect; of the rights available to him; and the effect of any action taken by him in waiving his rights. He understood he is entitled to have his case considered by an administrative separation board. He acknowledged/elected:

a. He voluntarily waived consideration of his case by an administrative separation board.

b. He has been advised of his right to submit a conditional waiver of his right to have his case considered by an administrative separation board.

c. He waived personal appearance before an administrative separation board.

d. He understood that he may, up until the date the separation authority orders, directs, or approves his separation, withdraw this waiver and request that an administrative separation board hear his case.

e. He understood he may expect to encounter substantial prejudice in civilian life if a General Under Honorable Conditions discharge is issued to him. He further understood that, as the result of issuance of a discharge of Under Other Than Honorable conditions, he may be ineligible for many or all benefits as a veteran under both Federal and State laws, and that he may expect to encounter substantial prejudice in civilian life. He understood that if he receive a discharge character of service that is less than

honorable, he may make application to the Army Discharge Review Board or the Army Board for Correction of Military Records for upgrading; however, he realize that an act of consideration by either board does not automatically imply upgrading.

26. On 3 August 2005, the separation authority approved his discharge under the provision of AR 635-200, Chapter 14, paragraph 12c, and directed the issuance of a Under Other than Honorable Conditions discharge.

27. The applicant provides medical records that show the following active problems and dates of service:

- Occupational Problem on 3 August 2005
- Antisocial Personality Disorder on 19 July 2005
- Nonallopathic Lesions Sacral on 1 June 2005
- Nonallopathic Lesions Pelvic on 1 June 2005
- Nonallopathic Lesions Lumbar on 1 June 2005
- Lumbago on 1 June 2005
- Patient Counseling on 18 May 2005
- Partner Relational Problem on 9 May 2005
- Back Strain Sacroiliac Region on 18 March 2005
- Other Physical Therapy on 18 March 2005
- Depression on 8 March 2005
- Personality Disorder 23 February 2005
- Cannabis Abuse on 9 February 2005
- Secondary Insomnia on 9 February 2005
- Cannabis Abuse on 9 February 2005
- Secondary Insomnia on 9 February 2005
- Adjustment Disorder with Disturbance of Emotions and Conduct on 13 January 2005
- Astigmatism Regular on 11 January 2005
- Refractive Error Hypermetropia on 11 January 2005

28. On 19 August 2005, the applicant was discharged, in the rank/grade of private/E-1, under the provisions of Army Regulation 635-200, paragraph 14-12c, for misconduct. His DD Form 214 shows his rank/grade as PVT/E-1, a separation code of "JKQ," And a reentry code of "3." The applicant completed 2 years, 2 months, and 2 days of net active service, and he was awarded or authorized the Army Service Ribbon, Marksman Marksmanship Qualification Badge with Rifle Bar, and the Global War on Terrorism Service Medal.

29. There is no indication that the applicant requested an upgrade of his discharge from the Army Discharge Review Board within its 15-year statute of limitations.

30. Regulatory guidance states action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

31. 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.

32. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests an upgrade in characterization of service from Under Other Than Honorable Conditions so that he can receive care at the VA. He indicated that Other Mental Health was related to his request. He stated that he needs care for his mental health, back and feet. He indicates that he was injured while in service. He also experienced marital discord. He contends that he used marijuana to numb his pain and that he was discharged due to failing a drug test.

b. The applicant's record was summarized in the ABCMR ROP. Of note, he was in the Regular Army from 20030610 to 20050819. His MOS was 91W10 Health Care Specialist. According to the Enlisted Record Brief, he deployed twice in the United States. He was discharged under provisions of AR 635-200 para 14-12C for misconduct. Command listed the following reasons for the involuntary separation action: He assaulted his wife (10Mar2005 Military Police Report held her in a head lock); wrongfully used and possessed marijuana (30Jan2005 with urine test positive for THC conducted on 10Feb2005); drove while impaired (12Mar2005), consumed alcohol underage (04Apr2005 Developmental Counseling and 12Mar2005 Military Police Report), damaged military property on 2 occasions (02Apr2005 and 10Mar2005 Police Report) and failed to obey lawful orders and regulations. In addition, he broke restriction (11Mar2005, 02Apr2005). After a trial of substance abuse treatment, in March 2005 his prognosis for further rehabilitative treatment was deemed to be extremely poor due to his lack of motivation for treatment. His service was characterized as Under Other Than Honorable Conditions (UOTHC).

c. The ARBA Medical Reviewer noted that both behavioral health (BH) and general medical notes lacked detail. The applicant's first encounter with BH services was in January 2005 (Bassett ACH) when he was seen in follow up for anger issues and an occupational problem. He was taking psychotropic medication and 2 prescriptions for sleep. His diagnoses included Depression and Adjustment Disorder with Disturbance of Emotions and Conduct. In February, he was Command referred for a mental status evaluation pursuant to chapter 14. His mood was "stressed". He had increased anxiety, irritability, and sleep issues after his arrest and questioning by CID for marijuana use. An antipsychotic was added to his drug regimen, possibly as a mood stabilizer. He was detained by military police 10Mar2005 for assaulting his wife. In the 30Mar2005 Report of Mental Status Evaluation by psychiatry, his mental status exam was normal except his mood was depressed. Some features of Personality Disorder as well as Dysphoria (pervasive uneasiness or dissatisfaction) were noted. He was deemed mentally responsible and mentally able to understand and participate in administrative proceedings. A mental condition or diagnosis was not found which required disposition through medical channels. While in service, his BH diagnoses also included Secondary Insomnia; Occupational Problem; Partner Relationship Problem; Cannabis Abuse; Personality Disorder; and Antisocial Personality Disorder. While in service, in addition to psychotropic medications which included SSRIs, antipsychotics and Klonopin, he received individual counseling, partner relationship counseling, anger management and ASAP (Army Substance Abuse Program).

d. In his application to ABCMR, the applicant stated that he took marijuana to numb his pain. In the 30Mar2005 Report of Medical History, he reported recurrent back pain; headaches (for which he took "a lot of Motrin"); and "heart pain" twice per day. His diagnosis was Chronic Back Pain without radiculopathy. The condition began in basic training in July 2003 without known injury at the time. A lumbar spine film obtained due to lumbar trauma was normal on 15Sep2004. The associated clinic visits for July 2003 and September 2004 were not available for this review. While in service, the lumbar condition was treated with rest, profiling, NSAIDS and Low Back Pain Class. He also underwent physical therapy, aquatic therapy and OMM (Osteopathic Manipulative Medicine) in February and March 2005. During the 14Mar2005 BACH Physical Therapy visit, he reported the back pain as 6/10 (moderate). He was placed on a temporary profile on 07Feb2005. It was anticipated he would return to duty without limitations in 2-3 months. After the chapter physical exam, he presented on 20Apr2005 reporting that OMM had improved his back pain and he wanted another course of treatment. His back pain was mild (3/10). He was released without limitations.

e. In his sworn statement on the day he was accused of assaulting his wife (10Mar2005), he denied physically harming her, but he did admit to destroying property and grabbing his wife's shirt on 28Jan2005. In his wife's statement, she indicated that the applicant had been verbally and physically abusive for the prior few months. In the applicant's 17Jun2005 Rebuttal Statement memorandum for Command to ask for

General Discharge instead of UOTHC, he apologized for drug use, underage drinking and destruction of government property; however, he maintained that he did not physically attack his wife. It should be noted that on 22Feb2005 (prior to the March 2005 incident), Fort Wainwright Family Advocacy Case Review Committee found a report of spousal abuse to be substantiated.

f. JLV search showed that the applicant was not service connected by the VA. Review of records did not reveal PTSD, TBI or MST diagnoses. The 03Sep2014 Secretary of Defense Liberal Guidance Memorandum and the 25Aug2017 Clarifying Guidance were considered. The record did show the applicant was diagnosed with Depression while in service which may be mitigating for the offences which led to his discharge. Under Liberal Consideration, the Board may consider discharge upgrade due to a BH condition. In addition, in the ARBA Medical Reviewer's opinion, chronic lumbar pain may have contributed to the development of the applicant's Depression condition. The evidence for this is the back injury in September 2004 was followed within a few months by depressive symptoms which required multiple psychotropic agents. There was no available documentation of BH issues or substance use issues prior to service.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant was diagnosed with Depression while in service.

(2) Did the condition exist, or did the experience occur during military service? Yes. The applicant was diagnosed with Depression. Of significance, he sustained acute lumbar trauma on or about September 2004 according to an order for a lumbar film at the time (in the setting of chronic intermittent lumbar pain present for more than a year), which was 3 months prior to beginning treatment for symptoms attributed to Depression.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes, in part. The ARBA Medical Reviewer notes that the applicant self-referred for depression and anger symptoms and began treatment as early as December 2004. This occurred at least a few months *after* his back trauma and his substance use and domestic abuse was first documented in January 2005. Despite ongoing treatment, these offences among others, were repeated. Per DSM-5, chronic depressive symptoms substantially increase the likelihood of underlying personality, anxiety and substance use disorders. Therefore, the applicant's substance use (alcohol and marijuana) and related (underage drinking, driving while impaired) offenses are mitigated by his Depression condition. In addition, indifference and diminished motivation are common in depression (mitigates the failure to obey lawful orders and breaking restriction). Increased irritability, anger and anger outburst are not uncommon with chronic depression; however, assault of his spouse and destruction of military property are not mitigated by his Depression condition. Although aggression and

violence have been associated with substance-related disorders, alcohol-related disorders and mood disorders, the applicant was evaluated, and it was assessed that symptoms due to his BH conditions were not to the extent that he was unable to conform his behavior to the requirements of law.

BOARD DISCUSSION:

After reviewing the application, supporting documents, evidence found within the military record, the Board found relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, applicable regulatory guidance and published DoD guidance in determining discharge upgrade requests. The Board considered the misconduct, court-martial charges and whether there was sufficient evidence of mitigating circumstances to weigh in favor of clemency determination. The Board considered the applicant's diagnosis of a behavioral health condition and agreed it did not mitigate his misconduct. After due consideration of the request, and, in the absence of post-service achievements or letters of reference to weigh in support of a clemency determination, the Board determined the character of service the applicant received upon separation was not in error or unjust.

member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is 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. 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.

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, 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.

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.

4. 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//