

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 December 2023

DOCKET NUMBER: AR20230003697

APPLICANT REQUESTS: an upgrade of his general, under honorable conditions discharge (GD) to an honorable discharge (HD).

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Summary of Benefits Letter

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 requesting an upgrade of his general, under honorable conditions discharge to honorable.

a. He believes the nature of his discharge properly reflects a single poor decision on his behalf; however, it does not accurately reflect his full time-in-service. The discharge was influenced by outside circumstances which were used in the judgement/decision behind separation. While in service, he competed in numerous competitions, he completed several training regiments, and he competed in "Team of the Year competitions in both the first and second year with 75th EOD." He went above and beyond, excelling in all challenges, standards, etc., and subsequently made a poor decision to utilize steroids for the sole purpose of physical competitions outside of the Army. As a result, he has been unable to pursue additional routes in life.

b. He understands the error of my ways and has additionally foregone any usage of such substances. During his service he did receive a traumatic brain injury (TBI), as evidenced in his disability rating and medical records. He does not blame his TBI for the decisions that led to his separation but does believe it had an impact on his mental stability and way of life since. At the time of discharge, he was offered the opportunity to "defend" himself to the Brigade Command team; however, he felt defeated and afraid,

and unfortunately, failed to submit a rebuttal. It is one of his greatest mistakes, for which he would not understand the aftermath.

c. Since 2016 he has been awarded full custody of the children from his previous marriage. He has remarried and is now the father of 4 beautiful girls. He pursued a career in medical sales and has worked from the ground up to re-establish what the mistake caused him to lose. He is thankful for the life-lesson/wake-up-call that these circumstances provided, but he believes the end-result reflects poorly on the rest of his enlisted time. His main goal/priority is to pursue the educational benefits that an upgrade to "honorable discharge" would allow him to utilize and would further enable him to pursue a different career field; one that requires nothing less than an "honorable."

3. The applicant provides a summary of benefits letter from the VA dated 7 March 2023, which indicates he is 100% service connected and is considered totally and permanently disabled effective 16 June 2022.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 19 March 2013.

b. His Enlisted Record Brief (ERB) did not identify foreign service and/or deployments. His ERB further shows he was promoted to private first class on 1 March 2015 but reduced to private/E-1 on 5 January 2016. The facts and circumstances leading to this reduction are not contained in the available records.

c. The service record is void of the facts and circumstances surrounding the applicant's discharge with the exception of the separation authority approval.

d. The separation authority approved the discharge recommendation for immediate separation under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, paragraph 14-12c for misconduct, abuse of illegal drugs. He would be issued a general, under honorable conditions discharge.

e. Orders 146-0143 dated 25 May 2016, discharged the applicant from active duty with an effective date of 8 June 2016.

f. On 8 June 2016, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 shows he completed 3 years and 2 months, and 20 days of active service with no lost time. He was assigned separation code JKK and the narrative reason for separation listed as "Misconduct (Drug Abuse)," with a reentry code of 4, and his grade/pay grade was shown as private/E-1. It also shows he was awarded or authorized: National Defense Service Medal and Army Service Ribbon.

5. On 19 January 2021, the applicant was notified the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge. Based on the available record, the discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process.

6. On 26 January 2022, the applicant was notified the ADRB reviewed his discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge. The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration, the applicant's behavioral health diagnosis did not mitigate the offenses of illegal drug use.

7. By regulation (AR 15-185), the ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application.

8. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such drug abuse, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

9. 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.

10. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, his previous denial by Army Discharge Review Board, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting reconsideration of the ADRBs previous denials of his requests for a discharge upgrade. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the regular Army

on 19 March 2013 and was discharged under honorable conditions (general) on 8 June 2016 under the separation authority provided by paragraph 14-12c(2) of AR 635-200, Active Duty Enlisted Administrative Separations (17 December 2009): Serious offense - Abuse of illegal drugs. The DD 214 shows no period of Service in a hazardous duty pay area.

c. The request for a discharge upgrade was denied by the ADRB on 4 November 2020 (AR20200004845) and again by the ADRB on 9 December 2021 (AR20210003382). Rather than repeat their findings here, the board is referred to the record of proceedings for that case. This review will concentrate on new evidence submitted with this application.

d. In both his prior applications, the applicant contended that PTSD and TBI were issues affecting his judgement. AR20210003381 shows the applicant was diagnosed with adjustment disorder while in service and neurosis post service as a VA service-connected disability. The behavioral health advisor opined for Kurta C:

e. Does the condition or experience actually excuse or mitigate the discharge? No.

f. The Board's Medical Advisor opined that while the applicant has been diagnosed and service connected for Neurosis, this condition does not mitigate the illicit use of steroids. Steroid use is not associated with Neurosis and there is no evidence that applicant's steroid use was related to this condition. The official records state applicant does not hold a PTSD diagnosis. While mTBI is acknowledged, official records note symptoms are mild and non-interfering. Therefore, the Board's Medical Advisor concluded that with the evidence available, the applicant does not hold a medically mitigating condition."

The only new document submitted with the case file is a 7 March 2023 VA benefits letter showing he has a combined service-connected disability rating of 100% and was declared totally and permanently disabled effective 16 June 2022. JLV shows his current 70% rating for neurosis was effective 1 April 2019 and therefore in place at the time of the prior two ADRB denials.

g. It is the opinion of the ARBA medical advisor that a discharge upgrade remains unwarranted.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant's separation packet was not filed in his service record. However, other

evidence shows he was discharged due to misconduct – commission of a serious offense with a general discharge. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical advisory opinion finding insufficient evidence of in-service mitigating factors to overcome the misconduct. Based on a preponderance of evidence, the Board determined the character of service he received at the time of separation was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - a. An honorable discharge is a separation with honor. 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 member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed. Paragraph 14-12c further states commission of a serious offense includes abuse of illegal drugs or alcohol.
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 post-traumatic stress disorder (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, traumatic brain injury, sexual assault, or sexual harassment. 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. The guidance further describes evidence sources and criteria and requires boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that 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.

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 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.

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.

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//