

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 December 2023

DOCKET NUMBER: AR20230005160

APPLICANT REQUESTS: in effect, an upgrade to the characterization of his service from under honorable conditions (general) to honorable.

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

- DD Form 149, Application for Correction of Military Record
- DD Form 214, Report of Separation from Active Duty

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, in effect, he joined the military to go war for his country, and he still would do the same today. He contends that his commanding general told him that he should have never been accepted into the military due to his mental health. He also appears to state that he had an operation on his leg and was told he should have never passed the entrance physical.
3. On 22 October 1976, the applicant enlisted in the Regular Army for a period of three years. The highest grade he held was private/E-2.
4. He accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on two separate occasions.
 - a. On 10 February 1977, for failing to go at the time prescribed to his appointed place of duty.
 - b. On 14 June 1977, for the wrongful use of provoking words towards another junior enlisted Soldier, failing to go at the time prescribed to his appointed place of duty on two

occasions, and being absent without leave from on or about 12 May 1977 to on or about 10 June 1977.

5. On 14 June 1977:

a. The commander informed the applicant that action was being initiated to discharge him from the U.S. Army under the provisions of Army Regulation (AR) 635-200, Personnel Separations-Enlisted Personnel, Chapter 5, Expeditious Discharge Program (EDP). The commander stated he intended to recommend the applicant receive a general discharge certificate. The reason for the proposed action was the applicant's poor attitude, lack of motivation, lack of self-discipline, and failure to demonstrate promotion potential. The action was initiated due to the applicant's quitter attitude, hostility toward the Army, and his substandard performance.

b. The applicant acknowledged notification of the commander's intent and consented to the proposed discharge action. He declined to make a statement or submit a rebuttal in his own behalf.

6. The applicant underwent a mental status evaluation on an unknown date. The evaluation found no significant mental illness and indicated the applicant met the retention standards under the provisions of AR 40-501, Standards of Medical Fitness, Chapter 3.

7. On 21 June 1977, the applicant completed a Report of Medical History as part of his separation processing. He reported that his overall health was good; however, he had experienced hearing loss, knee problems (existed prior to service), and had coughed up blood. The examining official noted that the applicant had high range frequency hearing loss; however, he was qualified for separation or retention.

8. The separation authority approved the recommendation for discharge and the issuance of a general discharge certificate on 21 June 1977.

9. On 6 July 1977, he was discharged after completing 7 months and 14 days of net active service under the provisions of chapter 2, AR 635-200, with an under honorable conditions characterization of service, and a Separation Program Designation of "JGH" and a Reenlistment Code of "RE 3-3B." Additionally, he had 31 days of lost time from 12 May 1977 to 11 June 1977.

10. The applicant did not provide any medical records showing a physical or mental health condition.

11. Regulatory guidance in effect at the time stated the EDP provided that individuals who had demonstrated that they cannot or will not meet acceptable standards required

of enlisted personnel in the Army, because of the existence of one or more of the following conditions, may be discharged:

- poor attitude
- lack of motivation
- lack of self-discipline
- inability to adapt socially or emotionally
- failure to demonstrate promotion potential

12. The applicant provided argument and/or evidence the Board should consider, along with the applicant's overall record, in accordance with the published equity, injustice, or clemency determination guidance.

13. 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, 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 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 an upgrade of his under honorable conditions discharge. He states that due to a leg condition he should not have been able to pass the pre-entrance physical and thus never been enlisted into the Army.

c. 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 22 October 1976 and was discharged under honorable conditions on 6 July 1977 under the separation authority provided by chapter 2, of AR 635-200, Personnel Separations - Enlisted Personnel ((30 March 1976). The military separation code of JGH denotes expeditious discharge. It shows 31 days lost under 10 USC 972 (12 May – 11 June 1977)

d. Because of the period of service under consideration, there are no encounters in AHLTA or documents in iPERMS.

e. On 10 February 1977, the applicant received a company grade Article 15 for failure to repair. He received a field grade Article 15 on 14 June 1977 for threatening

another Soldier with violence, two incidents of failure to repair, and a period of absence without leave from 12 May 1977 thru 10 June 1977.

f. His pre-separation mental status evaluation documented a normal examination with no evidence of a behavioral health condition. The examiner stated the applicant was mentally responsible, was able to distinguish right from wrong and adhere to the right, had the mental capacity to understand and participate in board proceedings, and met the medical retention standards of AR 40-501, Standards of Medical Fitness. He mentally cleared the applicant for administrative discharge from the Army.

g. His company commander informed him of the initiation separation action under chapter 5 of AR 635-200 on 14 June 1977. The reasons listed for this proposed action were poor attitude, lack of motivation, lack of self-discipline, failure to demonstrate promotion potential, quitter attitude, hostility toward the Army, and clearly substandard performance.

h. On 15 June 1977, the applicant consented to the proposed discharge action and declined to make a statement or submit a rebuttal on his behalf.

i. His pre-separation Report of Medical History completed on 21 June 1977 shows he had a history of a right knee fracture prior to entering the Army. The applicant stated "I am in good health" and no significant medical conditions were identified on the Report of Medical Examination. No other medical documentation was submitted with the application.

j. His discharge was with a general discharge certificate was approved by the battalion commander on 21 June 1977.

k. JLV shows he is not registered with the Veterans Hospital Administration: There are no entries.

l. It is the opinion of the ARBA medical advisor that a discharge upgrade is not warranted.

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 statement, his 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 his misconduct not being mitigated by a mental health condition. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon 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.

2/15/2024

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 Army Board for Correction of Military Records (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 (AR) 635-200, Personnel Separations-Enlisted Personnel, in effect at the time, states that discharge or release from active duty prior to expiration of period of service prior to expiration of enlistment will be accomplished under the appropriate chapter in this regulation. Chapter 5-37, Expeditious Discharge Program (EDP) provided that:

a. individuals who had demonstrated that they cannot or will not meet acceptable standards required of enlisted personnel in the Army, because of the existence of one or more of the following conditions, may be discharged:

- poor attitude
- lack of motivation
- lack of self-discipline
- inability to adapt socially or emotionally
- failure to demonstrate promotion potential

b. It is contrary to the intent of the policy for commander to use of the EDP -

(1) as a substitute for appropriate administrative action under paragraph 5-38; chapters 13 (Unfitness or Unsuitability), 14 (Fraudulent Entry), or 15 (Misconduct-Desertion and Absence without Leave) of AR 635-200; processing through medical channels because of physical or mental defects; or appropriate disciplinary action.

(2) to make arbitrary or capricious use of this authority.

(3) to force the separation of individuals who: possess a potential for rehabilitation or decline discharge under this policy.

c. Individuals discharged under EDP may be awarded an honorable or general discharge certificate as appropriate. An honorable discharge is a separation with honor. Issuance of an honorable discharge will be conditioned upon proper military behavior and proficient performance of duty during the member's current enlistment of current period of service with due consideration for the member's age, length of service, grade, and general aptitude. It is the pattern of behavior and not the isolated instance which should be considered the governing factor in determination of character of service to be awarded.

3. AR 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 will decide cases on the evidence of record. It is not an investigative body.

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 (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.

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//