

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 December 2023

DOCKET NUMBER: AR20230005363

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

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Self-authored statement
- Letter from Mother
- Letter from Friend

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, U.S. Code (USC), 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 got into trouble several times while he was in the Army. He made poor choices and did not take the Army seriously until a couple of months prior to his separation. He realized those were mistakes and has learned from them to help him use sound judgement and make good decisions. He has been through several ups and downs, but he is older and wiser now. He desires an upgrade so he can take advantage of his GI Bill and other Veterans' benefits. He indicates on his DD Form 293, that post-traumatic stress disorder (PTSD) and other mental health conditions are related to his request.
3. The applicant enlisted in the U.S. Army Reserve (USAR) on 5 October 2000, at the age of 21, for a period of 8 years. Upon completion of initial entry training, he was ordered to active duty on 14 November 2000 for the purpose of completing Basic Combat Training (BCT) and then Advanced Individual Training (AIT). He successfully completed BCT at Fort Benning, GA and was reassigned to a unit at Fort Sam Houston, TX, to complete AIT.

4. On 2 January 2002, the applicant was counseled on the following dates:
 - 24 February 2001, for:
 - disrespect to a noncommissioned officer (NCO)
 - lack of discipline
 - disregard for the Army Core Values of Duty, Integrity, and Respect
 - 8 March 2001, for being absent from his appointed place of duty
 - 13 March 2001, for being found with alcohol in his room and/or in his possession
 - 19 March 2001, for being missing from accountability formation
5. On 29 March 2001, the applicant accepted company grade, summarized, nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for, on or about 24 February 2001, being disrespectful to an NCO; and on or about 10 March 2001, failing to obey rules or regulations by being in possession of alcohol during the commander's health and welfare inspection. His punishment consisted of extra duty for 14 days and restriction for 14 days.
6. On 30 April 2001, the applicant was counseled for being found hiding in the shower stall in another Soldier's room in an attempt to hide from the Duty Drill Sergeant. He was advised that continued conduct of this nature could result in his involuntary separation from the service and the potential consequences of such a separation.
7. On 24 May 2001, the applicant accepted company grade NJP under the provisions of Article 15, of the UCMJ for, on or about 29 April 2001, failing to obey a lawful order from a commissioned officer by being in an off-limits female billet area. His punishment consisted of reduction to the rank/grade of private/E-1; forfeiture of \$243.00, extra duty for 14 days, and restriction for 14 days.
8. On 8 January 2002, the applicant accepted company grade, summarized, NJP under the provisions of Article 15, of the UCMJ for, being absent without authority from 1720 hours on 30 October 2001 until after 1700 hour on 31 October 2002. His punishment consisted of extra duty for 14 days and restriction for 14 days.
9. On 9 January 2002, the applicant was advised that he was being recommended for administrative separation from the Army.
10. On 15 January 2002, the applicant was counseled for being absent without leave (AWOL) from on or about 13 November 2001 to 21 December 2001. He was advised that continued conduct of this nature could result in his involuntary separation from the service and the potential consequences of such a separation.

11. On 22 January 2002, the applicant's commander was informed that a urine sample provided by the applicant during a urinalysis on 7 January 2002 had tested positive for an illegal drug.

12. On 22 January 2002, the applicant underwent a Mental Status Evaluation and was determined to have the mental capacity to understand and participate in separation proceedings.

13. On 24 January 2002, the applicant underwent a pre-separation medical examination and was determined to be qualified for separation.

14. On 6 February 2002, the applicant's commander was informed that a urine sample provided by the applicant during a urinalysis on 23 January 2002 had tested positive for an illegal drug.

15. The applicant's immediate commander notified the applicant of his intent to initiate actions to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, paragraphs 12b and 12c, for a pattern of misconduct and commission of a serious offense. He was advised that he was being recommended for a general, under honorable conditions discharge, but the final determination of his characterization of service would be made by the separation authority. The applicant acknowledged receipt of the proposed separation notification on 21 February 2001.

16. On 22 February 2002, the applicant acknowledged that he was advised of the reasons for separation and of the rights available to him. He consulted with counsel and submitted a conditional election of rights wherein he elected:

- to waive consideration of his case by an administrative separation board (ASB) conditioned upon his receipt of a general discharge (he not eligible at the time)
- to waive personal appearance before an ASB conditioned upon his receipt of a general discharge (he was not eligible at the time)
- not to submit statements in his own behalf.
- to request consulting counsel and representation by military counsel and/or civilian counsel at no expense to the Government

17. On 16 April 2003, the applicant's immediate commander formally recommended his separation prior to the expiration of his term of service under the provisions of Army Regulation 635-200, Chapter 14, by reason of a pattern of misconduct and commission of a serious offense. He recommended the applicant receive a general discharge.

18. On 22 February 2002, the applicant accepted field grade NJP under the provisions of Article 15, of the UCMJ for, wrongfully using cocaine between on or about 4 January

2002 and 7 January 1002. His punishment consisted of reduction to E-1, forfeiture of \$552.00 per month for two months, extra duty for 45 days and restriction for 45 days.

19. The applicant's interim commander recommended approval of the separation action, and issuance of a general discharge.

20. On 4 April 2002, the separation authority approved the recommendation for separation, and directed the applicant be issued a general under honorable conditions discharge.

21. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show he was released from active duty and discharged from the USAR on 16 April 2002, under the provisions of Army Regulation 635-200, paragraph 14-12b, by reason of misconduct, with separation code "JKA" and reentry code "3." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 1 year, 5 months, and 3 days of net active service this period. He did not complete his first full term of service and was not awarded a military occupational specialty.

22. On 9 June 2023, a member of the Army Review Board Agency, requested the applicant provide a copy of medical documents in support of his PTSD and other mental health conditions, and afforded him a 30-day window to respond. To date, he has not responded.

23. The applicant provides two letters that are available in their entirety for the Board's consideration.

a. His mother states, the applicant was young when he made bad decisions before and while he was in the military. Now that he is older, he makes better decisions and takes responsibility for his actions. He is still working to improve himself and has been participating in bible study. He has a heart of gold, but his serious mental health problems make it hard for him to stay focused.

b. A friend states, she has known the applicant for more than 18 years and has seen him make many changes in his life. He has learned to manage his anger in positive ways. His faith in the Lord and in himself has made him grow stronger over the years. She is proud of the man he has become and has no doubt he will succeed in anything that he puts his mind to.

24. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

25. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge to an honorable discharge. He contends he was experiencing mental health conditions including PTSD, which mitigated 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 the U.S. Army Reserve (USAR) on 5 October 2000. Upon completion of initial entry training, he was ordered to active duty on 14 November 2000 for the purpose of completing Basic Combat Training (BCT) and then Advanced Individual Training (AIT). He successfully completed BCT at Fort Benning, GA and was reassigned to a unit at Fort Sam Houston, TX, to complete AIT; 2) On 29 March 2001, the applicant accepted nonjudicial punishment (NJP) for being disrespectful to an NCO and failing to obey rules or regulations by being in possession of alcohol during the commander's health and welfare inspection; 3) On 24 May 2001, the applicant accepted NJP for being in an off-limits female billet area; 4) On 8 January 2002, the applicant accepted NJP for being absent without authority for one day; 5) On 15 January 2002, the applicant was counseled for being absent without leave (AWOL) from 13 November 2001 to 21 December 2001; 6) On 22 January 2002, the applicant's commander was informed that a urine sample provided by the applicant during a urinalysis on 7 January 2002 had tested positive for an illegal drug; 7) The applicant was discharged from the USAR on 16 April 2002, Chapter 14-12b, by reason of misconduct. His service was characterized as Under Honorable Conditions (General).

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined.

d. The applicant contends he was experiencing mental health conditions including PTSD, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service. He was seen for a Mental Status Exam on 22 January 2002 as part of his separation proceedings. He was not diagnosed with a mental health condition, and he was found to have the mental capacity to understand and participate in the proceedings. A review of JLV did provide evidence the applicant has received assistance from the VA for homelessness after being released from a nine-year prison sentence in 2023. The applicant was seen for a Compensation & Pension Evaluation in February 2023. He reported mental health symptoms of depression and anxiety as the result of typical events during Basic Training. His description of his military performance and misconduct was inconsistent with his military service record. The applicant did not describe experiencing mental health symptoms during his active service, but later after his discharge, his mental health symptoms along with his substance abuse increased.

The applicant has been diagnosed with service-connected Generalized Anxiety Disorder. There is insufficient evidence that he has ever been diagnosed with PTSD.

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 was diagnosed with service-connected Generalized Anxiety Disorder by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with service-connected Generalized Anxiety Disorder by the VA.

(3) Does the condition or experience actually excuse or mitigate the discharge? No, there is sufficient evidence the applicant was diagnosed with service-connected Generalized Anxiety Disorder in 2023. However, the applicant described in his application and during his Compensation & Pension Examination that he did not experience mental health symptoms during his active service, but he was inexperienced and unwilling to adapt the military environment. After his discharge, he reported an increase in mental health symptoms and substance abuse. He attributed these symptoms to typical experiences that occur during Basic Training. Therefore, there is insufficient evidence the applicant's extensive misconduct is mitigatable by a mental health condition, including PTSD experienced during his active service. However, the applicant contends he was experiencing a mental health condition that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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 Board carefully considered the applicant's request, supporting documents, evidence in the records and published DoD guidance for consideration of discharge upgrade requests. The Board considered the frequency and nature of his misconduct, the reason for his separation and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors for the misconduct. Based upon the lack of character evidence from those other than family members to show a change in character or post-service

accomplishments, the Board concluded there was insufficient evidence of an error or injustice which would warrant a change in the applicant's characterization of service.

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 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.

2/28/2024

X [REDACTED]

CHAIRPERSON
[REDACTED]

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, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body.

4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. Paragraph 3-7b states 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.

c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). 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; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; 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 to those conditions or experiences.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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.

//NOTHING FOLLOWS//