

IN THE CASE OF: ██████████

BOARD DATE: 7 December 2023

DOCKET NUMBER: AR20230005631

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

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Form 21-4138 (Statement in Support of Claim), 26 January 2023
- The American Legion, Department of ██████████ Service Department Cover Sheet, 30 January 2023

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 provided a statement on his application to the Board and a statement on the VA Form 21-4138 he provided.
  - a. In his application to the Board he notes his request is related to other mental health and he states he suffered from addiction from an early age. He further states he was trying to fight his addiction when he tested positive for drug use during the period of his active duty service.
  - b. His VA Form 21-4138 states he was separated from his child during his active duty service, and he used drugs to cope with the separation. He has been clean for almost 4 years. He would like the Board to upgrade his under honorable conditions (general) characterization of service to honorable because the Army did not address or take the time to help him with his addiction.

3. The applicant enlisted in the Regular Army on 7 November 1985.
4. A DA Form 1695 (Oath of Extension of Enlistment) dated 10 March 1988 shows he extended his initial enlistment for 13 months to meet service remaining requirements to complete his overseas tour; his new expiration of term of service was 6 December 1990.
5. The applicant accepted non-judicial punishment under the provisions of Article 15, Uniform Code of Military Justice, on 17 June 1988 because he did, at some unknown location, on or about 6 April 1988, wrongfully use marijuana, the use of which was detected by biochemical testing of a urine sample which he submitted to military authorities, on or about 6 April 1988. His punishment included reduction to Private First Class/E-3, suspended, to be automatically remitted if not vacated before 22 December 1988, 45 days of restriction, and 45 days of extra duty.
6. A Standard Form 513 (Consultation Sheet) dated 22 August 1988 shows the applicant, an active duty male Soldier with history of "ETOH" alcohol and drug abuse, presented with confusion, dizzy spells, and was unable to perform guard duty at night without substances. He was seen at psychiatry and neurology for suicidal ideation and alcohol abuse and then hospitalized two weeks ago. It was noted he wanted to go home and be discharged from the military. He was diagnosed with a provisional diagnosis of "Detox: ... ETOH/Drug."
7. His Standard Forms 93 (Report of Medical History) and 88 (Report of Medical Examination) dated 25 August 1988 note the applicant has or had some existing medical conditions, and he was admitted to the psychiatric ward on two separate occasions to detox from drugs and alcohol abuse. He was medically cleared for separation.
8. On 14 September 1988, the immediate commander notified the applicant of his intent to initiate actions to separate him from service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b, for serious misconduct. The commander noted the applicant's wrongful use and possession of marijuana as the specific reason for the proposed separation action. The applicant acknowledged receipt of his commander's notification that same day.
9. On 14 September 1988, he was advised by his consulting counsel of the basis for the contemplated action to separate him for commission of a serious misconduct under AR 635-200, Chapter 14, paragraph 14-12c and its effects; of the rights available to him; and the effect of any action taken by him in waiving his rights.
  - a. He understood that if he had less than 6 years of total active and reserve military service at the time of separation and he was being considered for separation for reason

of misconduct under AR 635-200, Chapter 14, he was entitled to have his case heard by an administrative separation board.

b. He understood he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to me.

c. He understood that if he received a discharge certificate/character of service which was less than honorable, he may make application to the Army Discharge Review Board of the Army Board for Correction of Military Records for upgrading; however, he realized that an act of consideration by either board does not imply that his discharge will be upgraded.

d. He waived a personal appearance before the board, and he elected not to submit a statement in his own behalf.

10. On 14 September 1988, the applicant's commander formally recommended his separation from service under the provisions of Army Regulation 635-200, paragraph 14-12c. There had been no rehabilitation attempts.

11. On 21 September 1988, the separation authority approved the chain of command's recommendation for the applicant's discharge under the provisions of AR 635-200, chapter 14, paragraph 14-12c, and directed the issuance of an Under Honorable Conditions (General) Discharge Certificate.

12. The applicant underwent a mental status evaluation on or about 5 October 1988. The relevant DA Form 3822-R (Report of Mental Status Evaluation) shows he was psychiatrically cleared for any administrative action deemed appropriate by command.

13. On 5 October 1988, the applicant was discharged under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct/abuse of illegal drugs, with a separation code of "JKK," a reentry code of "3," and an under honorable conditions (general) characterization of service. His DD Form 214 shows he completed 2 years, 10 months, and 29 days of net active service during the covered period.

14. A discharge under other than honorable conditions was normally considered appropriate for Soldiers discharged under the provisions of AR 635-200, paragraph 14-12c. However, the separation authority could direct a general discharge if such was merited by the Soldier's overall record.

15. 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

## 16. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) characterization of service to honorable. The applicant indicated other mental health is related to his request.

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 7 November 1985.
- The applicant accepted non-judicial punishment (NJP) on 17 June 1988 because he did, at some unknown location, on or about 6 April 1988, wrongfully use marijuana, the use of which was detected by biochemical testing of a urine sample which he submitted to military authorities, on or about 6 April 1988.
- On 14 September 1988, the immediate commander notified the applicant of his intent to initiate actions to separate him from service under AR 635-200, paragraph 14-12b, for serious misconduct. The commander noted the applicant's wrongful use and possession of marijuana as the specific reason for the proposed separation action.
- The applicant was discharged on 5 October 1988, under AR 635-200, paragraph 14-12c, by reason of misconduct/abuse of illegal drugs, with an under honorable conditions (general) characterization of service.

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 149, his ABCMR Record of Proceedings (ROP), his DD Form 214, documents from his service record and separation as well as a Department of VA Form 21-4138 and American Legion Cover Sheet. 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 drug addiction mitigated his discharge, as he noted suffering from addiction issues from a young age and that when he tested positive for drug use while active, he was "fighting that." He also noted that during his time in service he was separated from his child and used substances as a way to cope and deal with this separation.

e. The applicant's time in service predates use of electronic health records (EHR) by the Army, hence no EHRs are available for review. His service record and supporting

documents contained service treatment records (STR) and other documents with relevant medical history. His separation/chapter Report of Medical Exam, dated 25 August 1988, indicated that the applicant was in the psychiatric ward for alcohol detoxification. There was no indication of any other psychiatric diagnosis nor concern. Though, a STR from 22 August 1988 did note that the applicant presented intoxicated (alcohol and drug abuse), also reporting suicidal ideation, and wanting to be discharged from the Army so he can go home. On his Report of Medical History, the applicant indicated frequent trouble sleeping, depression or excessive worry, loss of memory and nervous trouble. The applicant was seen for a Mental Status Evaluation (MSE) on 5 October 1988. The applicant's presentation was noted the applicant as aggressive, with a labile mood, and loosely connected thinking process. The applicant was found to have the mental capacity to understand and participate in the proceedings, though no other opinions were indicated regarding if he met medical retention standard nor if there were any known diagnoses. No other medical records were provided.

f. Per the applicant's VA EHR, he is 20% service connected for medical conditions, but holds no service connection for any mental health conditions. The applicant has been engaged in care at the VA since 1997, and with care addressing his mental health since at least 2000. He has engaged in outpatient therapy and medication management. He has been diagnosed with bipolar disorder (to include mixed – unspecified, current episode depressed, most recent episode depressed), anxiety disorder NOS, generalized anxiety disorder, conversion disorder with seizures or convulsions, depressive disorder NOS, and alcohol dependence – in remission. The applicant participated in a behavioral health compensation and pension (C&P) exam on 1 October 2013. He was diagnosed with bipolar disorder, mixed but the evaluating provider noted that the C-File was not received which was “unfortunate because veteran says he was hospitalized psychiatrically in Germany while in the service so that can't be verified.” This provider does have evidence he was hospitalized per the records provided in his supporting documents. During this evaluation he noted having some depression since childhood and that his first psychiatric hospitalization was in 1988 for about 2 weeks, to include for depression. Through review of JLV, this applicant did have “Community Health Summaries and Documents” available, with records indicating problems/diagnoses of anxiety (2016) and other bipolar disorder (2016). No other medical records were provided.

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient 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 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? Yes. The applicant asserted other mental health mitigated his discharge. More specifically, the applicant asserted that addiction was the condition he believes mitigates his discharge. First and foremost, any substance use disorder, as a standalone diagnosis, is not currently a mitigating condition. However, there is evidence that the applicant may have been experiencing a mitigating mood disorder at the time of serve. His record reflects he reported depression, anxiety, and suicidal ideation but there was minimal data available to ascertain whether he held a psychiatric diagnosis. That said, Standard Form 513 showed he was hospitalized for two weeks, and while some data indicated this was for detoxification, detox usually only consists of several days (typically 2-7 days), not several weeks. This suggests the applicant was also hospitalized for his mental health concerns, to include the reported suicidal ideation and presumed depression. Also, during his mental status exam he presented as if he may have been experiencing significant mood disorder symptoms (aggressive, labile, loose associations). Additionally, the applicant was later diagnosed with bipolar disorder, and it was seemingly not service connected because his evaluator did not have his c-file and could not verify that he had been hospitalized while in the service. While the applicant likely did not yet meet full diagnostic criteria for bipolar disorder, there is some evidence that prodromal symptoms may have been present. Lastly, given the nexus between bipolar disorder and/or depression and substance use, to alleviate his symptoms/self-medicate, the wrongful use and possession of marijuana is mitigated. Hence, per Liberal Consideration guidance, the applicant's assertion, and the data reviewed, an upgrade is recommended.

**BOARD DISCUSSION:**

1. The Board carefully considered the applicant's request, supporting documents, 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 behavioral health claim and the review and conclusions of the ARBA BH Advisor.

2. The Board concurred with the conclusion of the medical advising official regarding his misconduct being mitigated by a behavioral health condition. Based on a preponderance of the evidence, the Board determined the applicant's character of service should be changed to honorable.

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 is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 to show his character of service as honorable.

2/12/2024

X █

CHAIRPERSON

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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 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed.

(1) Soldiers are subject to separation under the provisions of this chapter under, paragraph 14-12c for commission of a serious military or civilian offense if the specific circumstances of the offense warrant separation and a punitive discharge would be authorized for the same of closely related offense under the Manual for court-martial.

(2) A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if such was merited by the Soldier's overall record.

3. 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.

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//