

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 March 2024

DOCKET NUMBER: AR20230005733

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (General) discharge
- a change to his narrative reason for separation

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge)
- Radiology History
- Department of Veterans Affairs (VA) Rating Decision

FACTS:

1. The applicant did not file within the 3-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 is requesting a discharge upgrade due to a recent diagnosis of Bipolar 2 disorder and Anxiety disorder. These diagnoses fit with the pattern of misconduct he was responsible for during his service. During his service he made poor decisions which were influenced by intense anxiety and the manic/depressive states associated with Bipolar disorder along with a severe injury to his right leg, which significantly impacted his physical performance and self-value.
3. The applicant's complete military service record, including documentation showing the facts and circumstances regarding his administrative separation, are not available for review. This case is being considered based upon documents available in his record and those provided by the applicant.
4. The applicant enlisted into the Regular Army on 11 June 2013. Upon completion of initial entry training, he was awarded military occupational specialty 11B (Infantryman).

5. The applicant was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Paragraph 14-12b, due to a pattern of misconduct on 2 July 2014. He was assigned Separation Program Designator Code "JKA" and Reentry Eligibility Code "3." His service was characterized as under honorable conditions (General). He was credited with completion of 1 year and 22 days of active service. He had no time lost and did not complete his first full term of service.

6. The applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of his discharge. On 23 June 2016, the applicant was informed that after careful review of his application, military records, and all other available evidence, the ADRB had determined he was properly and equitably discharged and denied his request.

7. The applicant provides the following documents which are available in their entirety for the Board's consideration.

- A Walter Reed National Military Medical Center Radiology History report for a Magnetic Resonance Imaging procedure conducted on 23 April 2014
- A VA rating decision letter, dated 24 February 2023, which shows he was awarded a 70 percent disability rating for a diagnosis of Bipolar II disorder

8. 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.

9. 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/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is again applying, this time to the ABCMR, requesting an upgrade of his 2 July 2014 discharge characterized as under honorable conditions (general). He states:

"I am requesting a discharge change due to recent diagnoses of Bipolar 2 disorder with anxiety disorder as well. These diagnoses fit with the pattern of misconduct I was responsible for during my service. During my service I made poor decisions which were influenced by intense anxiety and the

manic/depressive states associated with Bipolar disorder along with a severe injury to my right leg which significantly impacted my physical performance and value of self.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. His DD 214 for the period of service under consideration shows the former Infantryman (11B) entered the regular Army on 11 June 2013 and received an under honorable conditions (general) discharge on 2 July 2014 under the separation authority provided by paragraph 14-12b of AR 635-200, Active Duty Enlisted Administrative Separations (17 December 2009): A Pattern of Misconduct. It does not list a period of Service in a hazardous duty pay area.

d. The request for a discharge upgrade was denied by the ADRB on 15 June 2016 (AR20150007184). Rather than repeat their findings here, the board is referred to the record of proceedings for that case. Because the ROP does not contain a medical opinion, this review will concentrate on evidence of a potentially mitigating mental health condition as well as new evidence submitted with this application.

e. There is one contemporaneous behavioral health encounter which is dated 17 April 2017:

“19-year-old male private active-duty United States Army is command ordered to present for mental status examination as part of chapter separation. The SM [Service member] has been referred by his commander CPT K., HHC [Headquarters and Headquarters Company] for MSE [Mental Status Examination] as part of Chapter 14-12b chapter separation ...

The SM is being chaptered following AWOL [absent without leave] for multiple days in March 2014. The SM has been at Ft. Myer since fall 2013 and was assigned to ROPE training platoon. He advises graduating and being assigned to TOG but did not directly report. For a period of almost 1 month in Feb-March 2014 he was residing at post but did not report to any one command.

He admits to frequently leaving post to return to his home in Tennessee without pass. On one such occasion in March he was away when Bravo company command was attempting to reach him to inquire why he had not reported yet. He acknowledged he was away without permission and was charged with AWOL. He had previously been given an Article 15 for lying to an NCO and had completed his punishment. He acknowledged that this duty station was not what he expected and he was frustrated ...

f. His Enlisted Record Brief shows the applicant was demoted to Private Second Class (E02) on 30 January 2014 and to Private (E01) on 19 May 2014. This is consistent with what the provider wrote in his MSE.

g. Neither his separation packet nor additional documentation addressing his involuntary administrative separation was submitted with the application or uploaded into iPERMS.

h. Submitted documentation and review of his records in JLV shows he has been awarded a VA service-connected disability rating of 70% for bipolar II disorder.

i. It is the opinion of the ARBA Medical Advisor that his mental health condition mitigates his misconduct. Thus, a discharge upgrade and restoration of his rank to Private First Class (E03) are warranted.

#### Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes: Bipolar II disorder

(2) Did the condition exist or experience occur during military service? Yes: Bipolar II disorder

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes: The average age for onset of bipolar disorder is 25, and it often has an onset during the teenage years. As there is an association between Bipolar Disorder and erratic, unpredictable behavior, there is a nexus between his diagnosis of untreated Bipolar Disorder and his multiple periods of absence without leave and associated loss of rank and no evidence of non-mitigatable misconduct

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. Although the separation documents are not available, other evidence shows he was discharged for a pattern of misconduct and received a general characterization of service. The Board found no error or injustice in his available separation processing. 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 reviewer's finding sufficient evidence to support the applicant had a



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 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.
4. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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 to 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 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, Boards 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.

//NOTHING FOLLOWS//