

IN THE CASE OF: ██████████

BOARD DATE: 18 January 2024

DOCKET NUMBER: AR20230006279

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under honorable conditions (general) characterization of service. Additionally, he requests a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record) with self-authored statement
- Memorandum, Alpha Battery, 1st Battalion, 41st Field Artillery, APO New York 09281, dated 7 June 1979
- Memorandum, Headquarters, U.S. Army Training Center, Fort Jackson, SC, 29207, dated 16 July 1979

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers AC97-09708 on 16 September 1998 and AR20180004813 on 21 April 2020.

2. As a new argument, the applicant states:

a. At the age of 10 years, he witnessed a drug dealer murder a ██████████ Police Officer. The event changed his life. There was much death in ██████████. Life was so ugly, he decided to go into the Army. He did not have a high school diploma. Although, he took the general educational development (GED) test seven times. He has issues with reading comprehension and spelling. He was sent for remedial training in advanced individual training for that reason. He passed the training and was awarded military occupational specialty (MOS) 71L (Clerk Typist).

b. He was stationed in Germany. After arriving, he was sent to work at the police station and then headquarters. Neither of these postings worked out. He was finally sent to Alpha Battery, where he was beaten in the back of a quarter ton truck by nine other Soldiers on the way out to a field training exercise. He suffered a tremendous amount of

physical and psychological damage. He was taken to the infirmary and treated for the physical damage. After that event, his military career went downhill, and his desire to be there was destroyed.

c. He was the lowest ranking Soldier and the only person of color working in the orderly room. The Soldiers of color expected him to keep them informed of office activities, and the white Soldiers resented the easy job he had. This created a constant fight among them. As his performance went downhill, they moved him to other locations in the unit. After two occurrences as a bus driver, he was moved to a desireless position. He was a throwaway. No one cared about him. This is when he accepted the discharge that was offered. He was not allowed to read the stack of documents that was handed to him. He followed orders and signed them.

d. Due to the damage that was done to him, he has been fighting for an upgrade since he was discharged. His file contains a document from his battery commander that contains untruths. He did not have behavioral problems. Nor did he use or deal drugs. There is no information to support this suggested behavior. If he had any knowledge this document was included in his discharge, he would not have signed it. He believes the document was manufactured to make him seem like the problem. He never had the opportunity to speak with a military lawyer. He believes he was in a prejudicial situation at his duty station.

e. The discharge and the whole military experience damaged his physical, mental, and financial life. They took all his options away. He lost his marriage because he could not secure a decent job. He has no arrest history and has continued his education. The applicant notes post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), other mental health, and harassment as conditions related to his request.

3. The applicant enlisted in the Regular Army on 13 January 1978. Upon the completion of his initial entry training, he was awarded MOS 71L (Administrative Specialist). The highest rank he attained was private first class/E-3.

4. The applicant was informally counseled on three occasions:

a. On 22 October 1978, by the Assistant Chief of the Headquarters Section, for oversleeping on three occasions and blatant refusal to get out of bed. He was notified that he was found lacking in his performance as a Soldier, and future violations would be dealt with more severely.

b. On 2 February 1979, by the First Sergeant, for his performance of duty, lack of interest in his job, inability to concentrate, and lack of attention to detail. He was transferred to the supply section. He was informed that if his performance did not

improve, he was subject to elimination from service. The applicant responded that maybe he was not cut out to be a clerk, and he would like to be a medic.

c. On 15 February 1979, by the Supply Section Chief, for his lackadaisical attitude, lack of effort to improve, tardiness, and missing unit formations. He was informed that further actions and attitudes of this nature could result in judicial or nonjudicial punishment and possible elimination from service.

5. The applicant's immediate commander notified the applicant on 7 June 1979 that he was initiating action to separate him from service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-31, under the Expeditious Discharge Program (EDP), with an under honorable conditions (general) discharge. As the specific reasons for the proposed action, his commander noted the applicant's unacceptable duty performance, failed assignments in three separate units, complaints that he was involved in selling and the usage of illegal drugs, ineptness, and his inability to adapt to military life.

6. On that same date, the applicant acknowledged receipt of the separation notification. He was advised of the rights available to him and the effect of waiving his rights. He voluntarily consented to the separation and elected not to submit a statement in his own behalf.

7. A memorandum from Alpha Battery, 1st Battalion, 41st Field Artillery, dated 7 June 1979, states the applicant underwent a medical examination, as required by Army Regulation 635-200. The applicant was medically cleared for administrative separation, and the relevant Standard Form (SF) 88 (Report of Medical Examination) and SF 93 (Report of Medical History) were placed in his medical record.

8. Subsequently, the applicant's commander formally recommended the applicant's separation from service under the provisions of Army Regulation 635-200, paragraph 5-31, by reason of the applicant's inability to adapt socially and perform adequately in his MOS.

9. On 15 June 1979, the separation authority approved the recommended separation action and directed the issuance of a DD Form 257A (General Discharge Certificate).

10. Accordingly, the applicant was discharged on 16 July 1979, under the provisions of Army Regulation 635-200, paragraph 5-31. His DD Form 214 confirms his service was characterized as under honorable conditions (general), with separation code JGH and reenlistment code RE-3. He was credited with 1 year, 6 months, and 4 days of net active service.

11. The ABCMR reviewed the applicant's request for an upgrade of his characterization of service on 16 September 1998. After careful consideration, the Board determined the application was not submitted within the time required and there was not sufficient evidence to justify or excuse the failure to file within the time prescribed by law. The Board denied his request.

12. The applicant petitioned the ABCMR to reconsider his request for an upgrade of his characterization of service. The Board reconsidered his case on 21 April 2020. After careful consideration, the Board found insufficient evidence of in-service mitigating factors for the misconduct and determined the character of service was not in error or unjust. The Board denied the applicant's request for relief.

13. Regulatory guidance states, individuals discharged under the EDP were issued either a general or honorable discharge characterization of service.

14. The Army Review Boards Agency (ARBA), Case Management Division (CMD), requested a copy of a Redacted CID report for sexual assault/harassment and Military Police Reports from the US Army Criminal Investigation Division (CID) on 12 July 2023. CID responded on 21 July 2023, stating a search of the Army criminal file indexes revealed no records pertaining to the applicant.

15. Additionally, on 14 July 2023, CMD, ARBA, sent a letter to the applicant requesting additional documentation related to the applicant's contention of PTSD and TBI. To date, no additional documentation has been received from the applicant.

16. The Board should consider the applicant's statement in accordance with the published equity, injustice, or clemency determination guidance.

17. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request for an upgrade of his under honorable conditions (general) characterization of service. He contends he had mental health conditions including PTSD, a traumatic brain injury (TBI), and sexual assault/harassment that 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 in the Regular Army on 13 January 1978; 2) The applicant was informally counseled on three occasions for minor infractions and poor performance between 22 October 1978-15 February 1979; 3) The applicant was discharged on 16 July 1979, under the provisions of Army Regulation 635-200, paragraph 5-31. His service was characterized as under honorable conditions (general); 4) The ABCMR reviewed and denied the applicant's request for an upgrade of his characterization of service on 16 September 1998 and 21 April 2020.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed the supporting documents and the applicant's military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

d. On his application, the applicant noted mental health conditions including PTSD, a TBI, and the experience of sexual assault/harassment mitigated his misconduct and are related to his request, as contributing and mitigating factors in the circumstances that resulted in his separation. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition or a TBI while on active service. Also, a search of the Army criminal file indexes revealed no records pertaining to the applicant.

e. A review of JLV provided evidence the applicant has engaged behavioral health care at the VA starting in 1996. The applicant reported a long history of polysubstance abuse since leaving the military, and his report of his military career, childhood, and current living situations was inconsistent with this application, available military records, and between medical encounters. The applicant has not been diagnosed with PTSD by the VA. He was diagnosed and treated for depression related to his reported back pain which began after his discharge from active service. There is insufficient evidence the applicant has ever been diagnosed with a TBI. The applicant was awarded in 2018 service-connected disability for chronic adjustment disorder related to his depression secondary to his back pain.

f. 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) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he was experiencing mental health conditions including PTSD, a traumatic brain injury (TBI), and sexual assault/harassment that contributed to his misconduct. There is only sufficient evidence the applicant was diagnosed with depression or chronic adjustment disorder secondary to his back pain after his discharge.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reports experiencing mental health conditions including PTSD, a traumatic brain injury (TBI), and sexual assault/harassment while on active service.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing mental health conditions including PTSD, a traumatic brain injury (TBI), and sexual

assault/harassment while on active service. There is sufficient evidence the applicant was having difficulty adjusting the military, and he was discharged for his poor performance despite repeated attempts at rehabilitation. However, the applicant contends he was experiencing mental health conditions and experiences that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. 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 BH 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 the lack of evidence indicating the applicant was experiencing a mental health condition during his period of service. 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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Numbers AC97-09708 on 16 September 1998 and AR20180004813 on 21 April 2020.

4/15/2024

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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. 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 has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.

2. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 5-31 provided for the discharge of enlisted personnel who had completed at least six months but less than 36 months of active duty and who had demonstrated that they could not or would not meet acceptable standards required of enlisted personnel in the Army because of the existence of one or more of the following conditions: poor attitude, lack of motivation, lack of self-discipline, inability to adapt socially or emotionally, or failure to demonstrate promotion potential. No individual would be discharged under this program unless the individual voluntarily consented to the proposed discharge. Individuals discharged under this provision of the regulation were issued either a general or honorable discharge.

b. 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.

c. 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.

3. 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. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards 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.

//NOTHING FOLLOWS//