

IN THE CASE OF: ██████████

BOARD DATE: 15 February 2024

DOCKET NUMBER: AR20230006308

APPLICANT REQUESTS: his under honorable conditions, general discharge be upgraded to honorable.

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

- DD Form 293 (Application for the Review of Discharge)
- Self-Authored letter
- Character Letters (three)

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:

a. There were extenuating circumstances that contributed to his leaving the service of his country as well as his path to triumph over those circumstances. He entered the Army with every intention of using the opportunity to remove himself from his current negative environment and learn skills that would be useful for a career after completion of his service. However, the transition from Civilian to Soldier was not smooth for him. At the time, he dismissed what he was experiencing as homesickness or loneliness. In addition, he suffered frostbite during basic training. The problem was that the feelings never left, but rather manifested into insomnia, constant frustration, lack of focus and never-ending sadness. With all his inner turmoil it was a daily struggle to perform the basic minimum just to get through the process. After his military service he continued to experience the feelings, he had while in service.

b. A speaker at church outlined the symptoms of depression and he realized that was many of the things he had been feeling. It was several years of mistakes later that he was medically diagnosed with depression and had to face his issues. He started treatment which was the beginning of him turning his life around in a positive direction.

c. He serves his community by working with a local food bank, working at various homeless shelters, fundraising for breast cancer awareness, mentoring and motivational speaking. He is thankful for his time in service of his country. He knows that given his undiagnosed illness that he did the best he could at the that time of his life.

3. The applicant enlisted in the Regular Army on 29 December 1986 for three years. His military occupational specialty was 31C (Single Channel Radio Operator).

4. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on 1 June 1987, for unlawfully striking another Soldier in the face on or about 27 May 1987. His punishment consisted of restriction, extra duty, and forfeiture of (illegible) for one month.

5. The applicant was absent without leave (AWOL) on 20 November 1987 and present for duty on 2 December 1987.

6. The applicant accepted NJP under Article 15 of the UCMJ on 11 December 1987, for being AWOL on or about 30 November 1987 until 2 December 1987. His punishment consisted of forfeiture of \$153.00, extra duty and restriction.

7. The applicant received general counseling between 22 September 1987 and 17 February 1988 for: unsecured wall locker (twice) and unkempt room area, failure to adapt to military life, failure to make the run while doing company physical training (PT), poor attitude (twice), lack of motivation at PT, disrespect, continual lack of respect to authority and his performance in the platoon.

8. The applicant had a dishonored check (insufficient funds) and was over the body fat content standard on four occasions between December 1987 and February 1988.

9. A Report of Mental Status Evaluation dated 17 March 1988 shows the applicant had the mental capacity to understand and participate in the proceedings, was mentally responsible, and met retention requirements with no gross mental defects.

10. The applicant's immediate commander notified him on 4 April 1988 that she was initiating action to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 14, for misconduct. The specific reasons were based on the applicant's two Article 15s and numerous counselings concerning his duty performance. His commander recommended he receive an under honorable conditions, general discharge. The applicant acknowledged receipt of the notification on the same date.

11. The applicant consulted with legal counsel on 4 April 1988 and was advised of the basis for his separation for misconduct under the provisions of Chapter 14, AR 635-200 and its effects, and the procedures and rights that were available to him.

a. He acknowledged that he may expect to encounter substantial prejudice in civilian life if discharged under honorable conditions (general).

b. He elected not to submit statements in his own behalf.

12. The applicant's immediate commander formally recommended the applicant be processed for separation before the expiration of his term of service on 4 April 1988. The commander stated the applicant had proven himself to be unsuitable for military life. His recurring misconduct and apathetic attitude were unbecoming of a Soldier. His negative conduct was detrimental to the morale and order of the unit.

13. The Staff Judge Advocate found the separation package legally sufficient, and the chain of command recommended approval.

14. The separation authority approved the recommended discharge, under the provisions of AR 635-200, Chapter 14-12c, on 6 April 1988 and directed the applicant's service be characterized as under honorable conditions, general.

15. The applicant was discharged on 15 April 1988. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, paragraph 14-12c, for misconduct- commission of a serious offense. His service was characterized as under honorable conditions (general). He completed 1 year, 3 months, and 15 days of net active service. He lost time from 30 November to 1 December 1987.

16. Soldiers are subject to separation under the provisions AR 635-200, Chapter 14, for commission of a serious offense. A discharge under other than honorable conditions (UOTHC) is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the overall record.

17. The applicant provides character letters that attest to his sincerity and morality. He is a hardworking father and grandfather that always puts family first. He is a great role model who is well respected amongst his peers and spiritually strong. He puts others before himself and organizes charity events. He offered a room in his home as shelter for a friend and his wife. He is a respectable, responsible citizen who is selfless and willing to give and not expect anything in return.

18. 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.

19. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions, general discharge to honorable.

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 RA on 29 December 1986.
- Applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on 1 June 1987, for unlawfully striking another Soldier in the face on or about 27 May 1987.
- Applicant accepted NJP under Article 15 of the UCMJ on 11 December 1987, for being AWOL on or about 30 November 1987 until 2 December 1987.
- Applicant received general counseling's between 22 September 1987 and 17 February 1988 for: unsecured wall locker (twice) and unkempt room area, failure to adapt to military life, failure to make the run while doing company physical training (PT), poor attitude (twice), lack of motivation at PT, disrespect, continual lack of respect to authority and his performance in the platoon.
- Applicant had a dishonored check (insufficient funds).
- Applicant's immediate commander notified him on 4 April 1988, of initiating action to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 14, for misconduct. The specific reasons were based on the applicant's two Article 15s and numerous counseling's concerning his duty performance. His commander recommended he receive an under honorable conditions, general, discharge.
- Applicant was discharged on 15 April 1988. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, paragraph 14-12c, for misconduct- commission of a serious offense. He was assigned Separation Code JKQ with Reenlistment Code RE-3B. His service was characterized as under honorable conditions (general).

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 293, DD Form 214, ABCMR Record of Proceedings (ROP), self-authored letter, character reference letter, and documents from his service record and separation. 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.

The applicant states there were extenuating circumstances that contributed to his leaving the service of his country as well as his path to triumph over those circumstances. He entered the Army with every intention of using the opportunity to remove himself from his current negative environment and learn skills that would be useful for a career after completion of his service. However, the transition from Civilian to Soldier was not smooth for him. At the time, he dismissed what he was experiencing, as homesickness or loneliness. In addition, he suffered frostbite during basic training. The problem was that the feelings never left, but rather manifested into insomnia, constant frustration, lack of focus and never-ending sadness. With all his inner turmoil it was a daily struggle to perform the basic minimum just to get through the process. After his military service he continued to experience the feelings, he had while in service. A speaker at church outlined the symptoms of depression and he realized that was many of the things he had been feeling. It was several years of mistakes later that he was medically diagnosed with depression and had to face his issues. He started treatment which was the beginning of him turning his life around in a positive direction.

d. Due to the period of service, no active-duty electronic medical records were available for review. The applicant submitted hard copy medical documentation from his time in service evidencing two mental status evaluations. One dated 17 November 1987, indicates the applicant was diagnosed with Adjustment Disorder, suspected Alcohol Abuse, and Antisocial Personality traits. A second mental status evaluation, dated 17 March 1988, indicates no concerns with mood, affect or thought processes, and evidenced no diagnosis. Both mental status evaluations indicate the applicant met retention standards, had no psychiatric disease or defect which warranted disposition through medical channels, had the mental capacity to understand and participate in the proceedings, and was cleared for any administrative action deemed appropriate by command.

e. No VA electronic medical records were available for review and the applicant is not service connected. In addition, the applicant did not submit any medical documentation post-military service substantiating his assertion of depression despite stating he was medically diagnosed with depression and received treatment.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition that mitigates 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 self-asserts a mitigating condition.

(2) Did the condition exist or experience occur during military service? Yes. The applicant reports experiencing depression while in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant asserts being medically diagnosed with depression. However, he provides no medical documentation to substantiate his diagnosis of depression. There is insufficient evidence of any mitigating BH condition and the VA has not service-connected the applicant for any condition. And while the applicant self-asserted depression, he did not provide any medical documentation evidencing a diagnosis. However, per Liberal Consideration guidelines, the applicant’s self-assertion of depression merits consideration by the Board.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the short term of honorable service completed prior to a pattern of misconduct leading to the applicant’s separation, some of which included violent behavior towards others, and the findings of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice warranting a change to 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 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.

5/14/2024

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, USC, 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. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by 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. AR 635-200 sets 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. 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 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. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if merited by the Soldier's overall record.

4. 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 Service Discharge Review Boards (DRB) and Service 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.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service DRBs and BCM/NRs on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//