

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 January 2023

DOCKET NUMBER: AR20230006310

APPLICANT REQUESTS: in effect, reconsideration of his previous request that his under honorable conditions (general) discharge be upgraded to honorable.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Summary of Benefits

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 Number AR20110014699 on 19 January 2012.
2. The applicant states he is requesting correction of the injustice in his record. In his previous application, he stated he was discharged from the Army due to suffering from sexual trauma and mental disabilities. He now receives compensation from the VA for a service-connected disability for having bipolar disorder due to sexual trauma.
3. On 13 August 1974, the applicant enlisted in the Regular Army for a period of 2 years. He was advanced to private/E-2 on 13 December 1974. Upon completion of initial entry training, he was assigned to a unit in Germany.
4. On 24 February 1975, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for on or about 13 February 1975, without authority absenting himself from his place of duty and remaining so absent until on or about 19 February 1975; and for on or about 13 February 1975, without authority and through design, missing movement. His punishment consisted of forfeiture of \$50.00 pay for a month and reduction from E-2 to E-1.
5. On 11 April 1975, the applicant accepted NJP under the provisions of Article 15, UCMJ for on or about 11 April 1975, without authority, failing to go at the time

prescribed to his appointed place of duty. His punishment consisted of reduction to E-1 and extra duty for 7 days.

6. On 11 April 1975, the applicant's commander notified him that he was initiating action to discharge him from the Army under the provisions of Headquarters, Department of the Army, DAPE-MPE-PS, letter, subject: Expeditious Discharge Program, Reports Control Symbol (Test), dated 20 August 1973. He was recommending the applicant be furnished a General Discharge Certificate. The commander stated the reasons for his proposed action was the applicant's completely negative attitude. He was devoid of any interest in his job, as was most recently represented by him purposely failing to appear at the proper place and time for his military occupational specialty testing. As an E-1 with 8 months in service, coupled with a poor attitude, he had absolutely no promotion potential.

7. The applicant was advised by legal counsel of his available rights, he elected not to submit a statement in his own behalf, and acknowledged the commander's proposed discharge action on 14 April 1975.

8. On 14 April 1975, the applicant's company commander recommended approval of the separation action.

9. On 17 April 1975, the appropriate authority approved the discharge recommendation and directed the applicant be issued a General Discharge Certificate.

10. On 12 May 1975, the applicant rendered a Statement of Medical Condition wherein he stated he underwent a separation medical examination more than 3 working days prior to his separation and to the best of his knowledge, there had been no change in his medical condition.

11. The applicant was discharged on 12 May 1975. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-37 (Expeditious Discharge Program) with Separation Program Designator code "KMN" and Reentry Eligibility code "3." He was credited with completion of 9 months of net active service this period.

12. In 1973, the Army initiated the Expeditious Discharge Program as a test; it gave commanders the opportunity to separate unproductive Soldiers who had completed at least 6 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. The program required Soldiers to voluntarily accept discharge and they could receive either an honorable or general discharge.

13. The applicant provides a VA Summary of Benefits letter, dated 9 February 2011, which shows the VA determined his service was honorable for VA purposes. At the time, he was being compensated for a 50-percent service-connected disability. This document does not show the disability for which he was being compensated.

14. 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. Applicants are not entitled to a hearing before the Board. Hearings may be authorized by a panel of the Board or by the Director.

15. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request that his under honorable conditions (general) discharge be upgraded to honorable. The applicant did not assert a mitigating condition nor experience in his application, though his records reflect he is 100% service connected.

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:

- The applicant enlisted in the Regular Army on 13 August 1974.
- On 24 February 1975, the applicant accepted nonjudicial punishment (NJP) for on or about 13 February 1975, without authority absenting himself from his place of duty and remaining so absent until on or about 19 February 1975; and for on or about 13 February 1975, without authority and through design, missing movement.
- On 11 April 1975, the applicant accepted NJP under the provisions of Article 15, UCMJ for on or about 11 April 1975, without authority, failing to go at the time prescribed to his appointed place of duty.
- On 11 April 1975, the applicant's commander notified him that he was initiating action to discharge him from the Army under the provisions of Headquarters, Department of the Army, DAPE-MPE-PS, letter, subject: Expeditious Discharge Program, Reports Control Symbol (Test), dated 20 August 1973. He was recommending the applicant be furnished a General Discharge Certificate. The commander stated the reasons for his proposed action was the applicant's completely negative attitude. He was devoid of any interest in his job, as was most recently represented by him purposely failing to appear at the proper place and time for his military occupational specialty testing. As an E-1 with 8 months in service, coupled with a poor attitude, he had absolutely no promotion potential.
- The applicant was discharged on 12 May 1975 under the provisions of AR 635-200, paragraph 5-37 (Expeditious Discharge Program) with a General Discharge.
- The ABMCR denied his previous application on 26 January 2012.

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 Veterans Affairs (VA) Summary of Benefits letter. 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 stated that he is requesting a correction of the injustice in his record. His current application did not list a mitigating condition or experience, though his previous application to the board reported that he was discharged from the Army because of sexual trauma and was now service connected (for a mental health condition).

d. 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 did contain his service treatment records (STR). His separation medical exam was not available but there is a signed document indicating there'd been no change in his medical condition since his last separation examination. In addition, there was no indicating of any mental health treatment nor diagnosis. No other records were provided to substantiate his previous assertion of sexual trauma or mental health concerns.

e. Per review of the applicant's EHR, he first engaged in care at the VA in 1996, did some care around mental health starting in 1998, and began regular engagement with mental health in 2010. The applicant has participated in therapy, medication management, and residential treatment (2013) with a focus on his PTSD and MST. Per his VA treatment records he has been diagnosed with panic disorder without agoraphobia, polysubstance dependence, PTSD (MST), major depressive disorder (MDD; recurrent – severe without psychotic feature , recurrent – moderate, single episode - moderate), neurotic depression, bipolar affective disorder I (mixed – unspecified, mixed – moderate, mixed, severe without mention of psychotic symptoms), bipolar II, cannabis abuse – unspecified, adjustment disorder with mixed anxiety and depressed mood, alcohol abuse – episodic drinking behavior, antisocial personality disorder, as well as psychosocial concerns to include lack of housing, inadequate material resources, anger and irritability, and problems related to unspecified psychosocial circumstances. Per his initial intake on 20 January 2010, the applicant reported significant physical and emotional abuse while in the Army (by a drill sergeant [SGT]). He called back 22 January and reported that he'd been trying to block something out for a long time, and it was embarrassing, but that his drill SGT made "sexual advances toward me...I had blood coming from my rear...SGT told me if I tell anybody he would kill me and my family." Additional history was given in a discharge summary from his residential stay in 2013. It was noted that the applicant was first

treated for mental health in 1975, when he was hospitalized, and diagnosed with bipolar disorder.

f. The applicant is 100% service connected, to include 70% for PTSD. The applicant has had several compensation and pension (C&P) evaluations pertaining to mental health (28 January 2015 – which referenced a previous one completed 30 July 2010 and 8 May 2015), though not all were available for review in his EHR. The trauma indicated as being related to all claimed diagnoses is his experience of MST and abuse by a drill SGT. Through review of Joint Legacy Viewing, this applicant did have “Community Health Summaries and Documents” available, though there was no record of additional mental health treatment nor diagnoses.

g. It is the opinion of the Agency Behavioral Health Advisor that there is no evidence, beyond self-report, to indicate the applicant had a mitigating condition or experience during his time in service. However, the applicant has since been service connected for PTSD secondary to an MST, and has been diagnosed with several other potentially mitigating conditions. Per Liberal Consideration guidance, the applicant’s contention is sufficient to warrant the Board’s consideration.

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 asserted MST and his record reflects numerous potentially mitigating mental health conditions.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts the MST occurred during his time in service. The applicant has since been service connected for PTSD secondary to MST.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. There are no records from his time in service which substantiate his claim of MST or mental health concerns, however given the time period in which he served and the nature of his mitigating experience, lack of documentation is common. Per Liberal Consideration guidance, the applicant’s contention is sufficient to warrant the board’s consideration. In addition, the applicant has been service connected for PTSD secondary to MST and has consistently engaged in treatment regarding his experiences of trauma since 2010. It is important to note, going AWOL and failure to reports are avoidance behaviors associated with the natural history and sequelae of PTSD as well as MST. There is a nexus between his mitigating condition and experiences, and the misconduct that led to his discharge. Hence, basis for separation is mitigated. Accordingly, an upgrade to Honorable is recommended with a narrative reason for separation change to Secretarial Authority.

REFERENCES:

1. Title 10, U.S. Code, 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.
2. 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. The ABCMR may, in its discretion, hold a hearing.
3. The Department of the Army began testing the Expeditious Discharge Program (EDP) in October 1973. In a message, dated 8 November 1974, the Deputy Chief of Staff for Personnel announced the expansion of the EDP. The program provided for the separation of Soldiers whose acceptability, performance of duty, and/or potential for continued effective service fell below the standards required for retention in the Army. Soldiers could be separated under this program when subjective evaluation of their commanders identified them as lacking qualities for continued military service because of attitude, motivation, self-discipline, inability to adapt socially or emotionally, or failure to demonstrate promotion potential. An honorable or general discharge was required and there has never been any provision for an automatic upgrade of a discharge less than fully honorable.
4. Army Regulation 635-200 (Personnel Separation – Enlisted Personnel) in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 5-37, discharge for failure to demonstrate promotion potential, of the regulation, in effect at the time, provided for the discharge of enlisted personnel who had completed at least 6 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 regulation were issued either a general or honorable discharge.

b. An honorable discharge is a separation with honor. Issuance of an honorable discharge will be conditioned upon proper military behavior and proficient performance of duty during the member's current enlistment or current period of service with due consideration for the member's age, length of service, grade, and general aptitude.

5. 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.

6. 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.

7. 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.

//NOTHING FOLLOWS//