

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 November 2023

DOCKET NUMBER: AR20230006483

APPLICANT REQUESTS:

- an upgrade of his general, under honorable conditions discharge to honorable
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 states he is requesting an upgrade of his discharge to honorable. He feels that he was denied the medical and mental health care needed to prevent him from acting out. He was convinced by his command that the discharge would automatically upgrade to honorable.
3. The applicant did not mark any conditions or issues on the DD Form 149 related to his request, nor did he provide supporting evidence. The applicant did provide a copy of his DD Form 214 for the service period ending 29 December 1997, to be referenced in the service record.
4. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 17 January 1996.

b. His service record is void of a DA Form 2-1 (Personnel Qualification Record) or equivalent Enlisted Record Brief. The service record is also void of the facts and circumstances that led to his discharge.

c. Orders 354-2204 dated 19 December 1997, discharged the applicant from active duty with an effective date of 29 December 1997.

d. Orders 364-2205 dated 30 December 1997, amended the discharge date on Orders 354-2204 to read 31 December 1997.

e. The DD Form 214 shows on 29 December 1997, he was discharged from active duty with a general, under honorable conditions characterization of service and he completed 1 year, 11 weeks, and 13 days of active service. He was assigned separation code JKA and the narrative reason for separation listed as "Misconduct," with a reentry code of 3. It also shows he was awarded or authorized:

- Army Service Ribbon
- Expert Marksmanship Qualification Badge with Grenade Bar
- Marksman Marksmanship Qualification Badge with Rifle

f. A memorandum dated 26 February 1998 requested the issuance of a DD Form 215 to correct the applicant's discharge date and time in service, referenced as "administrative errors. The applicant's service record was void of a DD Form 215 (Correction to DD Form 214).

5. A review of the applicant's service record confirms administrative entries were omitted from his DD Form 214. The entries will be added to his DD Form 214 as administrative corrections and will not be considered by the Board. The Board will consider his request for an upgrade of his general, under honorable conditions discharge to honorable.

6. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

7. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

8. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as patterns of misconduct, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

9. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

10. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his general, under honorable conditions discharge to honorable. The applicant did not assert that any mitigating condition or experience was present but did state that he feels he was "denied the medical and mental health care needed to prevent him from acting out."

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 service record is void of the facts and circumstances that led to his discharge.
- Applicant enlisted in the Regular Army on 17 January 1996.
- The applicant was discharged on 29 December 1997 with a general, under honorable conditions characterization of service. He completed 1 year, 11 weeks, and 13 days of active service. He was assigned separation code JKA and the narrative reason for separation listed as "Misconduct," with a reentry code of 3.
- A memorandum dated 26 February 1998 requested the issuance of a DD Form 215 to correct the applicant's discharge date and time in service, referenced as "administrative errors. The applicant's service record was void of a DD Form 215. Orders indicated he was discharged 31 December 1997.

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, as well as documents from his service record. However, his separation packet is unavailable for review. 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. On the application, the applicant did not assert that any mitigating condition or experience was present (did not check the box for any mental health considerations), but he did state that he feels he was "denied the medical and mental health care needed to prevent him from acting out." He also asserts he was told by his command that his discharge would be automatically upgraded to honorable. 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 not contain his service treatment records (STR) and no other records were provided to substantiate his claim that he was prevented from receiving mental health care.

e. Per the applicant's VA EHR, he is 60% service connected but is not service connected for any mental health concerns. The applicant has been engaged in care at the VA since 2011, and with mental health care since 2022. He has been diagnosed with attention-deficit hyperactivity disorder – predominantly inattentive type (ADHD), major depressive disorder – recurrent – unspecified (MDD), and paranoid personality disorder. He has also presented with other psychosocial concerns, such as problem related to housing and economic circumstances, problem related to unspecified psychosocial circumstances, problems related to other legal circumstances, sheltered homelessness and unsheltered homelessness. He has primarily engaged in homeless and housing programs (such as grant per diem [GPD] and health care for homeless veterans [HCHV]) and Veteran Justice Outreach (VJO), though in 2023 he also began engaging in medication management. Through review of JLV, this applicant did not have any "Community Health Summaries and Documents" available. No other medical records were provided. In summary, he is not currently service connected for any mitigating mental health conditions.

f. After reviewing the application and all supporting documents, this Agency Behavioral Health Advisor cannot provide an opine regarding potentially mitigating conditions or experiences without documentation of the specific misconduct that led to his discharge. In addition, the applicant asserts he was denied access to mental health care, however, insufficient evidence was provided to support this assertion nor that he experienced any mental health concerns during his time in service.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? No, the applicant did not specify that he had a mental health condition, only that he was denied access to mental health care.

(2) Did the condition exist or experience occur during military service? No, he did not assert a mental health condition during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unable to opine. The applicant asserts mitigation due to being denied medical and mental health care. Though, there is insufficient (no) documentation to support a behavioral health condition was present at the time of his discharge from the Army, nor that he was blocked or prevented in any way from receiving care. There is evidence he has begun engaging in treatment for his mental health starting in 2023... over 25 years

after his discharge. Also, without documentation of the specific misconduct that led to his discharge, an opine regarding mitigation cannot be provided.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance before the Board is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records and published DoD guidance for liberal consideration and clemency in determining discharge upgrade requests. The Board considered the misconduct and whether there was sufficient evidence of mitigating circumstances to weigh in favor of clemency determination. After due consideration of the request, and, in the absence of post-service achievements or letters of reference to weigh in support of a clemency determination, 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 Board determined 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.



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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows administrative entries were not listed on his DD Form 214 for the period ending 29 December 1997. As a result, amend his DD Form 214 to show:

- Item 12b (Separation Date This Period) – 31 December 1997 (1997 12 31)
- Item 12c (Net Active Service This Period) – 1 year, 11 months, and 15 days (0001 11 15)

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 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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. 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 member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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 based on 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.

5. 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//