

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 February 2024

DOCKET NUMBER: AR20230006600

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show:

- upgrade of his bad conduct discharge as the result of court-martial
- unspecified amendment of his narrative reason for separation, separation code, and reentry (RE) code

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

- two DD Forms 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- two self-authored statements
- Privacy Act Release
- email from Member of Congress' office
- DD Form 214
- four letters of reference/support

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:

a. At the time of his mistake, he was having a mental breakdown and had no one to turn to. He reached out to a senior noncommissioned officer (NCO) for help, but it did not get taken as seriously as it should have been. He felt as if he were reaching out, but no one was helping him; they only made things worse.

b. He is requesting a discharge upgrade due to his mental and physical health and lack of knowledge at the time of his offense. He was suffering from serious mental and

physical disabilities and did not understand his responsibilities to fulfill his military obligations.

c. He enlisted in the military in 2006, as a strong and healthy young man who had dreams of becoming a drill sergeant. He completed Basic Combat Training (BCT) at Fort Leonard Wood, Missouri and was later sent to Fort Hood, TX as his duty station. He had no medical issues and performed his duties with no problems at all after a good morning of physical training (PT) exercising. Then, all at once his health changed. He woke up in a room hooked up to various types of machines and on nitroglycerin. He was given a physical profile that limited his ability to exercise. He could only walk. After months passed, he was sent to Austin Heart Cardiology and Cardiac Specialists in Austin, TX. He was diagnosed with pericarditis, which is swelling and irritation of the skin sac-like membrane surrounding the heart. He went from a P3 (permanent physical profile rating of "3") to a P4 profile that limited him from everything, including his job duties.

d. During that time, he was also diagnosed with uncontrollable high blood pressure. From that point on, he spent his military career taking 10-14 pills daily. They were for migraines, chest pains, and high blood pressure. These medications eventually made him become fatigued and depressed. He took pride in everything he accomplished, but now he was restricted and limited for medical reasons. It really took a toll on him mentally and physically.

e. Eventually, his unit was deployed to Iraq and even though he was dealing with all these issues, he was forced to deploy. While in a hostile environment, his health declined at a serious rate. He was scared for his life and had suicidal thoughts because he was not physically combat ready. Bombs, mortar rounds, and rocket propelled grenades (RPGs) took a toll on him. To add to his stress, he received a Red Cross message that his child was suffering from life-threatening seizures, and he needed to be placed on rest and relaxation (R&R) leave. He was then sent home on R&R leave.

f. While on R&R leave, he went to the nearest military installation at Fort Rucker, AL, for help. He was turned down because he was deployed and was told to see his primary care physician (PCP) when he went back. During this time, he kept in constant contact with his squad leader who told him to stay put and assured him he was good because their unit was extended at the convenience of the Government, and he had never reenlisted. Since he had not reenlisted, the unit needed for figure out what to do with him. After a few months, his extension expired, and he thought that meant he was no longer enlisted in the Army. His pay stopped around that time as well, so he just went about his life and lost contact with his squad leader.

g. He later joined the police department in his hometown, and everything was normal until he needed a copy of his military discharge. When he reached out for

assistance with his discharge, he was told he was still on active duty; he was surprised and scared at the same time. He did not know what that meant for him. He was made aware that he would need to return to his unit, but upon attempting to return to his unit, he found out his unit had dissolved. He immediately researched the last location of his unit and found it was at Fort Carson, CO.

h. He then reported to the 4th Infantry Division at Fort Carson, CO, and was immediately placed back on the pay roll. His medical issues were still a major concern, but cleaning up his name and record were more important at the time. He can admit that his youth and lack of guidance played a major role in his misunderstanding of his failure to return. He now fully understands that proper procedures were not taken to make sure he had completed his obligations to the military. He honestly believed he had completed his military service and that a DD Form 214 was in the system for him.

i. As stated, when he returned, he honestly did not know what to do when he could no longer reach his unit. After a year, proceedings were started to process him out of the military. He lost everything, including his wife and child. All he could cling to was his belief in God and that he would turn this bad situation into a good one. After returning, he was incarcerated and treated like scum. He could not get anyone to listen to him, so he just completed his assignment and let the discharge stand. He was processed out of the military with a bad conduct discharge and 14 months confinement. He was in disbelief.

j. His health and youth allowed him to believe he had met his obligation. Now he fully understands what happened. He allowed his youth and inexperience to guide him in a direction that had life-long consequences. He does not blame the military for what happened. He still believes it was an innocent mistake. He had poor communication skills and did not stay on top of his responsibility as a member of the U.S. Army. His unit disbanded without knowledge of his situation, he lost contact with his squad leader, and he was never officially discharged. His health delayed him from communicating with anyone else in his chain of command and his knowledge of military law was not sufficient for him to understand his obligations. He never meant to neglect his military responsibilities.

k. Now here he is years later still battling the same health issues that developed while in the military and he is asking for help. He is asking for a discharge upgrade so he can seek medical assistance. He needs to be under the care of doctors. He needs someone who understands his fears, distrust, and the health issues he developed in Iraq. His only crime was being young and unknowing.

3. A DD Form 2808 (Report of Medical Examination) shows the applicant underwent medical examination on 30 October 2006, for the purpose of enlistment in the Regular Army. He was found qualified for service with a physical profile rating of "1" in all factors.

4. A physical profile is used to classify a Soldier's physical disabilities in terms of six factors or body systems, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates a high level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent or temporary.
5. The applicant enlisted in the Regular Army on 16 November 2006.
6. The applicant's available service records do not contain documentation reflecting his deployment to Iraq or his approved R&R leave during his Iraq deployment.
7. A DD Form 553 (Deserter/Absentee Wanted by the Armed Forces), dated 16 August 2010, shows the applicant was reported as absent without authority with intent to remain permanently absent from his unit, the Rear Detachment, 1st Brigade Combat Team (BCT), 4th Infantry Division (ID) at Fort Carson, CO, effective 3 August 2008.
8. A DD Form 458 (Charge Sheet) shows on 16 August 2010, the applicant was charged with:
  - a. absencing himself without authority with intent to remain permanently absent from his unit, the Rear Detachment, 1st BCT, 4th ID at Fort Carson, CO, effective 3 August 2008, and
  - b. absencing himself without authority with intent to remain permanently absent from his unit, the Rear Detachment, 1st BCT, 4th ID at Fort Carson, CO, and remaining absent through 2 September 2008.
9. A DD Form 616 (Report of Return of Absentee) shows the applicant, listed as a deserter who was dropped from the Army rolls on 2 September 2008, was apprehended by civil authorities in [REDACTED], and held in the Hale County Jail on a deserter warrant on 15 July 2012, and subsequently returned to military control at Fort Carson, CO.
10. A partial DD Form 2797-1 (Department of Defense Report of Result of Trial), dated 1 May 2013, shows:
  - a. The applicant was arraigned and tried by general court-martial on 1 May 2013, which convened by Headquarters, Fort Carson, CO, General Court-Martial Convening Order Number 2, dated 1 March 2013, as amended by Court-Martial Convening Order Number 5.

b. He charged with and found guilty of desertion to avoid hazardous duty and two specifications of unauthorized absence of over 3 and less than 30 days.

c. The continuation sheet listing his further charges and findings as well as his sentence is not in the applicant's available records for review.

11. A DD Form 2707 (Confinement Order), dated 1 May 2013, shows:

a. The applicant was found guilty by general court-martial of desertion to avoid hazardous duty, two specifications of unauthorized absence from his place of duty over 3 and less than 30 days, and dereliction of duty.

b. On 1 May 2013, he was sentenced to reduction to the rank/grade of private (PVT)/E-1, forfeiture of all pay and allowances, confinement for 14 months, and a bad conduct discharge.

12. Headquarters, U.S. Army Fires Center of Excellence and Fort Sill General Court-Martial Order Number 258, dated 3 September 2015. The applicant's sentence of reduction in rank/grade to PVT/E1, forfeiture of all pay and allowances, confinement for 14 months, and a bad-conduct discharge, adjudged on 1 May 2013, as promulgated by General Court-Martial Order Number 23, Headquarters, Fort Carson, CO, dated 1 November 2013, as corrected by U.S. Army Court of Criminal Appeals Notice of Court-Martial Order Correction, dated 29 May 2015, had been finally affirmed. That portion of the sentence extending to confinement had been served and the bad conduct discharge would be executed.

13. The applicant's DD Form 214 shows:

a. He was given a bad conduct discharge on 7 October 2015, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 3, due to court-martial (other), with corresponding separation code JJD and reentry code 4.

b. Item 12f (Foreign Service) shows 000 00 00. Item 18 (Remarks) does not contain reference to service in Iraq and/or the dates thereof.

c. He was credited with 4 years, 1 month, and 23 days of net active service, which includes lost time from 3 August 2008 through 14 July 2012 and 28 April 2013 through 14 February 2014, as well as excess leave from 15 February 2014 through 7 October 2015.

14. The applicant's available records do not contain documentation pertaining to the diagnosis and/or treatment of any mental health or physical conditions either during or after his military service and the applicant has not provided such documentation.

15. The applicant provided four letters of reference and support, from his pastor, a former supervisor, a former teacher, and the Sheriff's office. The letter from the Sheriff's office shows the applicant does not have a criminal record in [REDACTED]. The other letters, which have been provided in full to the Board, attest to the applicant's declining health after his service and his need for assistance.

16. The applicant provided argument or evidence that the Board should consider in accordance with the published equity, injustice, or clemency determination guidance.

17. 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 (EMR)(AHLTA and/or MHS Genesis), 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 applying to the ABCMR requesting an upgrade of his 7 October 2015 bad conduct discharge with a change in is separation authority. He states:

"At the given time of my mistake, I was having a mental breakdown and no one to turn to. I reached out to help by a senior NCO but it didn't get taken as seriously as it should have. I felt like I was reaching out but no one was helping me, only making it worse."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The DD 214 for the period of service under consideration shows he entered the regular Army on 16 November 2006 and was discharged on 7 October 2015 under the separation authority provided chapter 3 of AR 635-200, Active Duty Enlisted Administrative Separations (17 December 2009): Court-Martial (Other). It shows two periods of lost time under 10 USC § 972: 3 August 2008 thru 14 July 2012, and 28 April 2013 through 14 February 2014. There are no periods of service in a hazardous duty pay area.

d. The EMR shows the applicant was seen for several issues prior to the start of his period of AWOL on 3 August 2008. The most common was for a complaint of chest pain for which no etiology was found.

e. A Charge Sheet (DA for 458) show he was charged with absence without leave with the intent to permanently absent himself from his unit on 3 August 2008 and again on 2 September 2008. A Report of Return of Absentee (DD Form 616) show he was apprehended by civilian authorities in Alabama on 15 July 2012.

f. The applicant was subsequently found guilty of article 85 of the UCMJ: Desertion to Avoid Hazardous Duty. His sentence was that he be reduced to the grade of E-1; to forfeit all pay and allowances; to be confined for 14 months; and to be discharged with a Bad-Conduct Discharge

g. EMR encounters following his apprehension show he continued to be treated for high blood pressures and evaluated for chest pain. Evaluation this time included a stress test obtained 13 December 2013 which was negative for cardiac disease and the condition remained without an etiology.

h. The applicant was evaluated by behavioral health on 22 October 2012 and diagnosed with anxiety disorder due to general medical condition. He was only seen one more time for this condition which was on 26 October 2012.

i. He has no Veterans Hospital Administration encounters.

#### Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant claims a mental health condition.

(2) Did the condition exist or experience occur during military service? Applicant claims a mental health condition.

(3) Does the condition or experience actually excuse or mitigate the discharge? NO: The applicant has submitted no medical documentation indicating a diagnosis of a service-connected mental health condition. Review of the VA medical records indicates that the applicant had only been diagnosed anxiety secondary to a medical condition following his apprehension. However, as per Liberal Consideration guidance, the applicant's self-assertion alone merits consideration by the board.

j. If the applicant had a mitigating mental health condition, it would likely mitigate his misconduct while in the Army: These mitigating mental health conditions are typically associated with avoidant behaviors and so it/they would mitigate his period of AWOL.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding insufficient evidence indicating a diagnosis of a service-connected mental health condition. The Board found insufficient evidence of in-service mitigating factors to overcome the misconduct of desertion to avoid hazardous duty. The ABCMR is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate.

2. The Board noted the applicant's provided no post service achievement and carefully considered the applicant's character letters of support regarding needing medical assistance. However, based on the preponderance of evidence the Board determined that the character of service, narrative reason for separation, separation code, and reentry (RE) code the applicant received upon separation was not in error or unjust. Therefore, the Board denied relief.

3. This board is not an investigative body. The Board determined despite the absence of the applicant's medical records, they agreed the burden of proof rest on the applicant, however, he did not provide any supporting documentation and his service record has insufficient evidence to support the applicant contentions of a discharge upgrade and amendment of his narrative reason for separation, separation code, and reentry (RE) code.

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.

2/22/2024

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, 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 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.
  - 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 3 provides that an enlisted person will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review is required to be completed and the affirmed sentence ordered duly executed.

3. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army (RA) and the Reserve Components.

a. Chapter 3 prescribes basic eligibility for prior service applicants for enlistment and includes a list of Armed Forces Reentry (RE) Codes, including RA RE Codes.

- Re Code of "1" (RE-1) applies to persons qualified for enlistment if all other criteria are met
- RE-3 applies to persons ineligible for reentry unless a waiver is granted
- RE-4 applies to persons who have a nonwaiverable disqualification and are ineligible for enlistment

b. Chapter 4 states recruiting personnel have the responsibility for initially determining whether an individual meets current enlistment criteria and are responsible for processing waivers.

4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The SPD code JJD is to be used for RA Soldiers discharged as a result of court-martial (other) under the provisions of Army Regulation 635-200, chapter 3.

5. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross reference table shows the SPD code and a corresponding RE Code. The table in effect at the time of his discharge shows the SPD code JJD has a corresponding RE Code of "4."

6. 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 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 BCM/NRs 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.

7. Title 10, U.S. Code, section 1552, provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the Uniform Code of Military Justice, action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the Uniform Code of Military Justice or action on the sentence of a court-martial for purposes of clemency. The Secretary acting through boards of civilians of the executive part of that Military Department shall make such corrections.

//NOTHING FOLLOWS//