

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 November 2023

DOCKET NUMBER: AR20230006690

APPLICANT REQUESTS: in effect, upgrade of the characterization of his service from general, under honorable conditions to honorable with an appearance hearing before the Board.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record).

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, in effect, that he is requesting his characterization of service be upgraded from general, under honorable conditions to honorable. He believes that under current standards he would not have received a general, under honorable conditions discharge. He states that he has been a good citizen since his discharge, that his ability to serve was impaired by his youth, immaturity, personal and financial problems. On his DD Form 149 application he check-marked a box showing post-traumatic stress disorder (PTSD) was a significant issue/condition related to his request.
3. The applicant provides a DD Form 214, for his active service from 3 October 2000 to 2 July 2002, 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 3 October 2000 for a term of 5 years.
  - b. On 31 October 2011, the applicant accepted summarized company grade nonjudicial punishment for violation of Article 91 of the UCMJ as a result of willfully disobeying the lawful order of a noncommissioned officer. His punishment was restriction for 14 days.

c. On 3 May 2002, the applicant accepted company grade nonjudicial punishment for violating Article 92 of the UCMJ as a result of being derelict in the performance of his duties. His punishment was reduction to Private (E-2).

d. On 29 May 2002, the applicant consented to waive his rights on DA Form 3881 (Rights Warning Procedure/Waiver Certificate) for being suspected of the wrongful use and/or possession of a controlled substance.

e. A DA Form 3822-R (Report of Mental Status Evaluation), dated 31 May 2002, confirmed the applicant was referred for a mental evaluation because he was being considered for discharge. The physician noted in the remarks, the applicant had a normal mental status exam and there were no abnormalities found. The evaluation further indicated:

- normal behavior and fully alert
- fully oriented and unremarkable mood or effect
- clear thinking process and normal thought content
- he had the mental capacity to understand and participate in the proceedings
- he was mentally responsible

f. A DD Form 2808 (Report of Medical Examination), dated 5 June 2002, confirmed the applicant chose “normal” for all of the items located in the Clinical Evaluation, to include the portion that pertains to psychiatric issues. He was deemed qualified for service by the provider who conducted the examination.

g. A DD Form 2807-1 (Report of Medical History) shows on 5 June 2002, a medical examination was performed for the applicant in preparation for separation. The applicant indicated in block 14c that he was “currently in good health.” Additionally, he selected “yes” as responses to having depression or excessive worry; having been evaluated or treated for a mental condition; and having used illegal drugs or abused prescription drugs. The provider annotated that he worried about family, separating, and family on the east coast and that he tested positive for marijuana.

h. On 6 June 2002, the applicant accepted nonjudicial punishment for violating Article 112a of the UCMJ as a result of wrongfully using marijuana. His punishment included reduction to Private (E-1) and forfeiture of \$552 pay for one month, extra duty for 45 days and an oral reprimand.

i. On 12 June 2002, the applicant’s immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 14, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) for commission of a serious offense. The specific reasons for his proposed recommendation were for willfully

disobeying orders from NCO's, failure to stay awake and finish his tasks, and testing positive for marijuana.

j. After consultation with legal counsel, the applicant acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for an upgrade request
- he will be ineligible to apply for enlistment in the U.S. Army for a period of two years following discharge

k. On 12 June 2002, the immediate commander initiated separation action against the applicant for commission of a serious offense. He recommended that his period of service be characterized as general, under honorable conditions. The intermediate commander recommended approval.

l. On 14 June 2002, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, paragraph 14-12c, for commission of a serious offense. He would be issued a General Discharge Certificate.

m. The applicant was discharged from active duty on 2 July 2002 with a general, under honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged in accordance with chapter 14 of AR 635-200 with a general, under honorable conditions characterization of service. He completed 1 year and 9 months of active service with no lost time. He was assigned separation code JKQ and the narrative reason for separation listed as "Misconduct," with a reentry code of 3.

5. On 13 September 2023, the Case Management Division sent a request for medical documents that support the applicant's claim of PTSD. As of 13 October 2013, the applicant had not responded to the request.

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 635-5), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

9. 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.

10. 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 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 2 July 2002 discharge characterized as under honorable conditions (general). On his DD 149, he indicates that PTSD is related to his request. He states:

"Dear BCMR or ORB:

The following issues are the reasons believe my discharge should be upgraded to Honorable. The presumption of regularity that might normally permit you to assume that the service acted correctly in characterizing my service as less than honorable does not apply to my case because of the evidence I am submitting.

- Under current standards, I would not receive the type of discharge I did.
- I have been a good citizen since discharge
- My ability to serve was impaired by my youth and immaturity
- Personal and financial problems impaired my ability to serve."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the regular Army on 3 October 2000 and was discharged under honorable conditions (general) on 2 July 2002 under the separation authority provided by paragraph 14-12c of AR 635-200,

Personnel Separations – Enlisted Personnel (1 November 2000): Commission of a serious offense. It does not list a period of service in a hazardous duty pay area. The applicant underwent a mental status evaluation on 31 May 2002. The provider documented a normal examination. He went on to opine the applicant had the mental capacity to participate in proceedings, was mentally responsible, was able to distinguish right from wrong, and he was cleared for any administrative actions deemed appropriate by command.

d. The applicant completed his pre-separation Report of Medical History and Report of Medical Examination on 5 June 2002. These documents show he was in good health, without any significant medical history or conditions. On 12 June 2002, the applicant's company commander informed him of the initiation of separation action under paragraph 14-12c of AR 635 200: "The reasons for my proposed action are: You willfully disobeyed orders from NCO's, you failed to stay awake and finish your tasks, and you tested positive for marijuana on 7 May 02." On 14 June 2002, the brigade commander approved the applicant's separation and directed he be separated with a general discharge certificate.

f. No medical documentation was submitted with the application and there are no clinical encounters in the EMR. Review of his records in JLV shows he has is not registered with the Veterans Hospital Administration. There is no evidence the applicant had a mental health or other medical condition during his service which would have then contributed to or would now mitigate his multiple UCMJ violations and thereby warrant a discharge upgrade. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

(2) Did the condition exist or experience occur during military service? NO

(3) Does the condition or experience actually excuse or mitigate the discharge? NO: The applicant has submitted no medical documentation indicating a diagnosis of PTSD and/or other mental health conditions. Review of the VA medical records shows the applicant has not been diagnosed with either a service connected or nonservice connected BH condition. However, as per Liberal Consideration guidance, the applicant's self-assertion alone merits consideration by the board.

#### BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, the applicant's record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was discharged from active duty due to misconduct – commission of a serious offense. He received a general discharge. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical advisory opinion finding insufficient evidence of in-service mitigating factors to overcome the misconduct. The applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	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.

[REDACTED]

[REDACTED] [REDACTED]

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[REDACTED]

[REDACTED]

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 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. 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. 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 635-5 (Separation Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.
4. 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. Chapter 14 of the regulation states a member may be separated when it is determined that he or she is unqualified for further military service because of minor disciplinary infractions. The service of members separated because of misconduct will be characterized as under other than honorable conditions, or general, under honorable conditions as warranted by their military record.
5. 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, 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.

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 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. 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. 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. 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//