

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 January 2024

DOCKET NUMBER: AR20230006790

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his under honorable conditions (general) discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge)
- DA Form 3349 (Medical Condition - Physical Profile Record)

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) on 4 June 1975. [This ABCMR case did not contain a Docket Number at the time].
2. The applicant states he was sick, injured in his left knee, and had shoulder pain. He couldn't perform his duties for six months, and he was separated from the service.
3. On 18 January 1971, the applicant enlisted in the Regular Army for 3 years. Upon completion of training, he was awarded military occupational specialty 94B (Cook).
4. On 14 April 1972, the applicant's commander initiated a bar to reenlistment on the applicant. He noted his pending Article 15, unacceptable attitude towards the military, poor appearance, requirement for constant supervision, and numerous counseling. The company commander stated "This man's attitude towards service in the Army is totally unacceptable. His personal appearance is poor, he must be constantly supervised in order to accomplish even a trivial action. PFC [Applicant] has been counseled by myself and others of the chain of command on numerous occasions over his appearance, attitude, and poor work habits."
5. On 19 April 1972, the applicant's intermediate commander approved the bar to reenlistment.

6. A Physical Profile Record, dated 13 May 1972, shows the applicant was evaluated for an injury to his left knee and shoulder pain. However, he was deemed qualified for duty with temporary assignment limitations.
7. The applicant's immediate commander counseled the applicant on 26 May 1972 and 26 June 1972, concerning his continued poor performance of duty in the unit. He cautioned him that he was contemplating action under the Qualitative Management Program (QMP) if his performance did not improve.
8. On 29 June 1972, the applicant acknowledged he reviewed the list of counselling sessions noted in the recommendation for the contemplated separation action. He acknowledged he understood the impact of failure to demonstrate the standards of conduct and ability required by the Army. He stated he wanted to be discharged from the Army as soon as possible.
9. The applicant's commander recommended his discharge under the provisions of the QMP as stated in Department of the Army Message 242110Z, September 1971, based on the applicant's failure to demonstrate adequate potential for advancement to the grade of E-3. His commander recommended he receive an under honorable conditions (general) discharge.
10. The separation authority approved the recommended discharge on 30 June 1972, and directed the issuance of a General Discharge Certificate.
11. The applicant was discharged on 21 July 1972. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) with Separation Program Number "21U" (failure to demonstrate adequate potential for promotion). His service was characterized as under honorable conditions (general). He was assigned Reentry Code 3. He completed 1 year, 6 months, and 4 days of net active service this period.
12. The applicant petitioned the Army Discharge Review Board requesting upgrade of his under honorable conditions (general) discharge. On 15 October 1973, the Board voted to deny relief and determined that he was properly discharged.
13. The applicant petitioned the ABCMR requesting upgrade of his under honorable conditions (general) discharge. On 4 June 1975, the Board voted to deny relief and determined that he was properly and equitably separated.
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.

## 15. 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 previous ABCMR denial (4 September 2019; AR20170015060), the military electronic medical record (AHLTA), 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 has applied to the ABCMR in essences requesting a referral to the Disability Evaluation System. He states in part: "I was sick, injury in the left knee and shoulder pain so I can't perform my duties for about six months and they separated me from service. I want to have commissary privileges."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the regular Army on 18 January 1971 and received an under honorable conditions (general) discharge on 21 July 1972 under the provisions provided AR 635-200, Personnel Management – Enlisted Personnel (12 April 1971). His separation program number (SPN) 21U denotes "Separation for failure to demonstrate adequate potential for promotion."

d. A 13 March 1972 Physical Profile Record (DA form 3349) shows the applicant was temporarily restricted from full duties until 6 April 1972 for a left knee injury and shoulder pain.

e. The applicant was barred to reenlistment on 19 April 1972. His company commander wrote:

"This man's attitude towards service in the Army is totally unacceptable. His personal appearance is poor, he must be constantly supervised in order to accomplish even a trivial action. PFC [Applicant] has been counseled by myself and others of the chain of command on numerous occasions over his appearance, attitude, and poor work habits."

f. From a 30 May 1972 memorandum prepared by the Dining Facilities Officer:

"Since PFC [Applicant] came to work at this mess hall, he has been late for work several times and has taken off without permission several times also. Right after he came to work at the mess hall, he was wearing a short timer pin and I asked him why he was prepared to leave so soon. He said he was short

because he was trying for a 212 [AR 635-212, Discharge – Unfitness and Unsuitability].

That pretty well describes his attitude. Several times he has used the excuse that he can only speak Spanish. This is false because I have observed him speaking in English to his friends. PFC [Applicant] does not want to be in the Army and I doubt that his attitude or performance will improve.”

g. The applicant stated on 29 June 1972:

“1. I have reviewed the list of counselling sessions noted in the recommendation for separation and hereby acknowledge that it accurately lists the content of the counselling I have received.

2. I also acknowledge that, as a result of counselling and prior to the initiation of this separation action, I knew and understood the impact of failure to demonstrate the standards of conduct and ability required by the United States Army.

3. I also desire to be discharged from the Army, as soon as possible.”

h. No medical documentation was submitted with the application and his period of Service predates AHLTA. JLV shows he receives care as a non-service-connected Veteran and has no diagnosed mental health conditions other than those associated with alcohol and marijuana abuse.

i. There is no evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

j. It is the opinion of the ARBA Medical Advisor that referral of the applicant’s case to the DES is not warranted.

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? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

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 evidence shows the applicant was discharged in July 1972 for failure to demonstrate adequate potential for promotion, after completing 1 year, 6 months, and 4 days of active service. 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 advisor's opinion finding no evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the disability evaluation system. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge. Additionally, the applicant does not provide 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:

<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 to amend the decision of the ABCMR set forth in the applicant's previous case, dated 4 June 1975.

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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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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.

2. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

3. Army Regulation 600-200, Chapter 4, (Enlisted Personnel Management System), then in effect, set forth policy and prescribed procedures for denying reenlistment under the QMP. That program was based on the premise that reenlistment was a privilege for those whose performance, conduct, attitude, and potential for advancement met Army standards. It was designed to enhance the quality of the career enlisted force, selectively retain the best qualified Soldiers to 30 years of active duty, deny reenlistment to non-progressive and nonproductive Soldiers, and encourage Soldiers to maintain their eligibility for further service. Department of the Army (DAPE-MPP) Message Number 242110Z, dated September 1971, extended the provisions of the QMP to allow for the early separation of Soldiers in the grades of E-1 and E-2 who had failed to demonstrate adequate potential for promotion advancement.

4. Army Regulation 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 Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Commanders who elect not to promote a Soldier to E-2 or E-3 may elect to initiate separation. Normally, an honorable discharge would be awarded unless the Soldier's conduct clearly substantiated a general discharge.

5. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR), on 3 September 2014, 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. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the mental health condition was not diagnosed until years later. 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.

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, 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//