

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 January 2024

DOCKET NUMBER: AR20230006831

APPLICANT REQUESTS: Upgrade of his under honorable conditions (general) discharge. Additionally, he requests a personal appearance 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 he was discharged due to mental stress while in the Army. He had several psychiatric visits in connection with the discharge, and he is in the process of requesting those records. He only recently learned that he could submit a request for discharge upgrade.
3. On his DD Form 149, the applicant notes mental health issues are related to his request.
4. The applicant enlisted in the Regular Army on 26 March 1981, for 4 years. Upon completion of training, he was awarded military occupational specialty 13F (Fire Support Specialist).
5. On 5 May 1981, the applicant accepted non-judicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for failing to go at the time prescribed to his appointed place of duty, on or about 2 May 1981. His punishment included forfeiture of \$116.00.
6. On 6 August 1981, the applicant accepted NJP under the provisions of Article 15 of the UCMJ for failing to go at the time prescribed to his appointed place of duty twice, on

or about 24 July 1981. His punishment included forfeiture of \$100.00 and 14 days restriction and extra duty.

7. On 25 August 1981, the applicant accepted NJP under the provisions of Article 15 of the UCMJ for failing to go at the time prescribed to his appointed place of duty, on or about 15 August 1981. His punishment included forfeiture of \$50.00.

8. A Standard Form 600 (Chronological Record of Medical Care) shows that on 5 March 1982, the applicant self-referred to the Division Mental Hygiene Consultation Service for adjustment reaction. Medical document states, "Will be followed as necessary." However, it does not provide additional comments on his treatment.

9. On 10 March 1982, the applicant accepted NJP under the provisions of Article 15 of the UCMJ for failing to go at the time prescribed to his appointed place of duty twice, on or about 4 March and 8 March 1982. His punishment included reduction to E-1, forfeiture of \$100.00, and 14 days restriction and extra duty.

10. On 9 April 1982, the applicant accepted NJP under the provisions of Article 15 of the UCMJ for failing to go at the time prescribed to his appointed place of duty, on or about 9 April 1982. His punishment included reduction to E-1, forfeiture of \$100.00, and 14 days extra duty and restriction.

11. The applicant's immediate commander notified the applicant on 9 June 1982, that he was initiating actions to separate him from service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-31, Expeditious Discharge Program. As the specific reason, the commander cited the applicant's demonstrated irresponsibility to his duties as a Soldier in the Army. Additionally, it was highly unlikely that the applicant would become a productive Soldier in the Army until he began to accept his legal and moral responsibilities.

12. The applicant's commander formally recommended the applicant's separation from service under the provisions of Army Regulation 635-200, paragraph 5-31, with an under honorable conditions (general) discharge.

13. The applicant acknowledged receipt of the separation notification on 15 June 1982. He was advised of the rights available to him and the effect of waiving his rights. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him. He declined to submit a statement in her own behalf.

14. Consistent with the chain of command's recommendation, the separation authority approved the recommended action on 16 June 1982, and directed the issuance of a General Discharge Certificate.

15. The applicant was discharged on 24 June 1982. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 5-31h(2), by reason of Expeditious - failure to maintain acceptable standards for retention. His service was characterized as under honorable conditions (general). He was assigned Separation Code JGH and Reenlistment Code RE-3. He completed 1 year, 2 months, and 29 days of net active service this period.

16. 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.

17. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) discharge. The applicant notes other mental health as related to his request.

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:

- Applicant enlisted in the Regular Army on 26 March 1981.
- The applicant accepted non-judicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice, on:
 - 5 May 1981, for failing to go at the time prescribed to his appointed place of duty, on or about 2 May 1981.
 - 6 August 1981, for failing to go at the time prescribed to his appointed place of duty twice, or about 24 July 1981.
 - 25 August 1981, for failing to go at the time prescribed to his appointed place of duty, on or about 15 August 1981.
 - 10 March 1982, for failing to go at the time prescribed to his appointed place of duty twice, on or about 4 March and 8 March 1982.
 - 9 April 1982, for failing to go at the time prescribed to his appointed place of duty, on or about 9 April 1982.
- Applicant's immediate commander notified the applicant on 9 June 1982, that he was initiating actions to separate him from service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-31, Expeditious Discharge Program. As the specific reason, the commander cited the applicant's demonstrated irresponsibility to his duties as a Soldier in the Army.
- Applicant was discharged on 24 June 1982. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 5-31h(2), by reason of

Expeditious - failure to maintain acceptable standards for retention. His service was characterized as under honorable conditions (general). He was assigned Separation Code JGH and Reenlistment Code RE-3.

c. 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), and documents from his service record and separation packet. 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. The applicant states he was discharged due to mental stress while in the Army. He had several psychiatric visits in connection with the discharge, and he is in the process of requesting those records. He only recently learned that he could submit a request for a discharge upgrade.

e. Due to the period of service, no active-duty electronic medical records were available for review. A note dated 5 March 1982, in the applicant's Record of Medical Care, shows he self-referred for a mental hygiene consultation reporting adjustment reaction. The note indicates he, "will be followed as necessary". However, no additional encounters are documented in the record and there is no evidence he received treatment or a diagnosis.

f. No VA electronic medical records were available for review and the applicant is not service connected. The applicant submitted no medical documentation from his time of service evidencing a behavioral health condition, treatment or diagnosis. In addition, the applicant did not submit any medical documentation post-military service indicating any BH condition. Overall, the applicant did not submit any medical documentation indicating a behavioral health condition or diagnosis.

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition/diagnosis that mitigates his misconduct.

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 asserts a mitigating condition.

(2) Did the condition exist or experience occur during military service? Yes. The applicant selected other mental health on his application.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of a mitigating BH condition while in military service. There is no evidence of an in-service BH diagnoses, and there is no medical documentation indicating the VA has service-connected the applicant for any BH condition. And while the applicant self-asserted other mental health, the applicant did not submit any medical documentation substantiating his claim.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance hearing 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 hearing is not necessary to serve the interest of equity and justice in this case.
2. After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, and evidence in the records. The Board considered any available supporting medical documentation, the frequency and nature of his misconduct, the reason for separation and whether to apply clemency. The Board found documentation available for review, insufficient to determine that at the time of discharge, the applicant had been diagnosed with a behavioral health condition and the applicant did not provide any for consideration by the Board. After due consideration of the request and, in the absence of any mitigating factors such as post-service accomplishments or letters of reference to weigh in favor of the request, the Board found 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 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.

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

3. 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.

a. Paragraph 2-9 states 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.

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.

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. Paragraph 5-31 provided for the discharge of enlisted personnel who had completed at least six 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 provision of the regulation were issued either a general or honorable 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//