

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 August 2024

DOCKET NUMBER: AR20230006847

APPLICANT'S REQUEST:

- changes to the narrative reason for his separation and corresponding Separation Program Designator (SPD) code to show he was discharged due to "Alcohol Rehabilitation Failure"
- correction of block 14 (Military Education) of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show the military courses he completed
- to appear in person before the Board via video/telephone

APPLICANT'S SUPPORTING DOCUMENTS 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 states the SPD code on his DD Form 214 is "JPC," which is incorrect because he has never taken illegal drugs, tested positive for drugs, and never participated in a drug rehabilitation program. The correct SPD code should be "JPD" for Alcohol Rehabilitation Failure. He voluntarily requested to receive alcohol rehabilitation and completed the programs, for which he has a certificate of completion. This can also be verified in the Army medical records. Shortly after completing the program and being injured during field training, he was told he would be administratively separated from the Army for alcohol rehabilitation failure with SPD code "JPD." He believes he was separated because of the sexual assault/harassment claim he filed and retaliation for the whistleblower report he filed. On 17 December 2022, he was told he needed to be out-processed from the installation and out of the barracks by 23 December 2022. He was not provided a copy of his DD Form 214 to review. On 8 March 2023, his mother was emailed his DD Form 214 without his consent. The applicant indicated on his application that post-traumatic stress disorder (PTSD) and sexual assault/harassment are related to his request. The applicant indicated on his application that he was providing medical documentation, a Sexual Harassment and Rape Prevention (SHARP)

report, and documentation of his completion of the Alcohol Substance Abuse program with his application, but they were not included with his application.

2. On 4 May 2020, the applicant enlisted into the Regular Army for a period of 3 years and 24 weeks. Upon completion of initial entry training, he was assigned to a unit at Fort Carson, CO.

3. On 11 June 2021, the applicant received a General Officer Memorandum of Reprimand (GOMOR) for operating a motor vehicle while under the influence of alcohol. He elected to submit statements in his own behalf. Three noncommissioned officers (NCOs) and one commissioned officer rendered statements with favorable comments in the applicant's behalf. His brigade commander recommended filing the GOMOR in his Army Military Human Resource Record (AMHRR). The imposing General Officer ultimately directed the GOMOR be filed in his AMHRR.

4. A Fort Carson Army Substance Abuse Program (ASAP) Agency certificate shows the applicant successfully completed the 12-hour Prime for Life Program on 22 June 2021.

5. The applicant's record is void of the specific documentation related to his separation.

6. Orders and his DD Form 214 show he was discharged on 23 December 2022 under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), with SPD code "JPC" and Reentry Eligibility code "4." The narrative reason for his separation was Drug Rehabilitation Failure. His service was characterized as "Honorable." He was credited with completion of 2 years, 7 months, and 20 days of active service..

7. On 16 January 2024, in response to a written request, a member of the Army Criminal Investigation Division, Quantico, VA, informed a staff member of the Case Management Division, Army Review Boards Agency (ARBA) that a search of the Army criminal file indexes revealed a Law Enforcement Report pertaining to the applicant. This report shows the applicant reported being the victim of a sexual assault, wherein a male civilian performed sexual acts upon him without his consent at the civilian's residence. The investigation was referred to the local civilian police department for appropriate action.

8. On 30 January 2024, in response to a written request, a member of the U.S. Army Inspector General (IG) Agency, Washington, DC, provided a Case Management Division, ARBA, staff member an unredacted copy of an IG report pertaining to the applicant. This report shows the applicant visited the Fort Carson Colorado IG office on 13 December 2021 seeking assistance with Counterproductive Leadership. Specifically, The applicant wanted the IG to set up a meeting for him to speak with the commander in regard to an NCO within his unit disrespecting him and failing to follow safety

guidelines. The issue was resolved by coordinating with the applicant's commander and ensuring the applicant utilized the Commander's Open Door Policy to address his issues and the case was closed.

9. Army Regulation 600-85 (ASAP), in effect at the time, governed the ASAP. It identified Army policy on alcohol and other drug abuse and identified assigned responsibilities for implementing the program. It detailed procedures for identification, referral, and evaluation of participants in the program. The regulation stated commanders were to make an effort to restore Soldiers to full functioning when they had become ineffective due to alcohol abuse. Rehabilitation was a proven and cost-effective way of retaining Soldiers with necessary skills and experience; however, the regulation required the separation of any Soldiers who lacked the potential for continued military service, or who had failed to participate in, or successfully complete rehabilitation.

10. Army Regulation 635-200, Chapter 9, in effect at the time, provided the authority and outlined the procedures for discharging Soldiers for alcohol or other drug abuse rehabilitation failure. It required commanders to work in consultation with ASAP rehabilitation teams to determine whether further rehabilitation efforts were not practical, rendering the Soldier a rehabilitation failure. Initiation of separation proceedings were required for Soldiers designated as alcohol/drug rehabilitation failures. It is presumed that all requirements of law and regulation were met, and the rights of the applicant were fully protected throughout the separation process. The applicant has provided no information that would indicate the contrary.

11. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

13. 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 a change in his separation code and narrative reason for his separation - Blocks 26 and 28 of his DD 214.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows he entered the regular Army on 04 May

2020 and was honorably discharged on 23 December 2022 under authority provided in chapter 9 of AR 635-200, Personnel Separations – Enlisted Personnel (28 June 2021): Separation for a Substance Use Disorder.

d. The record shows the applicant was performing well and had neither behavioral health concerns nor disciplinary issues until he received a General Officer Memorandum of Reprimand (GOMOR) in June 2021 for driving under the influence (DUI) of alcohol on 18 March 2021.

e. The EMR shows the applicant was referred to behavioral health for evaluation after his DUI. On 21 March 2021, the provider found he had “no alcohol or drug related diagnosis” and his prognosis was “Good.”

f. He was evaluated again on 25 March 2021. Because he did not have an alcohol use disorder or other behavioral health issue, the provider stated would not require the Army’s Substance Use Disorder Clinical Care (SUDCC) program but would be enrolled in the Army’s Alcohol and Drug Abuse Prevention and Treatment (ADAPT) program.

g. The ADAPT is staffed with alcohol and drug counselors and providers. They provide education, counseling, and timely intervention with the goal of preventing Soldiers who have had a drug or alcohol related incident from developing subsequent alcohol and drug use and abuse problems. The applicant successfully completed the program on 22 June 2021 and a behavioral health provider declared him psychotically fit for duty on 28 June 2021.

h. Unfortunately, the applicant relapsed in the fall of 2021. It was during this period that he revealed he had been sexually assaulted. The 16 January 2024 redacted CID/MP from Department of the Army Criminal Investigation Division shows the sexual assault(s) occurred prior to his 21 March 2021 DUI:

“Offense: Sexual Assault (State - [REDACTED])

Dates/Times/Locations of Occurrences: 0001, 01 Mar 21 - 2359, 31 Mar 21;
[REDACTED]

Executive Summary:

On 30 Sep 22, the Department of the Army Criminal Investigation Division (DACID) was notified by [REDACTED] Victim Advocate, 2SBCT, 4ID, Fort Carson, CO (FCCO), that V/[Applicant] [V = Victim] reported an individual named [REDACTED] touched his genitals in [REDACTED]. DACID interviewed V/[Applicant] who stated [REDACTED] performed sexual acts on him without his consent. V/[Applicant] was able to provide a physical description of [REDACTED] and indicated [REDACTED] worked in real estate.

V/[Applicant] additionally identified the incident location as [REDACTED] residence within [REDACTED]. DACID coordinated with [REDACTED] who indicated two individuals named [REDACTED] lived in the complex during the timeframe of the incident, to include S/PLATA who was subsequently identified as a residential loan specialist. This investigation was referred to the [REDACTED] Police Department for appropriate action.”

i. The applicant was diagnosed with Alcohol abuse with unspecified alcohol-induced disorder and adjustment disorder with depressed mood and started on treatment.

j. On 19 April 2022, he admitted with a diagnosis of “Alcohol dependence and alcohol-induce psychotic disorder and hallucinations.” He was discharged on 25 April 2022. From the discharge summary:

“Pt [patient] initially admitted to EACH [Evans Army Community Hospital] FCU 4/19/2022 with reported subacute onset of auditory and visual hallucinations and EtOH [alcohol] level of 297.1 mg/dL on presentation; reportedly had been binge drinking 8-10 drink equivalents daily since the previous weekend.

Completed medically observed detox (required only one dose of Ativan 1mg on day of admission) and transferred to IBHU [Inpatient Behavioral Health Unit] that evening for further stabilization. Given no evidence of hepatocellular injury, pt was started on naltrexone 50mg daily. Reported perceptual disturbances resolved after metabolizing the EtOH in his system and did not recur during the remainder of his inpatient stay.”

k. Neither the applicant’s separation packet nor documentation addressing his involuntary administrative separation was submitted with the application or uploaded into iPERMS.

l. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: Military Sexual Trauma

(2) Did the condition exist or experience occur during military service? YES

(3) Does the condition or experience actually excuse or mitigate the discharge? YES: As this condition is associated with self-medication with alcohol, the condition fully mitigates the GOMOR, the only disciplinary action the Soldier received.

m. Given the MST and the lack of alcohol use or behavioral health disorders prior to the MST and no disciplinary actions or documents in the supporting documents or

iPERMS except the mitigated GOMOR, the medical advisor recommends the applicant's separation code and narrative reason be changed to Secretarial Authority.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, regulation, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The evidence shows the applicant was discharged from active duty due to drug rehabilitation failure. The Board found no error or injustice in his separation processing. The Board reviewed and concurred with the medical advisor's review finding based on the applicant's contention of military sexual trauma (MST) and lack of use prior to the MST, the Board determined there were no aggravating circumstances and as a result, determined a change to the narrative reason for separation and corresponding codes is appropriate.
2. A review of the applicant's available service record did not reveal any completed military educational courses completed and the applicant did not provide evidence to show completion of any courses; therefore the Board found relief was not warranted for this portion of his request.
3. 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.

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:

1. The Board determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 23 February 2022 to show in:

- item 26 (Separation Code): JFF
- item 27 (Reentry Code): 1
- item 28 (Narrative Reason for Separation): Secretarial Authority

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to adding military education to the applicant's DD Form 214.

10/28/2024

X [REDACTED]

 CHAIRPERSON

[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 1556 provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
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 regulation provides that 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. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR.
3. Army Regulation 600-85, in effect at the time, stated commanders were to make an effort to restore Soldiers to full functioning when they had become ineffective due to alcohol abuse. Rehabilitation was a proven and cost-effective way of retaining Soldiers with necessary skills and experience; however, the regulation required the separation of any Soldiers who lacked the potential for continued military service, or who had failed to participate in, or successfully complete rehabilitation. The rehabilitation program is based upon the severity of the individual's involvement with substance abuse and may provide individual, group, and/or Family counseling on a nonresidential (Level I) or partial inpatient/residential (Level II) basis. Program design allows for flexibility and offers a wide variety of rehabilitation modalities structured to meet both individual needs and Army requirements for effective duty performance.
4. Army Regulation 635-200, in effect at the time, set 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. Chapter 9 contained the authority and outlined the procedures for discharging Soldiers because of alcohol or other drug abuse. A member who had been referred to the ADAPCP for alcohol/drug abuse could be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there was a lack of potential for continued Army service and rehabilitation efforts were no longer

practical. Nothing in this chapter prevented separation of a Soldier who had been referred to such a program under any other provisions of this regulation. Initiation of separation proceedings was required for Soldiers designated as alcohol/drug rehabilitation failures. The service of Soldiers discharged under this chapter would be characterized as honorable or under honorable conditions unless the Soldier was in an entry-level status.

5. Army Regulation 635-5-1 (SPD Codes) implements the specific authorities and reasons for separating Soldiers from active duty. It also prescribes when to enter SPD codes on the DD Form 214.

a. Paragraph 2-1 provides that SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of Department of Defense and the Military Services to assist in the collection and analysis of separation data. This analysis may, in turn, influence changes in separation policy. SPD codes are not intended to stigmatize an individual in any manner.

b. Table 2-3 provides the SPDs and narrative reasons for separation that are applicable to enlisted personnel. It shows, in part, SPD JPC is the appropriate code to assign to an enlisted Soldier who is involuntarily separated under the provisions of Army Regulation 635-200, Chapter 9, as a result of Drug rehabilitation failure; code JPD is the appropriate code to assign for Alcohol rehabilitation failure.

6. 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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) 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 to 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.

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, 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.

//NOTHING FOLLOWS//