

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 February 2024

DOCKET NUMBER: AR20230006980

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. Additionally, he requests a personal appearance before the Board.

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

- DD Form 293 (Application for the Review of Discharge)
- Self-authored letter
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 went to a party off base with several of his Army buddies, cocaine was available at the party. He made a very poor decision and used the drug. Within a couple of days, he failed a urinalysis test. He used this drug once and did not plan to use it again; he has not to this day. At the time, he had honorably served for five years and was planning to make a career out of the Army. He sincerely regrets this mistake and asks that his character of discharge be changed to honorable. He worked hard to be the best Soldier in the motor pool and asks the Board to look favorably on his complete record and not just on this one mistake.
3. On his DD Form 293, the applicant notes post-traumatic stress disorder (PTSD) issues are related to his request.
4. On 16 August 1983, the applicant enlisted in the Regular Army. Upon completion of training, he was awarded military occupational specialty 63B (Light Wheel Vehicle Mechanic).

5. On 16 October 1985, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for wrongfully using marijuana on or about 4 October 1985. His punishment included reduction in grade to E-3, forfeiture of \$177.00 pay per month for one month, and 14 days extra duty and restriction.
6. On 17 July 1986, the applicant accepted NJP under Article 15 of the UCMJ, for going without authority, from his guard post on or about 7 May 1986. His punishment included reduction in grade to E-3, forfeiture of \$190.00 pay per month for one month, and 14 days extra duty and restriction.
7. The applicant reenlisted on 16 June 1987.
8. The applicant received formal counseling on 8 December 1988 for driving under the influence (DUI).
9. On 19 December 1988, he was command referred to the Community Counseling Center for Alcohol and Drug Abuse Prevention and Control Program screening. The Commander noted the applicant was arrested by civil authorities for DUI on 30 October 1988; however, the command was not notified until 5 December 1988.
10. The applicant received additional counseling on the following dates/for:
  - 17 April 1989, for non-payment of just debts
  - 9 May 1989, missing accountability, and physical training formations
11. On 22 May 1989, the applicant accepted NJP under Article 15 of the UCMJ, for wrongfully using cocaine between 13 March 1989 and 12 April 1989. His punishment included reduction in grade to E-1, forfeiture of \$349.00 pay per month for two months, and 45 days extra duty and restriction.
12. On 30 May 1989, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
13. The applicant's commander notified him on 14 June 1989, that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b, for a pattern of misconduct. As the specific reasons, his commander cited the applicant's three NJPs.
14. The applicant acknowledged that he had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to him. He indicated he understood he could expect to encounter substantial

prejudice in civilian life if he was issued a less than honorable discharge. He declined to submit a statement in his own behalf.

15. The applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, paragraph 14-12b, for a pattern of misconduct.

16. By legal review, the applicant's Chapter 14, separation action was found to be legally sufficient for further processing.

17. Consistent with the chain of command's recommendation, the separation authority approved the recommended discharge on 7 July 1989, and directed issuance of a UOTHC discharge.

18. The applicant was discharged on 26 July 1989. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12b, for a pattern of misconduct. His service was characterized as UOTHC. He was assigned Separation Code JKM and Reentry Codes 3 and 3C. He completed 5 years, 11 months, and 11 days of net active service this period.

19. Additionally, his DD Form 214 shows he was awarded or authorized the Army Service Ribbon, Overseas Service Ribbon, Army Good Conduct Medal, Marksman Badge with Rifle Component Bar, and the Army Achievement Medal.

20. The applicant's DD Form 214 does not show his continuous honorable active service period information that is required for members who honorably served their first term of enlistment [see Administrative Notes].

21. On 25 September 2023, the ABCMR staff requested that the applicant provide medical documents to support his claim of PTSD as a contributing factor in the circumstances that resulted in his discharge. He did not respond.

22. 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.

23. MEDICAL REVIEW:

a. The applicant requests an upgrade of his UOTHC discharge to honorable. He contends his misconduct was related to PTSD.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant reenlisted into the Regular Army on 16 June 1987; 2) The applicant received formal counseling on 8 December 1988 for driving DUI and on 19 December 1988, he

was command referred to the Community Counseling Center for Alcohol and Drug Abuse Prevention and Control Program screening. The Commander noted the applicant was arrested by civil authorities for DUI on 30 October 1988 but command was not notified until 5 December 1988; 3) The applicant received additional for infractions to include non-payment of debts (17 April 1989), and missing accountability and physical training formations (9 May 1989); 4) On 22 May 1989, the applicant accepted NJP under Article 15 of the UCMJ, for wrongfully using cocaine between 13 March 1989 and 12 April 1989; 5) The applicant's commander notified him on 14 June 1989, that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b, for a pattern of misconduct; 5) The applicant was discharged on 26 July 1989. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12b, for a pattern of misconduct.

c. The VA electronic medical record (JLV), ROP, and casefiles were reviewed. The military electronic medical record, AHLTA, was not reviewed as it was not in use during the applicant's period of service. Included in the applicant's casefile was Report of Mental Status Evaluation dated 30 May 1989 that shows the applicant was psychiatrically cleared for any administrative action deemed appropriate by command. Also included in the casefiles was a Report of Medical Examination dated 12 May 1989 that shows the applicant was found medically qualified for administrative separation. No other military BH-related documentation was provided for review. A review of JLV was void of any treatment history for the applicant and he does not have a service-connected disability. No civilian BH records were provided for review.

d. The applicant is requesting an upgrade of his UOTHC discharge to honorable. He contends his misconduct was related to PTSD. A review of the records was void of any BH diagnosis or treatment for the applicant during or after service and he provided no documentation supporting his assertion of PTSD. In absence of documentation supporting his assertion that his misconduct was related to PTSD there is insufficient evidence to establish that his misconduct was related to or mitigated by PTSD and insufficient evidence to support an upgrade of his discharge based on medical mitigation.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence that the applicant had an experience or condition during his time in service that would mitigate his misconduct. However, the applicant contends his misconduct was related to PTSD, and per liberal guidance, his contention is sufficient to warrant the Board's consideration.

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 contends his misconduct was related to PTSD

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

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the records was void of any BH diagnosis or treatment for the applicant during or after service and he provided no documentation supporting his assertion of PTSD. In absence of documentation supporting his assertion that his misconduct was related to PTSD there is insufficient evidence to establish that his misconduct was related to or mitigated by PTSD and insufficient evidence to support an upgrade of his discharge based on medical mitigation.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined partial relief was warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the multiple drug offenses leading to the applicant’s separation and the findings of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant’s characterization of service.

2. The Board did note that the applicant completed a period of Honorable service which is not currently annotated on his DD Form 214 and recommended that change be completed to more accurately reflect his military service.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:            :            :            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 a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by adding the following additional statement to block 18 (Remarks) of his DD Form 214: "Continuous honorable active service from 830816 to 870615."

2. The Board further determined 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 upgrading the characterization of his discharge.

5/14/2024

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214, for the period ending 26 July 1989 is missing important entries that affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following entries in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE

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 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.

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 635-8 (Separation Processing and Documents) provides: for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable, enter Continuous Honorable Active Service From" (first day of service for which DD Form 214 was not issued) until (date before commencement of current enlistment). Then, enter the specific periods of reenlistment as prescribed above.

5. 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 a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14, paragraph 14-12b provides for the separation of Soldiers when they have a pattern of misconduct involving acts of discreditable involvement with civil or military authorities and conduct which is prejudicial to good order and discipline. The

issuance of a discharge under other than honorable conditions is normally considered appropriate for separations under the provisions of Chapter 14.

(1) The separation authority may direct a general discharge if such is merited the Soldier's overall record.

(2) Characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate. A characterization of honorable may be approved only by the commander exercising general court-martial jurisdiction, or higher authority, unless authority is delegated.

6. 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 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.

7. 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.

8. 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//