

IN THE CASE OF: ██████████

BOARD DATE: 18 January 2024

DOCKET NUMBER: AR20230007033

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) character of service.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement, 30 December 2022
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 27 December 1982

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:

a. He fully understands the reason for his discharge from the Army with a general discharge. However, at the time, all he could think about was getting back home due to his sister contracting Hepatitis C from a blood transfusion related to her being robbed, kidnapped, and raped while working at a convenience store in Metairie, Louisiana.

b. He was mad that his sister knew who assaulted her but refused to tell him who it was. He contemplated going home but decided to stay at Fort Lewis, Washington. He became angry, his anger turned to frustration, and his use of marijuana got the best of him. He used to love his job and believed he was the best, but now he realizes he made a huge mistake by agreeing to be chaptered out.

c. His sister died a few years after her assault, but he cherished the fact he got to say goodbye to her and tell her how much he loved her. He thanks the Board for their consideration and asked them to understand the circumstances that led to his discharge by putting themselves in his shoes.

3. The applicant enlisted in the Regular Army on 16 July 1980 for 3 years. The highest rank/grade he held was private first class/E-3.
4. On 16 January 1981, he accepted non-judicial punishment (NJP) under Article 15, of the Uniform Code of Military Justice (UCMJ), for on or about 5 January 1981, absents himself from his unit and did remain so absent until on or about 6 January 1981. His punishment was forfeiture of \$116.00 (suspended for 60 days) and extra duty for 14 days.
5. On 22 June 1982, he accepted NJP under Article 15, of the UCMJ, for:
  - a. On or about 3 May 1982, having received a lawful command willfully disobeying the same and wrongfully having in his possession some amount of marijuana.
  - b. On or about 5 June 1982, wrongfully having in his possession some amount of marijuana.
  - c. His punishment was reduction to private/E-1 (suspended for 180 days); forfeiture of \$275.00 pay per month for two months, and correctional custody for 30 days (effective on entry).
6. On 2 July 1982, the applicant's intermediate commander vacated the suspension of his suspended reduction to Private/E-1 imposed on 22 June 1982 and ordered the unexecuted portion of his punishment duly executed.
7. On an undisclosed date, the applicant underwent a complete mental status evaluation as part of his consideration for discharge due to his misconduct. His mental status evaluation noted, he met retention requirements, was mentally responsible, and had the mental capacity to understand and participate in the proceedings.
8. On 23 August 1982, the applicant's immediate commander:
  - a. Notified the applicant of his intent to initiate action to separate him from service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 14 (Separation for Misconduct), paragraph 14-12b, for a pattern of misconduct.
  - b. Recommended the applicant be required to appear before a board of officers for the purpose of determining whether he should have been discharged before the expiration of his term of service.

c. Recommended the applicant be discharged due to his repeated acts of misconduct which included NJP, extra attention and instruction by non-commissioned officers, and formal counseling from 10 June 1981 to 7 June 1982 for:

- failure to report
- disrespect to a Platoon Sergeant and Officer
- assault
- violation of company standard operating procedures
- leaving place of duty
- military appearance
- possession (twice)
- poor performance/attitude

9. On 26 August 1982:

a. He acknowledged receipt of his commander's notification.

b. He was advised by his consulting counsel of the basis for the contemplated action to separate him for his misconduct under AR 635-200, paragraph 14-12b and its effects; of the rights available to him; and the effect of any action taken by him in waiving his rights.

(1) Prior to completing his election of rights, the applicant was afforded the opportunity to consult with appointed military counsel, military counsel of his own choice, or civilian counsel; he declined.

(2) He understood he may expect to encounter substantial prejudice in civilian life if his service was characterized as general, under honorable conditions and as a result of general discharge he may be ineligible for many or all benefits as a veteran under both federal and state laws.

(3) He elected not to submit a statement on his own behalf.

10. On 7 September 1982, the applicant's intermediate and senior intermediate commanders recommended his separation from the service, under the provisions of AR 635-200, paragraph 14-12b.

11. On 27 September 1982, the separation authority reviewed the applicant's elimination proceedings and directed a board of officers be convened to determine whether he should be eliminated from the service.

12. A memorandum, dated 20 December 1982, shows a board of officers was convened on 9 November 1982 and recommended the applicant be separated from the

military service by reason of misconduct, issued a General Discharge Certificate, and separation program designator code of "JKA."

13. On 27 December 1982, the applicant was discharged under the provisions of AR 635-200, paragraph 14-12b, by reason of misconduct - pattern of misconduct, with a under honorable conditions (general) characterization of service in the grade of E-1. He received a separation code of "JKM (JKE)" and reenlistment code "3" and "3B." His DD Form 214 contains the following entries:

a. He completed 2 years, 5 months, and 11 days of net active service during the period covered.

b. Block 29 (Dates of Time Lost During this Period) the entry "810105 – 810105."

14. On 21 August 1984, the Army Discharge Review Board (ADRB) reviewed the applicant's request for an upgrade of his discharge. The ADRB found his discharge to be both proper and equitable under the circumstances and voted to deny his request.

15. Regulatory guidance in effect at the time provided a discharge under other than honorable conditions was normally considered appropriate for Soldiers discharged under the provisions of AR 635-200, chapter 14. However, the separation authority could direct a general discharge if such were merited by the Soldier's overall record.

16. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

17. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) characterization of service. The applicant indicated a traumatic event occurred to his sister as being related to his request for upgrade.

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:

- The applicant enlisted in the Regular Army on 16 July 1980.
- On 16 January 1981, he accepted non-judicial punishment (NJP) for on or about 5 January 1981, absenting himself from his unit and did remain so absent until on or about 6 January 1981.
- On 22 June 1982, he accepted NJP for on or about 3 May 1982, having received a lawful command willfully disobey the same and wrongfully have in his

possession some amount of marijuana; and for on or about 5 June 1982, wrongfully have in his possession some amount of marijuana.

- On 23 August 1982, the applicant's immediate commander notified the applicant of: his intent to initiate action to separate him from service under AR 635-200, Chapter 14, paragraph 14-12b, for a pattern of misconduct; his recommendation that he appear before a board; and recommendation the applicant be discharged due to his repeated acts of misconduct which included NJP, extra attention and instruction by non-commissioned officers, and formal counseling's from 10 June 1981 to 7 June 1982 for:
  - failure to report
  - disrespect to a Platoon Sergeant and Officer
  - assault
  - violation of company standard operating procedures
  - leaving place of duty
  - military appearance
  - possession (twice)
  - poor performance/attitude
- A memorandum, dated 20 December 1982, shows a board of officers was convened on 9 November 1982 and recommended the applicant be separated from the military service by reason of misconduct, issued a General Discharge Certificate, and separation program designator code of "JKA."
- On 27 December 1982, the applicant was discharged with an under honorable conditions (general) discharge.
- On 21 August 1984 the ADRB denied his request for upgrade.

c. Review of Available Records Including Medical:

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), his DD Form 214, documents from his service record and separation as well as a self-authored statement. 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 asserted that his sister was held up at knife point, was cut, robbed, kidnapped, raped and dropped off by the perpetrator, and would not tell her brother/the applicant who did it (even though she knew). He noted that this led to anger/frustration and his use of marijuana. Hence, he is asserting this experience mitigates his discharge. He also noted that him being AWOL was him and several other soldiers having car trouble and them keeping their chain of command notified (it was not their intention to be AWOL).

e. The applicant's time in service predates use of electronic health records (EHR) by the Army, hence no EHRs are available for review. His service record and supporting documents did not contain his service treatment records (STR) however his records contained relevant medical information. The applicant was seen for a mental status exam as part of the separation process (date unreadable). The applicant's presentation and overall assessment was unremarkable. The applicant was found to have the mental capacity to understand and participate in the proceedings, was mentally responsible, and met retention requirements per AR 40-501, chapter 3. No other records were made available to substantiate his claim.

f. Per the applicant's VA EHR, he is not service connected. He has not been engaged in any mental health care through the VA and he holds no mental health diagnoses with the VA. Through review of JLV, this applicant did not have any "Community Health Summaries and Documents" available for consideration. No other medical records were provided.

g. Based on the available information, it is the opinion of the ARBA BH Advisor that there is insufficient evidence to support the applicant had a condition at the time of service that mitigated his discharge. The applicant did reportedly have a stressful family experience occur, though there is no evidence that it caused a mitigating condition nor meet the categories of a mitigating experience.

#### Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes, applicant asserts a traumatic experience with his sister caused increased anger and frustration.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts this event occurred during his time in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant did not specify a mitigating condition but did report that his sister experienced a traumatic event and how she handled it left him feeling anger and frustration. He noted that he coped by using marijuana. Per Liberal Consideration guidance, his contention is sufficient to warrant the board's consideration. However, there is no evidence that the applicant was experiencing a mitigating condition during his time in service and there is no evidence the applicant has experienced any mental health conditions nor concerns since his discharge.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's mental claim and the review and conclusions of the ARBA BH Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct not being mitigated by a mental health condition. Based on a preponderance of the evidence, the Board determined 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.

4/15/2024

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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.

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. Title 10, U.S. Code, Section 1556, 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.

3. 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 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

4. 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 post-traumatic stress



disorder; 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.

5. 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//