

IN THE CASE OF: ██████████

BOARD DATE: 7 February 2024

DOCKET NUMBER: AR20230007283

APPLICANT REQUESTS: His under other than honorable conditions (UOTHC) discharge be upgraded.

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

- DD Form 149 (Application for Correction of Military Record)
- Medical records, 7 pages

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, as a result of his mental health conditions that was diagnosed during his time in service and the traumatic event of the death of his daughter, he feels he was not in the right mental state of mind and it should not have been held against him.
3. On the applicant's DD Form 149, he indicates post-traumatic stress disorder (PTSD) and other mental health conditions, as contributing and mitigating factors in the circumstances that resulted in his separation.
4. A review of the applicant's service record shows he enlisted in the Regular Army on 7 March 2000 for 4 years. He completed training with award of the military occupational specialty 25U (Signal Support Systems Specialist) and reenlisted on 12 December 2003. The highest rank he attained was E-4.
5. The applicant tested positive for marijuana on a random urinalysis on 6 July 2004 and a Criminal Investigative Division found probable cause to believe the applicant had committed the offense of wrongful use of a controlled substance.

6. The applicant was enrolled in the Army Substance Abuse Program following a positive urinalysis. The record indicates the applicant had tested positive twice; however, only one set of results clearly is of record.

7. The available record contains 55 pages of service medical records, which shows treatment for:

- Major depression
- Panic disorder
- A history of childhood sexual abuse
- Cannabis abuse in remission
- Right ankle and knee pain

8. A DA Form 3822-R (Report of Mental Status Evaluation), dated 12 August 2004, shows the applicant had mild depression, but had a level of orientation, mood, thinking process, thought content, or memory. He was determined to be mentally capable to understand and participate in the proceedings deemed appropriate by command.

9. The applicant's immediate commander notified the applicant on 20 September 2004 of his intent to initiate actions to separate him under Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, paragraph 14- 12c for serious misconduct.

10. The applicant requested a medical board separation in lieu of an administrative discharge on 27 September 2004.

11. The applicant consulted with legal counsel on 29 October 2004. He was advised of the basis for the contemplated discharge, the possible effects of an under honorable conditions discharge, and the procedures and rights that were available to him. He waived his administrative rights except to submit a statement in his own behalf. However, no statement is of record.

12. The applicant's immediate commander formally recommended his separation from service under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14- 12c for commission of a serious offence..

13. The applicant was afforded a Medical Evaluation Board on 12 November 2004, which found right knee chondromalacia, right tarsal coalition and to have medically acceptable conditions of hearing loss, a depressive disorder, and an anxiety disorder.

14. On 24 November 2004, the applicant requested a medical discharge in lieu of the administrative discharge citing his anxiety and depression over the death of his 2 month old child and estrangement from his other daughter. The general court-martial convening authority denied the applicant's request.

15. The appropriate authority approved the discharge recommendation on 10 December 2004, and directed the applicant be issued a UOTHC Discharge Certificate.

16. The applicant was discharged on 30 December 2004 in the pay grade of E-1. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 14, for misconduct with an under other than honorable conditions (UOTH) character of service, a Separation Code JKK, and a Reentry Code of 3. He was credited with 4 years, 9 months, and 24 days of net active service. His awards are listed as the Army Good Conduct Medal, National Defense Service Medal, Army Service Ribbon, and the Global War on Terrorism Service Medal.

17. The available records do not include a diagnosis of PTSD.

18. The applicant's submission of his service medical records are part of the records contained in the available records.

19. In determining whether to grant relief the Boards for Correction of Military/Navy Records (BCM/NR) can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

20. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. The applicant asserts PTSD and other mental health condition mitigates his discharge.

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 RA 7 March 2000 and reenlisted on 12 December 2003.
- The applicant tested positive for marijuana on a random urinalysis on 6 July 2004 and a Criminal Investigative Division found probable cause to believe the applicant had committed the offense of wrongful use of a controlled substance.
- The applicant was enrolled in the Army Substance Abuse Program following a positive urinalysis. The record indicates the applicant tested positive twice.

- Applicant's immediate commander notified the applicant on 20 September 2004 of his intent to initiate actions to separate him under Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, paragraph 14- 12c for serious misconduct.
- Applicant requested a medical board separation in lieu of an administrative discharge on 27 September 2004.
- Applicant was afforded a Medical Evaluation Board on 12 November 2004, which found right knee chondromalacia, right tarsal coalition and to have medically acceptable conditions of hearing loss, a depressive disorder, and an anxiety disorder.
- On 24 November 2004, the applicant requested a medical discharge in lieu of the administrative discharge citing his anxiety and depression over the death of his infant child and estrangement from his other daughter. The general court-martial convening authority denied the applicant's request.
- The appropriate authority approved the discharge recommendation on 10 December 2004, and directed the applicant be issued a UOTHC Discharge Certificate.
- Applicant was discharged on 30 December 2004. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 14, for misconduct with an Under Other Than Honorable Conditions (UOTHC) character of service, a Separation Code JKK, and a Reentry Code of 4.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, DD Form 214, his ABCMR Record of Proceedings (ROP), hardcopy active-duty medical record, 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, as a result of his mental health condition that was diagnosed during his time in service and the traumatic event of the death of his daughter, he feels he was not in the right mental state of mind and it should not have been held against him.

e. Limited active-duty electronic medical records were available for review. However, the applicant submitted hardcopy medical documentation including a memorandum dated 19 August 2004 that notes the applicant was psychiatrically hospitalized on 16 August 2004 due to suicidal ideation and depressed mood. He was diagnosed with Panic Disorder, Major Depressive Disorder, and Cannabis Abuse. The memo states the applicant had a medical condition that warranted referral to the Medical Evaluation Board (MEB), required follow-up by psychiatry, and recommended suspension of PRP, security clearance, and weapons handling. A note dated 03 August 2004, indicates the

applicant reported during a behavioral health encounter that the death of his daughter, on 30 March 2002 at 4 months old due to a birth defect, triggered intrusive thoughts and flashbacks of his own childhood sexual abuse. An encounter on 9 September 2004, diagnosed the applicant with Insomnia, Depressive Disorder, Anxiety Disorder, and Cannabis Abuse in remission. The applicant was treated with both therapy and medication while in service due to his behavioral health conditions. In a sworn statement dated 15 July 2004, the applicant was asked, "what made you use a controlled substance?" He responded, "extreme depression".

f. Applicant is not service connected, possibly due to the characterization of his discharge. However, the VA electronic medical records available for review indicate the applicant was treated for his behavioral health condition from May 2005 to August 2005. He later participated in a C and P evaluation on 6 May 2008 and was diagnosed with Major Depressive Disorder, recurrent severe, and Panic Disorder. The clinician opined his depression and anxiety started in the military after his daughter's death and he was treated while in the military. The applicant appears to reconnect with the VA in August 2023 and participated in a comprehensive mental health intake on 8 December 2023 that diagnosed him with Bereavement, Cannabis Abuse, Depression, Generalized Anxiety Disorder and Post-traumatic Stress Disorder (PTSD). Based on his symptoms, the applicant was recommended for and started his first session of Cognitive Processing Therapy (CPT) for PTSD on 18 January 2024 as well as medication management.

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is evidence the applicant had an experience along with a subsequent behavioral health condition, during military service, that mitigates his discharge.

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 experience and BH condition.

(2) Did the condition exist or experience occur during military service? Yes. The applicant's 4-month-old daughter died of a birth defect while he was in service, and this appeared to have triggered his behavioral health condition.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The record indicates the applicant was diagnosed with Bereavement, Insomnia, Panic Disorder, Depressive Disorder, Anxiety Disorder, and Cannabis Abuse while in military service. All of the combined diagnoses are also symptoms of PTSD. The VA has

diagnosed the applicant with PTSD and is treating him with medication and specialized therapy for his symptoms. Given the nexus between PTSD and substance use as a coping mechanism, the applicant’s wrongful use of a controlled substance would be mitigated by his BH condition.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant’s petition, available military records and medical review, the Board concurred with the advising official finding sufficient evidence the applicant had an experience along with a subsequent behavioral health condition, during military service, that mitigates his discharge. Additionally, the opine noted the nexus between PTSD and substance use as a coping mechanism, the applicant’s wrongful use of a controlled substance would be mitigated by his BH condition. The Board agreed, there is sufficient evidence to upgrade the applicant’s characterization of service to honorable, based on the opine.

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 is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by re-issuing the applicant's his DD Form 214 for the period ending 30 December 2004, showing his characterization of service as honorable.

2/22/2024

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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, USC, section 1556 provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.
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 Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 (Separation for Misconduct) establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave.

d. Paragraph 14-12c (Commission of a Serious Offense) applied to Soldiers who committed a serious military or civilian offense, when required by the specific circumstances warrant separation and a punitive discharge was, or could be authorized for that same or relatively similar offense under the UCMJ.

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 (DRBs) and BCM/NRs 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 a 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.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//