

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 February 2024

DOCKET NUMBER: AR20230007316

APPLICANT REQUESTS: His under honorable conditions (general) discharge be upgraded to an honorable discharge and, in effect, a correction of his period of active-duty service.

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 :

a. His first sergeant routinely belittled his work, and him personally. This was after he was named Soldier of the Month under previous supervisors. He feels that he endured persecution, racial discrimination, and was a victim of unfairness by his first sergeant. He routinely favored those with similar interests and backgrounds. The first sergeant was African American, while he is Asian American. He was really incensed when the Battalion XO let him stay at Fort Hood TX to complete his regular date of separation (DOS) processing, when the battalion transferred to the National Training Center. He commented, "You don't deserve any benefits and I will personally see to it that you are chaptered out of the military. I will hand-carry your General Discharge paper work to Division."

b. His DD Form 214 incorrectly states he served 3 years and 5 months, when he actually served 3 years and 327 days. He had enough accrued leave (57 days) to remain on leave till his DOS, but was too ignorant to know what the first sergeant was doing.

3. The applicant incorrectly states his DD Form 214 shows he served for only 3 years and 5 months. However, the 3 years and 5 months time frame is the period of service in his MOS, not his total period of active duty service, which is 3 years, 10 months, and 23 days. Therefore, there is no error and this aspect of his request will not be further addressed.
4. On the applicant's DD Form 149, he indicates a mental health condition as a contributing and mitigating factor in the circumstances that resulted in his separation.
5. A review of the applicant's service record shows he enlisted in the Regular Army for 4 years on 20 June 1997, he completed training and was awarded military occupational specialty (MOS) 92A (Automated Logistical Specialist). The highest grade held was E-4.
6. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice on the following dates for the indicated offenses:
 - 2 March 2000, for failure to go his appointed place of duty, 11 February 2000, his punishment included reduction to E-3, suspended until 29 October 2000 and vacated on 29 Jun 2000
 - 10 October 2000, for failure to go his appointed place of duty, on 9 August 2000 and failure to obey a lawful order from a noncommissioned officer on 24 August 2000
 - 30 March 2001, for wrongful use of cocaine on or between 30 December 2000 and 5 January 2001, his punishment included reduction to E-1
7. A Criminal Investigation Division (CID) investigation was conducted, between 24 February and 7 March 2001, following notification that the applicant had tested positive for cocaine on a random drug screening of 5 January 2001. The investigation determined that there was probable cause to show that the applicant had knowingly used cocaine.
8. A Commander's Worksheet, dated 15 May 2001, shows the applicant was considered to not be able to function in his assigned MOS, and that he had receive a rehabilitative transfer, enrollment in the Army Drug Abuse and Prevention Control Program, and received one field grade and two battery level Article 15's with numerous counseling for failure to repair and failure to follow instructions.
9. On 3 July 2001, the applicant's immediate commander notified the applicant of his intent to initiate actions to separate him under Army Regulation 635-200 (Personnel Separations – Enlisted), Chapter 14, paragraph 14- 12c. His commander noted the specific reasons as:

a. A field grade Article 15 dated 30 March 2001, for wrongful use of cocaine on or between 30 December 2000 and 5 January 2001.

b. A battery grade Article 15 dated 2 March 2000, for failure to repair on or about 11 February 2000.

c. A Vacation of Suspension, dated 29 June 2000, for failure to repair on or about 28 June 2000.

d. A battery grade Article 15, dated 10 October 2000, for failure to repair on or about 9 August 2000 and violation of a lawful order on or about 24 August 2000.

10. The applicant consulted with legal counsel on 7 July 2001. 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 elected not to submit a statement in his own behalf.

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

12. The appropriate authority approved the discharge recommendation, under Army Regulation 635-200, para 14-12c on 16 July 2001 and directed the applicant be issued a General Discharge Certificate.

13. The applicant was discharged on 17 August 2001 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 honorable conditions (general) character of service, Separation Code of JKK, and a Reentry Code of 3. He was credited with 3 years, 10 months, and 23 days of net active service with no lost time. His awards are listed as only the Army Service Ribbon.

14. The applicant did not provide and the record does not contain any documentation of mental health issues.

15. 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.

16. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) discharge to honorable. He contends 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 on 20 June 1997.
- Applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice on the following dates for the indicated offenses:
- 2 March 2000, for failure to go to his appointed place of duty, 11 February 2000, his punishment included reduction to E-3, suspended until 29 October 2000 and vacated on 29 Jun 2000
- 10 October 2000, for failure to go to his appointed place of duty, on 9 August 2000 and failure to obey a lawful order from a noncommissioned officer on 24 August 2000
- 30 March 2001, for wrongful use of cocaine on or between 30 December 2000 and 5 January 2001, his punishment included reduction to E-1
- A Criminal Investigation Division (CID) investigation was conducted, between 24 February and 7 March 2001, following notification that the applicant had tested positive for cocaine on a random drug screening on 5 January 2001. The investigation determined that there was probable cause to show the applicant had knowingly used cocaine.
- A Commander's Worksheet, dated 15 May 2001, shows the applicant was considered to not be able to function in his assigned MOS, and that he had receive a rehabilitative transfer, enrollment in the Army Drug Abuse and Prevention Control Program, and received one field grade and two battery level Article 15's with numerous counseling for failure to repair and failure to follow instructions.
- Applicant was discharged on 17 August 2001 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 honorable conditions (general) character of service, Separation Code of JKK, and a Reentry Code of 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 his first sergeant routinely belittled his work, and him personally. This was after he was named Soldier of the Month under previous supervisors. He feels that he endured persecution, racial discrimination, and was a victim of unfairness by his first sergeant. He routinely favored those with similar interests and backgrounds. The first sergeant was African American, while he is Asian American. He was really incensed when the Battalion XO let him stay at Fort Hood TX to complete his regular date of separation (DOS) processing, when the battalion transferred to the National Training Center. He commented, "You don't deserve any benefits and I will personally see to it that you are chaptered out of the military. I will hand-carry your General Discharge paperwork to Division." Of note, the applicant accepts no personal responsibility for his multiple instances of misconduct and, despite his assertion of being "soldier of the month," the counseling form dated 15 May 2001, shows he was considered to not be able to function in his assigned MOS and had receive a rehabilitative transfer.

e. Due to the period of service, no active-duty electronic medical records were available for review and the applicant did not submit any hard copy medical documentation evidencing a behavioral health condition. The VA electronic medical record available for review indicates the applicant is 10% service connected for tinnitus. The applicant has not engaged in behavioral health care services but has ongoing contact with the VA for his medical care. The applicant was seen for a one-time behavioral health encounter on 19 January 2023. He reported he got back together with his ex-wife, who he divorced in 2020. He shared they were \$28,000 behind on their mortgage. He reported feeling stressed and depressed as a result of his recent psychosocial stressors. He discussed wanting to start taking his health and wellness seriously, including wanting to lose weight and stop smoking. The clinical diagnostic impression was of Adjustment Disorder related to his psychosocial stressors. The applicant was offered ongoing support but did not show to subsequent appointments.

f. 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 diagnosis that mitigates his misconduct. However, Per Liberal Consideration guidelines, the applicant's self-assertion of other mental health condition merits consideration by the Board.

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? No. There is no evidence of any BH condition and the applicant is not service connected.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. The VA electronic medical record evidences a one-time behavioral health encounter related to psychosocial stressors not a BH condition. And while the applicant self-asserted other mental health condition, he did not provide any medical documentation substantiating a diagnosis.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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 the medical review, the Board concurred with the advising official finding insufficient evidence of any mitigating BH condition. The opine noted there is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. Evidence shows a one-time behavioral health encounter related to psychosocial stressors not a BH condition.

2. The Board determined there is insufficient evidence of in-service mitigating factors to over the misconduct of using cocaine as well as his two Battery level ART15. The Board recognized the applicant's self-asserted other mental health condition; however, the applicant' did not provide any medical documentation substantiating a diagnosis. The applicant was discharged for misconduct and was provided an under honorable conditions (general) characterization of service. The Board agreed the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. The Board agreed the burden of proof rest on the applicant; however, he did not provide any supporting documentation and his service record has insufficient evidence to support the applicant contentions of a discharge upgrade related to his behavioral health concerns. Based on this, the Board determined relief was not warranted and denied relief.

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:

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.

3/29/2024

X [Redacted Signature]

CHAIRPERSON
[Redacted Name]

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 15–185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the Army Board for Correction of Military Records (ABCMR). Paragraph 2-9 states 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.

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. 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.

//NOTHING FOLLOWS//