

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2024

DOCKET NUMBER: AR20230007512

APPLICANT REQUESTS: an upgrade of his characterization of service from under honorable conditions (general) honorable and correction of his social security number on two DD Forms 214 (Armed Forces of the United States Report of Transfer or Discharge).

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

- Two DD Forms 149 (Application for Correction of Military Record)
- Two DD Forms 214
- Chronological Record of Medical Care
- Two Standard Forms 89 (Report of Medical History)
- Application for Compassionate Reassignment and Denial (3 pages)
- Mental Hygiene Neuropsychiatric Examination
- Discharge Packet (6 pages)
- Progress Note
- Department of Veterans Affairs (VA) Rating Decision
- Record of Assignments

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 in two applications:

a. Item 32 (Remarks) on his DD Forms 214 ending on 27 September 1965 and 24 June 1966 contains an incorrect social security number.

b. He was discharged due to mental health based on anxiety and depression about his possible sexual identity. He did not act on anything, but he was concerned about his thoughts. He turned out not to be homosexual. But he was unjustly discharged due to mental anguish. He annotated his applications to show he suffers from post-traumatic

stress disorder (PTSD); other mental health issues to include Don't Ask Don't Tell (DADT).

3. The Board will not consider the applicant's request to correct the SSN listed on his 2 DD Forms 214. His record contains at least one document, DA Form 3027 (US Army Request for National Agency Check), that reflects his requested SSN. This DD Forms 214 will be administratively corrected, without action by the Board.

4. The applicant enlisted in the Regular Army on 3 October 1962; he was single/unmarried at the time of his enlistment.

5. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was honorably discharged on 27 September 1965 after completing 1 years, 11 months, and 25 days of active service. This DD Form 214 reflects the contested SSN in item 32 (Remarks).

6. After a short break in service, the applicant enlisted in the Regular Army on 20 December 1965 in the rank/grade of sergeant/E-5; his enlistment record shows he had wife and infant daughter at the time of his enlistment.

7. The applicant provides, and his record contains a request for compassionate reassignment. The available documentation does not show why the request was made. The request was denied on 7 March 1966 because the chain of command and approval authority felt the applicant's "problem can be adequately solved by having the wife join her husband."

8. A report of neuropsychiatric examination, dated 8 June 1966, shows he was originally seen at the Mental Hygiene Clinic at his own request. Approximately a week prior to his visit, he had been absent without leave (AWOL) four or five hours. He indicated he was AWOL because he was very depressed, anxious, and confused. He was having personal problems of such a nature that he was under tremendous tension. He saw no solution, he even considered suicide. Eventually, he decided that his best course of action was to return to duty.

a. His problems had to do with confusion as to his sexual identity. He had conflicts in this area which were made worse by having personal contact with other men. Being constantly around other males increased his difficulties to the point that he suffered a great deal of tension and anxiety. Although he never lost control, he felt the problem was getting worse and he may not be able to control himself in the future. This resulted in a psychological conflict. It was the impression of the examining psychiatrist that, if the applicant continued in the service, his difficulties would worsen, and it will be to his detriment. Because of this firm conviction, the examining psychiatrist strongly urged his unit to separate him from the service.

b. Mental Status: The applicant was somewhat anxious and depressed. He was neat in appearance, and cooperative. He was not suicidal at this point. There was no sign of psychosis.

c. Diagnosis: Personality, emotionally unstable. His symptoms and/or unmilitary behavior was a repetition of a demonstrable life-long pattern of defective adjustment. A neuropsychiatric examination determined this condition was not amenable to hospitalization, treatment, disciplinary action, training, transfer to another organization, or reclassification to another type of duty. This condition did not warrant separation from service under the provisions of current medical discharge regulations.

d. He was found to be mentally responsible, both to distinguish right from wrong and to adhere to the right, and the examining official made the following recommendations:

(1) That no further attempt be made at rehabilitation or reclassification of the applicant since it was believed he would not be rehabilitated to the extent that he would become a satisfactory Soldier.

(2) That he be separated from the service under the provisions of Army Regulation (AR) 635-209 (Unsuitability).

9. On 9 June 1966 -

a. The applicant's immediate commander notified the applicant of the intent to process him for elimination under the provisions of AR 635-209 (Unsuitability). He was also notified of his rights. The applicant acknowledged receipt of the separation notification. He also acknowledged he was counseled and advised of the basis for the contemplated separation action, and he was afforded the opportunity to request counsel. The applicant acknowledged/elected:

- he waived his right to a hearing before a board of officers
- he did not desire to submit written statements in his own behalf
- he did not desire further counsel
- he acknowledged he made these elections of his own free will

b. The applicant's immediate commander recommended the applicant's discharge under the provisions of AR 635-209, due to unsuitability. Additionally, the commander stated his conduct and efficiency were good. He had one Article 15 for violation of Article 86 (AWOL) for which he was reduced one pay grade; from pay grade E-5 to E-4.

10. On 16 June 1966, the separation authority approved the commander's separation recommendation with the issuance of a General Discharge Certificate.

11. On 24 June 1966, he was discharged accordingly. His DD Form 214 shows he completed 6 months and 5 days of net active service this period. He also had 3 years, 4 months, and 10 days of other service for a total of 3 years, 10 months, and 15 days of total service. No awards are listed. This DD Form 214 also shows in:

- Reason and Authority, AR 635-209, [Separation Program Number (SPN)] 264
- Character of Service, "Under Honorable Conditions (General)"

12. During the applicant's era of service, commanders used AR 635-209 to separate Soldiers for unsuitability when they had been diagnosed with a character or behavior disorder (currently termed personality disorder). The Army's policy with regard to personality disorders has evolved over time; these changes are addressed below. Additionally, the Board may decide to apply the DADT policy, also addressed below.

13. MEDICAL REVIEW:

a. The applicant requests an upgrade of his under honorable conditions, general, discharge to honorable. He contends his misconduct was related to PTSD and Don't Ask Don't Tell. 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 enlisted into the Regular Army on 3 October 1962 and was honorably discharged on 27 September 1965. He reenlisted on 20 December 1965; 2) The applicant provides, and his record contains a request for compassionate reassignment. The request was denied on 7 March 1966 because the chain of command and approval authority felt the applicant's "problem can be adequately solved by having the wife join her husband."; 3) A report of neuropsychiatric examination, dated 8 June 1966, shows the applicant was originally seen at the Mental Hygiene Clinic at his own request. His problems had to do with confusion as to his sexual identity. He had conflicts in this area which were made worse by having personal contact with other men. Being constantly around other males increased his difficulties to the point that he suffered a great deal of tension and anxiety. It was the impression of the examining psychiatrist that, if the applicant continued in the service, his difficulties would worsen, and it will be to his detriment. Because of this firm conviction, the examining psychiatrist strongly urged his unit to separate him from the service; 4) The applicant's immediate commander recommended the applicant's discharge under the provisions of AR 635-209, due to unsuitability. Additionally, the commander stated his conduct and efficiency were good. He had one Article 15 for violation of Article 86 (AWOL) for which he was reduced one pay grade; 5) On 24 June 1966, he was discharged accordingly.

b. The VA electronic medical record (JLV), and ROP 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 case file was a Chronological Record of Medical Care that shows that during his initial enlistment the applicant was

seen by Mental Hygiene on 18 November 1964 with complaints of nightmares, sleep walking, and depression. The documentation is difficult to read, however, it appears to reflect he was diagnosed with Acute Maladjustment (Adjustment Disorder), prescribed psychotropic medication, and instructed to follow-up. Also included in the casefile was a Report of Medical History dated 28 July 1965, associated with the applicant's initial separation, that shows the applicant reported a history of nightmares, depression, and excessive worry. The casefile also contains a Neuropsychiatric Examination Report dated 8 June 1966, from his second enlistment, which reflects in part, that the applicant reported problems that had to do with confusion as to his sexual identity. He had conflicts in this area which were made worse by having personal contact with other men. Being constantly around other males increased his difficulties to the point that he suffered a great deal of tension and anxiety. It was the impression of the examining psychiatrist that, if the applicant continued in the service, his difficulties would worsen, and it will be to his detriment. Because of this firm conviction, the examining psychiatrist strongly urged his unit to separate him from the service. He was diagnosed with Personality Disorder, emotional unstable.

c. A review of JLV shows the applicant 50 percent SC for PTSD. C&P Examination dated 14 November 2023 shows the applicant reported that while stationed in Germany he witnessed a friend die during a training exercise secondary to a rollover accident whereby the friend was smashed by the jeep. The applicant reportedly helped get the jeep off the Soldier and saw the smashed body. He also reported a second training accident whereby a friend fell off a truck and broke his leg, such that the bone was sticking through the Soldier's skin. The applicant was reportedly informed two days later that the friend died because of his injuries. The examiner deemed the applicant endorsed sufficient symptoms to meet criteria for PTSD related to service. Records show the applicant's initial BH treatment engagement with the VA occurred on 13 September 2023 whereby he reported experiencing a traumatic event during the military 47 years prior that still bothered him to date. The provider noted the applicant did not go into specifics but reported anger, irritability, and avoidant behavior. He was diagnosed with PTSD and scheduled for follow-up. Encounter documentation was not clear on criteria met for the diagnosis. Records suggest the applicant had one additional BH encounter on 30 December 2023, whereby he elected to discontinue BH treatment.

d. The applicant is requesting an upgrade of his under honorable conditions, general, discharge to honorable and contends his misconduct was related to PTSD and DADT. A review of the records shows the applicant 50 percent SC for PTSD. As there is an association between PTSD and avoidance, there is nexus between the applicant's brief period of AWOL and his PTSD such that the misconduct is mitigated. However, the applicant's reported concerns with gender identity at the time was not mitigated by PTSD as gender identity issues are not natural sequelae of PTSD. Regarding the applicant's contention of DADT, it is not clear to this advisor that DADT would apply to this case, given the policy was not in effect during the applicant's time in service. As

such, it appears the administrative decision for separation due to Unsuitability was proper and equitable at the time of separation.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence that the applicant had an experience or condition during his time in service that would partially 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 is 50 percent SC for 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? Partial. The applicant is requesting an upgrade of his under honorable conditions, general, discharge to honorable and contends his misconduct was related to PTSD and DADT. A review of the records show the applicant 50 percent SC for PTSD. As there is an association between PTSD and avoidance, there is nexus between the applicant's brief period of AWOL and his PTSD such that the misconduct is mitigated. However, the applicant's reported concerns with gender identity at the time was not mitigated by PTSD as gender identity issues is not natural sequelae of PTSD. Regarding the applicant contention of DADT, it is not clear to this advisor that DADT would apply to this case, given the policy was not in effect during the applicant's time in service. As such, it appears the administrative decision for separation due to Unsuitability was proper and equitable at the time of separation.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence of record shows the applicant served honorably from 3 October 1962 to 27 September 1965. However, during his second enlistment that began on 20 December 1965, his behavior and/or misconduct necessitated his command referral for a psychiatric evaluation. He was diagnosed with a character and behavior disorder. Accordingly, his immediate commander initiated separation action against him for unsuitability (character and behavior disorder). The Board determined his administrative separation was accomplished in compliance with applicable regulations at the time. The type of discharge directed and the reason for separation were appropriate considering all the facts of the case. However, the law and regulation have since changed. It now appears the applicant's overall service record and his diagnosed character and behavior

disorder (now known as personality disorder) warrant upgrading his discharge to fully honorable as directed by the Brotzman/Nelson memoranda. Additionally, the Board agreed with medical reviewer's finding sufficient evidence that the applicant had an experience or condition during his time in service that would partially mitigate his misconduct. The Board determined an honorable discharge, under Secretarial Authority, is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

In addition to the correction addressed in Administrative Note(s) below, the Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing him a DD Form 214 for the period ending 24 June 1966 showing his character of service as Honorable:

- Character of Service: Honorable
- Separation Authority: AR 635-200
- Separation Code: JFF
- Reentry Code: 1
- Narrative Reason for Separation: Secretarial Authority



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): Correct the applicant's DD Forms 214 for the periods ending 7 September 1965 and 24 June 1966 to delete the contested SSN and replace it with The SSN listed on his DA Form 3027.

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. AR 635-209, in effect at the time, prescribed policies and procedures for the separation of Soldiers who were considered unsuitable for continue military service. A Soldier could be separated under this provision when they had been diagnosed with a character or behavior disorder, as listed in AR 40-401 (Medical Service – Armed Forces Medical Diagnosis Nomenclature and Statistical Classification).

a. The Army combined AR 635-208 (Personnel Separations – Discharge – Unfitness) and AR 635-209 into AR 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability) in 1966 but did not change the provisions addressing personality disorders.

b. In November 1972, AR 635-200 (Personnel Separations – Enlisted Personnel) superseded AR 635-212, and this revision moved character/behavior disorder separations to paragraph 13-5b (2) (Unsuitability – Character and Behavior Disorders); again, the policies pertaining to personality disorders were unchanged.

c. AR 635-200 was revised due to a civil suit settlement in December 1976. This change required Soldiers being separated for unsuitability, as a result of a personality disorder, to have been evaluated and diagnosed by a physician trained in psychiatry. Later guidance mandated the retroactive application of the foregoing changes and further expanded the policy, such that the presence of a personality disorder diagnosis would justify an upgrade to fully honorable, except in cases where there were "clear and demonstrable reasons" why a fully honorable discharge should not be given; conviction by a general court-martial or by more than one special court-martial were determined to be "clear and demonstrable reasons" that would justify a less than fully honorable discharge.

d. A Department of the Army Memorandum dated 14 January 1977, better known as the Brotzman Memorandum, was promulgated. It required retroactive application of revised policies, attitudes and changes in reviewing applications for upgrade of discharges based on personality disorders.

e. A second memorandum, dated 8 February 1978, known as the Nelson Memorandum, expanded the review policy and specified that the presence of a personality disorder diagnosis would justify upgrade of a discharge to fully honorable except in cases where there are "clear and demonstrable reasons" why a fully honorable discharge should not be given. Conviction by general court-martial or by more than one special court-martial (SPCM) was determined to be "clear and demonstrable reasons" which would justify a less than fully honorable discharge.

f. Army Regulation 635-200, currently in effect, paragraph 5-13, provides when separation is because of a personality disorder, the service of a Soldier separated per this paragraph will be characterized as honorable unless an entry level separation is required under chapter 3, section III. A characterization of service of under honorable conditions may only be awarded to a Soldier separating under these provisions if they had been convicted of an offense by general court-martial or convicted by more than one SPCM during the current enlistment.

3. The Under Secretary of Defense for Personnel and Readiness memorandum, dated 20 September 2011, subject: Correction of Military Records Following Repeal of Section 654 of Title 10, U.S. Code, provides policy guidance for Service Discharge Review Boards (DRB's) and Service Boards for Correction of Military/Naval Records (BCM/NR's) to follow when acting on applications from former service members discharged under DADT or prior policies.

a. The memorandum states that effective 20 September 2011, Service DRB's should normally grant requests in these cases to change the:

- Narrative Reason for Separation to "Secretarial Authority"
- SPD code to "JFF"
- Characterization to "Honorable"
- RE code to an immediately-eligible-to-reenter category

b. For the above corrections/amendments to be warranted, the memorandum states both of the following conditions must have been met: the original discharge was based solely on DADT or a similar policy in place prior to enactment of DADT and there were no aggravating factors in the record, such as misconduct.

c. The memorandum further states that although each request must be evaluated on a case-by-case basis, the award of an honorable or general discharge should normally be considered to indicate the absence of aggravating factors.

d. The memorandum also recognized that although BCM/NR's have a significantly broader scope of review and are authorized to provide much more comprehensive remedies than are available from the DRB's, it is Department of Defense (DOD) policy that broad, retroactive corrections of records from applicants discharged under DADT [or prior policies] are not warranted. Although DADT is repealed effective 20 September 2011, it was the law and reflected the view of Congress during the period it was the law. Similarly, DOD regulations implementing various aspects of DADT [or prior policies] were valid regulations during that same or prior periods. Thus, the issuance of a discharge under DADT [or prior policies] should not by itself be considered to constitute an error or injustice that would invalidate an otherwise properly-taken discharge action.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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.

5. Section 1556 of Title 10, United States Code, 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. 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.

//NOTHING FOLLOWS//