

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 February 2024

DOCKET NUMBER: AR20230007650

APPLICANT REQUESTS:

- upgrade of his discharge from under honorable conditions (general) to honorable
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- third-party character reference letter
- Mental Health Psychological Assessment and Treatment Plan
- Department of Veterans Affairs (VA) benefits decision letter

FACTS:

1. The applicant did not file within the 3-year period 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's military records are not available for review. His records were requested from the National Personnel Records Center, but without success. This case is being considered based on the documents the applicant provided.
3. The applicant states another Soldier with whom he was close was killed in a horrific construction accident on base. He had been performing well until then. They were not offered any counseling after the incident, and he was traumatized and became depressed. He used marijuana to cope. He was never offered treatment. He has been sober and doing well for over 16 years, but his discharge still haunts him. He has been a productive working man, he has a close and loving family, and he is active in his physical and mental health care. The upgrade of his discharge will give him a sense of peace.

4. The applicant's DD form 214 shows:

- a. He entered active duty in the Regular Army on 23 November 1983.
- b. He held military occupational specialty 51B (Carpentry and Masonry Specialist).
- c. He was awarded the Army Service Ribbon, Marksman Marksmanship Qualification Badge with Rifle Bar (M-16), and the Expert Marksmanship Qualification Badge with Grenade Bar.
- d. He was discharged on 10 October 1985 under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12c, by reason of misconduct – commission of a serious offense, with his service characterized as under honorable conditions (general). The DD Form 214 also shows he completed 1 year, 10 months, 18 days of active service.

5. The applicant provided:

- a. A third-party character reference letter, provided by his current supervisor, attesting to his positive personal attributes, character traits, and work ethic.
- b. A Mental Health Psychological Assessment and Treatment Plan, dated January 2023, showing he was diagnosed with major depressive disorder (R/O post-traumatic stress disorder (PTSD)) and contain the following entry:

He experienced a traumatic event in the military (learning of the gruesome death of a comrade). The fact that this event apparently unfolded at least in part as a result of negligence by those in charge, combined with the way his leadership responded afterwards, led to a deep seated mistrust of authority and an existential uneasiness. He initially coped with these emotions and thoughts by using illicit substances, which led to myriad psychosocial issues. He has since been able to establish and maintain sobriety, however he does not have effective coping skills aside from physical and emotional avoidance. He is seeking treatment in order to find other ways to address his sx of trauma, depression and moral injury.

- c. A VA benefits decision letter showing he was granted service-connected disability compensation for persistent depressive disorder.

6. The applicant provided argument or evidence that the Board should consider in accordance with the published equity, injustice, or clemency determination guidance.

## 7. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his service characterization from under honorable conditions (general) to honorable. He contends PTSD 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 23 November 1983.
- Applicant's military records are not available for review. His records were requested from the National Personnel Records Center, without success.
- The available record is void of the applicant's separation packet containing the specific facts and circumstances surrounding the applicant's discharge processing.
- Applicant was discharged on 10 October 1985 under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12c, by reason of misconduct – commission of a serious offense, with his service characterized as under honorable conditions (general).

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, character reference letter, VA benefits decision letter, ABCMR Record of Proceedings (ROP), medical documentation, 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 another Soldier with whom he was close was killed in a horrific construction accident on base. He had been performing well until then. They were not offered any counseling after the incident, and he was traumatized and became depressed. He used marijuana to cope. He was never offered treatment. He has been sober and doing well for over 16 years, but his discharge still haunts him. He has been a productive working man, he has a close and loving family, and he is active in his physical and mental health care. The upgrade of his discharge will give him a sense of peace.

e. Due to the period of service, no active-duty electronic medical records were available for review. The VA electronic record available for review indicates the applicant is 70% service connected for PTSD. On 8 November 2022, the applicant participated in a mental health session to initiate services. He reported symptoms of depression and PTSD as well as a history of participating in substance use programs while in military service and as a civilian. The initial diagnostic impression was

depression related to military trauma. The applicant was provided with ongoing individual therapy to address his symptoms and participated until August 2023, when he opted to pause treatment due to a change in clinician. His diagnosis was Major Depressive Disorder, PTSD and Polysubstance use Disorder, in sustained remission. The applicant submitted a Mental Health Psychological Assessment and Treatment Plan, dated January 2023, showing the following entry: "He experienced a traumatic event in the military (learning of the gruesome death of a comrade). The fact that this event apparently unfolded, at least in part, as a result of negligence by those in charge, combined with the way his leadership responded afterwards, led to a deep-seated mistrust of authority and an existential uneasiness. He initially coped with these emotions and thoughts by using illicit substances, which led to myriad psychosocial issues. He has since been able to establish and maintain sobriety, however he does not have effective coping skills aside from physical and emotional avoidance. He is seeking treatment in order to find other ways to address his symptoms of trauma, depression and moral injury."

f. Based on the information available, this Agency Behavioral Health Advisor is unable to opine regarding mitigation based on a BH condition without the specific facts and circumstances that led to the applicant's 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 condition.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 70% service-connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? This advisor is unable to opine regarding medical mitigation without the specific facts and circumstances that led to his discharge. However, the record does have evidence of BH conditions, PTSD and depression, that could potentially mitigate certain misconduct if it did not involve violence, bodily harm, or major crimes.

#### 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

noted the advising official inability to opine the applicant’s contentions regarding medical mitigation without the specific facts and circumstances that led to his discharge. The Board commends the applicant for his post service achievements and his 16 years of sobriety. The Board found his character letters of supporting attesting to his integrity, and work ethic noteworthy.

2. However, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct without the facts and circumstances surrounding his discharge. The Board noted the applicant was discharged for misconduct and was provided an under honorable conditions (General) characterization of service. Based on the absence of the facts and circumstances leading to the applicant’s discharge, the Board determined 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. Therefore, the Board denied relief.

3. The applicant’s request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

3/4/2024

X

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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. Army Regulation 635-200 set forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was 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 such is merited by the Soldier's overall record.

b. Paragraph 3-7a states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct. When a Soldier is discharged before the expiration term of service for a reason for which an honorable discharge is discretionary, the following considerations apply:

(1) Where there have been infractions of discipline, the extent thereof should be considered, as well as the seriousness of the offense(s).

(2) A Soldier will not be denied an honorable discharge solely by reason of a conviction by court-martial, action under the Uniform Code of Military Justice, Article 15, or any other administrative action. The characterization should be based upon the underlying conduct.

3. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) 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.

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 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; sexual harassment. Boards were directed 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

5. 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.

6. Army Regulation 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-11 states 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.

7. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//