

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 October 2024

DOCKET NUMBER: AR20230007743

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) discharge.

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

- DD Form 293 (Application for Army Discharge Review Board)
- DA Form 3822-R (Report of Mental Status Evaluation)
- Self-Authored Statement
- Three Department of Veterans Affairs (VA) Forms
- Letter of Support
- Four DD Forms 214 (Certificate of Release or Discharge from Active Duty)

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 his command separated him for unsatisfactory performance, but he later discovered he suffered from post-traumatic stress disorder (PTSD) and bipolar disorder; while he was still on active duty, an Army psychiatrist diagnosed him to "Adjustment Disorder with Mixed Emotional Features."

a. On his DD Form 293, the applicant has checked blocks for PTSD and Other Mental Health condition. In support, the applicant submits VA Forms showing he applied for disability compensation based on his behavioral health conditions, and he includes a self-authored statement, which accompanied his VA request. In his statement, the applicant describes how a fellow Soldier died during a field exercise; the Soldier was rappelling from a helicopter when the helicopter blades struck him in the head, killing him. The applicant maintained the aftereffects of this incident, plus a childhood filled with abuse, contributed to his subsequent general discharge, nonjudicial punishment, cocaine addiction, and many years of incarceration.

b. The applicant additionally provides documents from his service record and adds a letter of support, in which Ms. B\_\_ B\_\_ states the following:

(1) Ms. B\_\_ B\_\_ affirms she has known the applicant for over 3 years and has observed how the applicant can have issues with people; the applicant is unable to connect with others, has a quick temper, and feels he cannot trust anyone.

(2) At times, the applicant can be the nicest person, and then suddenly do a complete turnaround, becoming argumentative and declaring that Ms. B\_\_ does not know what he has through in the past. The applicant disclosed that his family members do not want to be around him because of his attitude, and he expressed a desire to reconnect with them.

3. A review of the applicant's service record shows:

a. On 2 April 1979, the applicant enlisted into the Regular Army for 4 years.

b. On 11 June 1980, the applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for disobeying the order of a noncommissioned officer (NCO) and being disrespectful in language toward an NCO; the imposing commander's punishment included a suspended reduction in rank.

c. On 2 December 1981, he was promoted to sergeant (SGT)/E-5.

d. On 29 March 1983, the applicant's company commander counseled the applicant about the need to improve his attitude, job proficiency, and ability to get along with others. The commander commented that he was allowing the applicant to reenlist, but any future problems created by the applicant would be dealt with harshly. On 1 April 1983, the applicant immediately reenlisted for 6 years.

e. On 14 April 1983, the applicant's company commander prepared a statement pertaining to the applicant; his statement included the following:

(1) "[Applicant's] performance in this unit has been totally substandard with the exception of a neat appearance and his ability to give PT (physical training). He is a total failure in the areas of leadership, technical competence, attitude, judgment, military bearing, loyalty, integrity, and common sense. He lives to 'beat the system.'"

(2) "I was personally present at the motor pool between 0700-0725 hours on 13 April. [Applicant] was not present, nor did he alert anyone of his lateness. He also did this once before during the evening work shift due to ACI preparation. When he did show up, he was in civilian clothes while all of his Soldiers had been at work several

hours prior. This man needs to be a civilian. No punishment on administrative action can be considered harsh based on his past track record."

f. On 20 April 1983, the applicant accepted NJP from his battalion commander for using disrespectful language toward his first sergeant (1SG); the battalion commander's punishment included a suspended reduction to specialist four (SP4)/E-4. The applicant filed an appeal, but, on 4 May 1983, the appellate authority denied his petition.

g. On 6 May 1983, the applicant's company commander initiated bar to reenlistment action against the applicant, citing his recent NJP action. The commander stated the applicant had "not proven to be a reliable NCO. He has become a mouthpiece for troops in trouble. His disciplinary problems have set a poor example for junior enlisted Soldier of this company. [Applicant] is a chronic complainer and thrives on instigating trouble."

h. On 10 May 1983, the imposing commander vacated the suspended reduction after the applicant disobeyed a lawful order, failed to report to his place of duty at the time prescribed, and was found sleeping on duty.

i. On 12 May 1983, the applicant's company commander advised him, in writing, that he was initiating separation action against the applicant, per chapter 13 (Separation for Unsatisfactory Performance), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). As his basis, the commander cited the applicant's failure to correct his substandard professional and personal conduct and pointed to the applicant's "open disdain for authority" and that the applicant existed "only to undermine the morale and discipline" of the unit.

n. On 13 May 1983, a civilian social services assistant rendered a DA Form 3822-R (Report of Mental Status Evaluation) pertaining to the applicant. The report indicated the applicant met the medical retention standards outlined in AR 40-501 (Standards of Medical Fitness); it additionally reflected no diagnoses and affirmed the applicant was cleared for administrative action.

o. On 16 May 1983, after consulting with counsel, the applicant acknowledged counsel had advised him of the basis for his pending separation action and had discussed his rights and the effect of waiving those rights. The applicant elected to submit a statement in his own behalf, and he wrote the following:

(1) The applicant argued his pending separation action lacked legal sufficiency because it did not include an formal counseling statements. He went on to note that, once counseled, the command had to give him a probationary period. Further, the applicant stated he had only been in his current company for 56 days, and the regulation indicated Soldiers should be allowed 2 months before being considered for separation action.

(2) The applicant contended, "I feel that a reassignment is justified in my case because of the severe difficulty I am having with my chain of command. The company commander and 1SG have cussed (at) me and used abusive language to me. Other supervisors are harassing me on a daily basis. As the statements in the packet show, I was ordered to both work late in the motor pool and also supervise a GI (clean up) party at the barracks at the same time. Any way (that) I go, I am found wrong."

(3) "Concerning the (NJP action) for disrespect to the 1SG, I was misquoted in the charge. My platoon sergeant heard the statement, which was a running cadence, and he felt there was nothing wrong in it."

(4) "In sum, I am requesting reassignment to gain a change in commanders, associates, and working conditions. It is clearly appropriate because of the treatment I am receiving in this unit. However, if you feel that I must be released from active duty at this time, please consider me as a candidate for the (U.S. Army Reserve (USAR)) Individual Ready Reserve. I have already been well trained and am ready and willing to defend my country if needed."

p. On 19 May 1983, the applicant provided an enclosure for his bar to reenlistment certificate. He argued that the regulation (AR 601-280 (Army Reenlistment Program)) indicated bar to reenlistment action should not be initiated until the Soldier had been in the unit for 90 days; as of 6 May 1983 (the date when the commander initiated the bar request), the applicant had served in the unit for less than 60 days. Additionally, the applicant contended the request to bar him from reenlistment was vague. He proposed that, rather than approving the bar, the command should transfer him to another unit.

q. On 19 May 1983, the applicant's company commander prepared a memorandum in response to the bar to reenlistment. The commander maintained the regulation did not prohibit bar to reenlistment action for Soldiers with less than 90 days in the unit, and, as to the allegation of being "vague," the commander argued, "Total specificity would require a laundry list to highlight all of [applicant's] breeches of discipline, poor performance, and substandard conduct." The commander added that the applicant had been given ample opportunity to correct his deficiencies, but those measures taken by the unit had not produced the desired results.

r. On 20 May 1983, the battalion commander approved the applicant's bar to reenlistment. On 24 May 1983, the brigade-level commander withheld the battalion commander's authority to approve the applicant's separation action. On 25 May 1983, the company commander filed his separation recommendation with the separation authority.

s. On 14 June 1983, an Army psychiatrist prepared a DA Form 3822-R for the applicant and reported that, while the applicant had previously undergone an evaluation,

the brigade-level commander requested that the psychiatrist conduct a reevaluation. Based on the Army psychiatrist's extensive review of the applicant's mental health records, psychological testing, and psychiatric interviews, he diagnosed the applicant with "Adjustment Disorder with Mixed Emotional Features." The psychiatrist noted that, "The above diagnosis represents a recent difficulty adapting to his current unit situation and does not represent a personality disorder or severe psychiatric disorder."

t. On 17 June 198, the applicant prepared a certificate, in which he expressed his strong desire to remain on active duty, and that he wanted to complete his remaining enlistment term. He felt that his chain of command had been lying to him and that all were prejudiced against him. He pointed out that, while assigned in Germany, his leadership had placed him in charge of 179 Soldiers, and there were no issues. On his initial assignment to Company C, he served as a squad leader, and he did an "outstanding job until unfavorable action (was) taken against me...When I went to F Company...I worked in third shop for a period of 33 days, and my job performance was good...I was doing good until the 13th of April 1983, when the (allegations addressed in his April 1983 NJP) occurred."

u. On 15 July 1983, the separation authority approved the applicant's separation and directed the applicant's release from active duty, under honorable conditions (General), and transfer to the U.S. Army Reserve.

v. On 20 July 1983, he was discharged accordingly. His DD Form 214 shows he completed 4 years, 3 months, and 19 days of active service. His DD Form 214 also shows in:

- Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – Army Service Ribbon, Overseas Service Ribbon, and a marksmanship qualification badge
- Item 18 (Remarks) – the applicant's continuous honorable service, from 19790402 to 19830331, is not listed
- Item 25 (Separation Authority) – chapter 13, AR 635-200
- Item 26 (SPD) – "LHJ (LMJ)"
- Item 27 (RE Code) – RE-3
- Item 28 (Narrative Reason for Separation) – "Unsatisfactory Performance"

#### 4. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his general discharge of under honorable conditions and change to his narrative reason for separation. He contends mental health conditions including PTSD are related to his request. 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 in the Regular Army on 02 April 1979; 2) The applicant had history of nonjudicial punishments and counseling statements related to his behavior of being disrespectful to NCOs, not following orders, poor attitude, not getting along with others, lacking respect for authority, and being a bad example; 3) On 20 May 1983, the battalion commander approved the applicant's bar to reenlistment. On 24 May 1983, the brigade-level commander withheld the battalion commander's authority to approve the applicant's separation action. On 25 May 1983, the company commander filed his separation recommendation with the separation authority; 4) The applicant was discharged on 20 July 1983, Chapter 13, Unsatisfactory Performance. His service was characterized as general, under honorable conditions.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) and hardcopy military medical documentation and VA applications provided by the applicant were also examined.

c. The applicant asserts experienced mental health conditions including PTSD while on active service, which mitigates his misconduct and discharge. There is evidence the applicant underwent two Mental Status Evaluations while on active service. Initially, he was seen on 13 May 1983 by a civilian social services assistant. He was not diagnosed with a mental health condition, met medical retention standards, and was cleared for administrative action. On 14 June 1983, an Army psychiatrist completed a Mental Status Evaluation for the applicant. The applicant was reported to be mildly anxious and depressed, and he was diagnosed with an Adjustment Disorder with Mixed Emotional Features. It was noted the applicant was experiencing difficulty adapting to his current unit and his condition did not represent a personality disorder or a severe psychiatric disorder. In addition, the applicant was cleared for administrative action deemed appropriate by Command, but it was recommended the Command consideration to a unit transfer.

d. A review of JLV provided evidence the applicant began to engage with the VA in 1993 for mental health services. He was noted to have been diagnosed with an Adjustment Disorder while on active service, but he has not been diagnosed with a service-connected mental health condition, including PTSD. The applicant has intermittently and inconsistently engaged with behavioral health treatment at the VA till presently, and the applicant does not receive any service-connected disability for a mental health condition.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions including PTSD which mitigates his misconduct. He was diagnosed with an Adjustment Disorder while on active service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD while on active service, which mitigates his misconduct. The applicant was diagnosed with an Adjustment Disorder while on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant experienced a significant mental health condition including PTSD, while he was on active service. The applicant was experiencing interpersonal and occupational problems with his current unit, and he was found to be experiencing mild anxiety and depressive symptoms. However, the presence of mild mental health symptoms is not sufficient evidence of the presence of a significant mental health condition including PTSD. Yet, the applicant contends he was experiencing a mental health condition that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for the board's consideration.

#### 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 review based on law, policy, regulation, and published Department of Defense guidance for liberal and clemency determination requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board found no error or injustice existed to warrant an upgrade to honorable. The applicant provided no evidence of post-service achievements. The Board noted and concurred with the medical advisor's review finding insufficient evidence to support the applicant had a condition or experience that mitigated his misconduct. Based on a preponderance of evidence, the Board determined that the characterization of service the applicant received upon separation was not in error or unjust.

2. The Board found the applicant's service record exhibits numerous instances of unsatisfactory job performance and conduct. Evidence shows he failed to meet the standards required to be a productive member of the United States Army. The applicant accepted nonjudicial punishment on several occasions and was discharged for unsatisfactory performance. The Board agreed that 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 characterization of service. Therefore, the Board denied relief.

3. Prior to closing the discussion, the Board noted and concurred with the administrative note below.

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.

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):

Add the following comment to Item 18 (Remarks) of the applicant's DD Form 214, ending 20 July 1983: "CONTINUOUS HONORABLE SERVICE FROM 19790402 UNTIL 19830331."



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 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

3. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) stated an honorable discharge was separation with honor.

(1) Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense.

(2) Separation authorities could furnish an honorable discharge when subsequent honest and faithful service over a greater period outweighed disqualifying entries in the Soldier's military record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Section II (Secretarial Authority), paragraph 5-3 (Policy). The separation of enlisted personnel for the convenience of the Government was the prerogative of the Secretary of the Army and was to be accomplished only by his/her authority. The separation of any enlisted member of the Army under this authority will be based on Secretary of the Army determination that separation was in the best interests of the Army.

c. chapter 13 (Separation for Unsatisfactory Performance):

(1) Commanders could initiate separation action against Soldiers when, in the commanders' judgment:

- they would not develop sufficiently to participate in satisfactorily in training and/or become satisfactory Soldiers;
- the seriousness of the circumstances were such that the Soldiers' retention would have an adverse impact on the military discipline, good order, and morale; and
- it was likely the Soldiers would continue to be disruptive influences in present and future assignments

(2) Prior to the initiation of separation action, the regulation stipulated that commanders ensure Soldiers had received adequate counseling and rehabilitation. The regulation pointed out that military service was a calling different from any civilian occupation, and as such, commanders were not to consider separation solely due to unsatisfactory performance unless the leadership had made efforts to rehabilitate the Soldiers.

(3) The regulation permitted separation authorities to furnish Soldiers separated under this provision with either an honorable or a general discharge under honorable conditions.

4. 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.

5. 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 Board for Correction of Military/Naval Records (BCM/NRs) 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 (PTSD); Traumatic Brain Injury (TBI); 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. 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.

6. 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//