

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2024

DOCKET NUMBER: AR20230007938

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) characterization of service.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Report of Separation from Active Duty), for the period ending 18 November 1977
- Department of Veterans Affairs (VA) Form 21-4138 (Statement in Support of Claim), undated

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 effect, while he was in the service, he went to the gas chamber. A gas can exploded and hit his foot, causing him severe panic. He was unable to secure his mask, and the gas went up into his face. He began having severe panic attacks. He found out he was going to be sent to Germany. He had nightmares and went absent without leave (AWOL) because of his severe fear of flying. He was diagnosed with schizophrenia shortly after returning home. For the last 23 years, he has been treated by the VA. He believes the gas chamber started his panic attacks. The applicant notes "other mental health" as a condition related to his request.
3. The applicant enlisted in the Regular Army on 4 February 1977 for a 3-year period.
4. The applicant accepted non-judicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 1 June 1977 for disrespecting his superior commissioned officer, by making an obscene gesture, on or about 1 June 1977. His punishment consisted of forfeiture of \$87.00 pay, 14 days of extra duty, and 14 days of restriction.

5. Two DA Forms 4187 (Personnel Action) show the following changes in the applicant's duty status:

- Present for Duty (PDY) to AWOL on 9 June 1977
- AWOL to DFR on 9 July 1977

6. A DA Form 3836 (Notice of Return of U.S. Army Member from Unauthorized Absence) shows the applicant was apprehended by civil authorities and returned to military control on 16 August 1977.

7. The applicant accepted non-judicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on two additional occasions:

a. On 13 September 1977, for being AWOL, on or about 19 June 1977 until on or about 16 August 1977. His punishment consisted of forfeiture of \$125.00 pay per month for two months and 45 days of extra duty.

b. On 2 November 1977, for being AWOL, on or about 31 October 1977 until on or about 2 November 1977. His punishment consisted of forfeiture of \$93.00 pay, seven days of extra duty, and seven days of restriction.

8. The applicant was evaluated for discharge under the provisions of the Expeditious Discharge Program. Prior to coming to his current unit, he was an advanced individual training failure, received two Articles 15, and was reported AWOL. His first line supervisor stated he counseled the applicant on three occasions and [the applicant] failed to respond to counseling. The commander stated he counseled the applicant on two occasions and gave him an Article 15 for being AWOL. The applicant told the commander he wanted out of the Army because he was continually getting into trouble, and he could not adjust to military life.

9. The applicant's immediate commander notified the applicant on 3 November 1977 of his intent to initiate action to discharge the applicant under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), paragraph 5-37, Expeditious Discharge Program (EDP), with the issuance of a general discharge certificate. As reasons for the proposed action, the commander stated the applicant had been given numerous opportunities to prove himself worthy of remaining in the Army. He had been counseled and still continued to ignore the rules and regulations.

10. On that same date, the applicant acknowledged receipt of the notification. He consulted with counsel and was advised of the reason for separation and the rights available to him. The applicant voluntarily consented to the discharge. He acknowledged understanding that if he was issued a general discharge, he may

encounter substantial prejudice in civilian life. He did not submit a statement in his behalf.

11. The applicant's commander formally recommended his separation from service under the EDP. He noted the applicant had established a pattern of repeated misconduct, and he possessed no aptitude for further training.

12. The separation authority approved the recommended discharge on 4 November 1977 and further directed the issuance of a DD Form 257A (General Discharge Certificate).

13. The applicant was discharged on 18 November 1977, under the provisions of Army Regulation 635-200, paragraph 5-37, EDP. His DD Form 214 confirms his characterization of service was under honorable conditions (general), with separation code JGH and reenlistment code RE-3, 3B. He was credited with 7 months and 7 days of net active service, with 68 days of lost time.

14. The applicant provides a VA Form 21-4138, wherein his mother states, in effect, when her son left for the service, he was excited. They were very proud of him. When he returned, shortly after leaving, he acted funny. He was always stressed out and did strange things. He was diagnosed with schizophrenia. Her son left home in 1999. They could not find him for about two years. He was homeless or living in a shelter. He moved home in 2012 and goes to the VA for treatment. He is doing a lot better.

15. The Expeditious Discharge Program (EDP) provides that members who have demonstrated they cannot or will not meet the acceptable standards required of enlisted personnel in the Army may be separated when they have failed to respond to counseling.

16. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

17. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his character of service from under honorable conditions, general, 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 4 February 1977.

- Applicant accepted non-judicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 1 June 1977 for disrespecting his superior commissioned officer, by making an obscene gesture, on or about 1 June 1977.
- Two DA Forms 4187 (Personnel Action) show the following changes in the applicant's duty status: Present for Duty (PDY) to AWOL on 9 June 1977 and AWOL to DFR on 9 July 1977.
- Applicant was apprehended by civil authorities and returned to military control on 16 August 1977.
- Applicant accepted non-judicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on two additional occasions:
- On 13 September 1977, for being AWOL, on or about 19 June 1977 until on or about 16 August 1977.
- On 2 November 1977, for being AWOL, on or about 31 October 1977 until on or about 2 November 1977.
- Applicant was evaluated for discharge under the provisions of the Expeditious Discharge Program. Prior to coming to his current unit, he was an advanced individual training failure, received two Articles 15, and was reported AWOL. His first line supervisor stated he counseled the applicant on three occasions and [the applicant] failed to respond to counseling. The commander stated he counseled the applicant on two occasions and gave him an Article 15 for being AWOL. The applicant told the commander he wanted out of the Army because he was continually getting into trouble, and he could not adjust to military life.
- Applicant's immediate commander notified the applicant on 3 November 1977 of his intent to initiate action to discharge the applicant under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), paragraph 5-37, Expeditious Discharge Program (EDP), with the issuance of a general discharge certificate. As reasons for the proposed action, the commander stated the applicant had been given numerous opportunities to prove himself worthy of remaining in the Army. He had been counseled and still continued to ignore the rules and regulations.
- Applicant was discharged on 18 November 1977, under the provisions of Army Regulation 635-200, paragraph 5-37, EDP. His DD Form 214 confirms his characterization of service was under honorable conditions (general), with separation code JGH and reenlistment code RE-3, 3B.

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), DD Form 214, letters of support, 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 while he was in service, he went to the gas chamber. A gas can exploded and hit his foot, causing him severe panic. He was unable to secure his mask, and the gas went up into his face. He began having severe panic attacks. He found out he was going to be sent to Germany. He had nightmares and went absent without leave (AWOL) because of his severe fear of flying. He was diagnosed with schizophrenia shortly after returning home. For the last 23 years, he has been treated by the VA. He believes the gas chamber started his panic attacks. The applicant notes "other mental health" as a condition related to his request.

e. Due to the period of service, no active-duty electronic medical records were available for review and the applicant did not submit any hardcopy medical documentation from his time in service. The VA electronic medical record indicates the applicant is not service connected. The applicant presented to the VA, twenty-two years post-military service, for a substance abuse intake on 8 December 1999. The applicant reported a 20-year history of heavy alcohol use and an eleven-year history of addiction to cocaine, including a period of time when he consumed up to \$1000 daily of crack/cocaine. The applicant reported his longest period of abstinence was from 1993 to 1997, while he was incarcerated for assault. He further reported three DWI convictions between 1980 and 1992.

f. The VA record evidences five inpatient admissions between January 2000 and February 2012 due to substance abuse induced mood disorders and reported hallucinations. A discharge summary, dated 19 January 2000, diagnosed him with Cocaine dependence, Alcohol dependence, Marijuana abuse, Drug induced hallucinosis, and Chemical induced mood disturbance by history. He reported abusing cocaine regularly, heavy drinking, and marijuana use and was unable to control his problematic polysubstance abuse. While under the influence of drugs and alcohol, he reported attempting suicide three times and hearing voices, both auditory and visual. He reported blackouts, hallucinations, alcohol shakes, and dysphoric mood related to heavy drug and alcohol use. He was admitted once again, and the discharge summary dated 24 August 2000, indicates he was diagnosed with Chronic schizophrenia, Polysubstance abuse, and Personality disorder. The diagnosis of schizophrenia was based on his report of hearing voices without the use of substance. However, he was found to be positive for cocaine and opiates. A third discharge summary dated 11 April 2011; indicates he was admitted into the Substance Abuse Residential Rehabilitation & Treatment Program (SARRTP) from 7 April 2011 to 11 April 2011. Upon discharge he was diagnosed with Polysubstance Dependence, Malingering, and Cluster B personality traits. During this admission, the applicant denied any history of mental health symptoms (including hallucinations) other than substance abuse. He stated, "If it'll get me some money - I'll play crazy!" A fourth inpatient admission occurred on 30 December 2011, and he was discharged on 31 January 2012. He was diagnosed with Polysubstance Dependence, Substance-Induced Mood Disorder with Depressive

Features, and Personality Disorder. The applicant experienced another admission on 3 February 2012 and was discharged on 10 February 2012. That admission was related to being discharge to a homeless shelter during his prior admission and the applicant not wanting to be in the shelter. The record indicates he was admitted to the safe, secure and supportive environment of the hospital. He was diagnosed with Polysubstance Dependence during this inpatient hospitalization. The applicant was referred to the HUD/VASH Treatment Team and a psychosocial assessment, dated 25 July 2012, summarizes his history of previous legal charges and incarcerations, history of homelessness, and polysubstance use. Overall, the record indicates his mental health episodes appeared to be the sequelae of polysubstance abuse and possible inaccurate reporting on the part of the applicant to obtain benefits. The applicant is currently adequately housed and receives ongoing medical care via the VA.

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence the applicant had a 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 condition.

(2) Did the condition exist or experience occur during military service? Yes. The applicant reports experiencing a panic attack during military service but is not service connected.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The record does not evidence any BH condition during military service. The applicant's VA medical record indicates he engaged in decades of polysubstance abuse that eventually resulted in substance induced hallucinations and mood disorder. The applicant's reported diagnosis of schizophrenia was in the context of a polysubstance abuse induced episode and the record indicates the applicant may have engaged in inaccurate reporting. Overall, the applicant's psychiatric episodes presented more than two decades post-military service, after over 20 years of extensive polysubstance abuse.

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and

published DoD guidance for liberal consideration of discharge upgrade requests. The evidence shows the applicant was discharged under the Expeditious Discharge Program following a series of misconduct (AWOL, NJP, failure to respond to counseling). He received a general discharge. The Board found no error or injustice in his separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical reviewer's finding insufficient evidence the applicant had a behavioral health condition during military service that mitigates his discharge. Also, the applicant provided insufficient evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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.



_____ of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, USC, 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. Section 1556 of Title 10, USC, 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.

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

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 a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 5-37 of the regulation in effect at the time provided for the discharge of enlisted personnel whose performance of duty, acceptability for service, and potential for continued effective service fall below the standards required for enlisted personnel. The philosophy for this policy is that commanders will be able to anticipate and preclude the development of conditions which clearly indicate that Soldiers concerned are becoming problems to an extent likely to lead to board or punitive action which could result in their separation under conditions which would stigmatize them in the future. No individual would be discharged under this program unless the individual voluntarily consented to the proposed discharge. Individuals discharged under this provision of the regulation were issued either a general or honorable discharge.

d. The Expeditious Discharge Program provides that members who have demonstrated they cannot or will not meet the acceptable standards required of enlisted personnel in the Army because of the existence of one or more of the following conditions may be separated when they fail to respond to counseling.

- poor attitude
- lack of motivation
- lack of self-discipline
- inability to adapt socially or emotionally
- failure to demonstrate promotion potential

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 (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) 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; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs 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//