

IN THE CASE OF: ██████████

BOARD DATE: 6 March 2024

DOCKET NUMBER: AR20230007967

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

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

- DD Form 149 (Application for Correction of Military Record), 4 May 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 16 February 2001
- Patient Health Summary (54 pages), 30 September 2023

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 he has paid his dues and his time. The applicant notes, post-traumatic stress disorder (PTSD) is related to his request.
3. The applicant enlisted in the Regular Army on 31 March 1999.
4. The applicant's service record is void of the complete facts and circumstances surrounding his discharge. He provides a duly constituted DD Form 214, State Director of Veterans Affairs – 6, which omits the separation authority, separation code, and reentry code, however it is sufficient to provide a fair and partial assessment of the case.
5. His DD Form 214 shows he was discharged on 16 February 2001, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, by reason of misconduct, in the grade of E-1. His character of service was under honorable conditions (general) and he was credited with 1 year, 10 months, and 16 days of net active service. He was awarded the Army Service Ribbon and the Overseas Service Ribbon. He did not complete his full term of service.

6.. He additionally provides his patient health summary, generated on 30 September 2023, which shows his health summary of medical diagnosis, and medications prescribed. Additionally, he highlights a bipolar disorder single manic episode.

7. There is no indication the applicant applied to the Army Discharge Review Board within that Boards 15-year statute of limitations.

8. Regulatory guidance states when an individual is discharged under the provisions of AR 635-200, Chapter 14, for misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

9. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

10. MEDICAL REVIEW:

a. The applicant requests and upgrade of his under honorable conditions, general, discharge to honorable. He contends his misconduct was related PTSD.

b. 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 31 March 1999; 2) The applicant's service record is void of the complete facts and circumstances surrounding his discharge. He provides a duly constituted DD Form 214, State Director of Veterans Affairs – 6, which omits the separation authority, separation code, and reentry code, however it is sufficient to provide a fair and partial assessment of the case; 3) His DD Form 214 shows he was discharged on 16 February 2001, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, by reason of misconduct, in the grade of E-1.

c. The VA electronic medical record (JLV), ROP, and casefiles were reviewed. The military electronic medical records, AHLTA, was not reviewed as it was not used during the applicant period of service. No military BH related records were provided for review. A review of JLV was void any treatment history for the applicant and he does not have a service-connected disability. The applicant provided a Health Summary, generated on 30 September 2023 that shows a diagnosis of Bipolar Disorder, single manic episode that was documented on 24 may 2010. The document does not contain information related to onset of the diagnosis or precipitating event and in no way associates the diagnosis with military service. The applicant provided no BH documentation showing a diagnosis of PTSD. No other BH-related records were provided for review.

d. The applicant requests upgrade of his under honorable conditions, general, discharge to honorable and contends his misconduct was related to PTSD. A review of

the records was void of any BH diagnosis or treatment history during service. Post service records show the applicant diagnosed with Bipolar Disorder manic, single episode. The diagnosis was entered in 2010 and there is no information associating the diagnosis with military service. In absence of documentation supporting his assertion of PTSD or any other BH condition during service, there is insufficient evidence to establish that his misconduct was related to or mitigated by PTSD or any other BH condition and insufficient evidence to support an upgrade of his discharge characterization based on BH medical mitigation.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence that the applicant had an experience or condition during his time in service that mitigated his misconduct. However, he contends his misconduct was related to PTSD, and per liberal guidance his assertion 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 contends his misconduct was related to 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? No. A review of the records was void of any BH diagnosis or treatment history during service. Post service records show the applicant diagnosed with Bipolar Disorder manic, single episode. The diagnosis was entered in 2010 and there is no information associating the diagnosis with military service. In absence of documentation supporting his assertion of PTSD or any other BH condition during service, there is insufficient evidence to establish that his misconduct was related to or mitigated by PTSD or any other BH condition and insufficient evidence to support an upgrade of his discharge characterization based on BH medical mitigation.

#### 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 medical review, the Board concurred with the advising official finding insufficient evidence that the applicant had an

experience or condition during his time in service that mitigated his misconduct. The Board determined based on the opine there is insufficient evidence to establish that his misconduct was related to or mitigated by PTSD or any other BH condition and insufficient evidence to support an upgrade of his discharge characterization based on BH medical mitigation.

2. The Board noted, the applicant provided no post service achievements or character letters of support that could attest to his honorable conduct for the Board to weigh a clemency determination. The Board found the applicant’s record is absent the facts and circumstances surrounding his discharge, determining there is insufficient evidence of in-service mitigating factors to overcome the misconduct. This board is not an investigative body. The Board determined despite the absence of the applicant’s separation and medical records, they agreed the burden of proof rest on the applicant, however, he did not provide any supporting documentation showing a diagnosis of PTSD and his service record has insufficient evidence to support the applicant contentions related to behavioral health issues.

3. Furthermore, the Board determined the applicant was discharged for misconduct and was provided an under honorable conditions (General) characterization of service. The Board found the applicant. The Board agreed the applicant’s discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an honorable discharge. Based on this, the Board determined relief was not warranted and denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

X

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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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. AR 635-200 sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.
  - a. Chapter 3, section II (Type of Characterization or Description) provides a description of the states the following types of characterization of service or description

of service are authorized: separation with characterization of service as Honorable, General (under honorable conditions), or Under Other Than Honorable Conditions, and Uncharacterized (for entry level status) are authorized. These separation types will be used in appropriate circumstances unless limited by the reason for separation.

(1) 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 and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(2) Paragraph 3-7b states 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.

b. Chapter 14 (Separation for Misconduct) establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave. 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.

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; 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. 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. 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//