

IN THE CASE OF: ██████████

BOARD DATE: 22 February 2024

DOCKET NUMBER: AR20230008172

APPLICANT REQUESTS: His under honorable conditions (general) discharge be upgraded to an honorable discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Third party letter of support

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 at the time of discharge he was dealing with the death of a close friend and made some mistakes due to his youth and processing the loss. He is requesting this change, because he served his country overseas during a difficult time for our country. During his time of service, 9/11 happened and there were some big changes within his service alone that impacted his behavior.
3. On the applicant's DD Form 149, he indicates post-traumatic stress disorder (PTSD) as a contributing and mitigating factor in the circumstances that resulted in his separation. However, the applicant has not provided any evidence to support the contentions.
4. A review of the applicant's service record shows he enlisted in the Regular Army for 4 years on 3 August 2000, completed training with award of the military occupational specialty 63W (Wheeled Vehicle Repairer). His initial duty assignment was in Germany and the highest grade held is not of record.
5. The available records do not include any of the applicant's separation documents.

6. The applicant was discharged on 15 June 2002 in the pay grade of E-1. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12c, for misconduct with an under honorable conditions (general) character of service with a Separation Code JKQ (misconduct, commission of a serious offense) and a Reentry Code of 3. He was completed 1 year, 10 months, and 13 days of net active service with 1 year, 3 months, and 1 day of foreign service. His awards are shown as the National Defense Service Medal and the Army Service Medal.

7. The Army Discharge Review Board denied the applicant's request for an upgrade on 24 January 2017.

8. The applicant provided a third party statement in support of the applicant. It states:

a. The applicant is a man of high moral character, strong values, incredibly responsible and has a very strong work ethic. He is a great friend, wonderful man, and father. After his time in the military, he returned state-side and immediately began working. He went from a warehouseman to a mechanic technician, completed a long grueling apprenticeship to become a Journeyman Millwright Mechanic and continued toward of his goal and became a millwright supervisor. From there he continued his career in management, where he finally landed at Raytheon Corporation as a Machine Shop and Engineering Senior Supervisor.

b. Pertaining to his personal life, he has volunteered his time with Make a Wish foundation, Friends of the Detroit River and is an active member of St Joseph Catholic Church. He has been married for almost 16 years and is a terrific father to his two daughters. He has never once been in trouble or broken the law. He is also currently in school fulltime to obtain his Bachelor of Science in Management and currently has a 4.0 GPA.

9. The Army Review Boards Agency, Case Management Division requested on 6 November 2023, that the applicant provide medical documents to support his issues of PTSD. There is no response of record for this request.

10. In determining whether to grant relief the Boards for Correction of Military/Navy Records (BCM/NR) can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

11. 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.

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 3 August 2000; 2) The available records do not include any of the applicant's separation documents; 3) The applicant was discharged on 15 June 2002 in the pay grade of E-1. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12c, for misconduct with an under honorable conditions (general) character of service with a Separation Code JKQ (misconduct, commission of a serious offense) and a Reentry Code of 3.

c. 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. Military BH-related documents were provided for review. A review of JLV was void of any treatment history for the applicant. No civilian BH records were provided for review.

d. The applicant is requesting an 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 for the applicant during or after service and he provide no documentation supporting his assertion. In absence of documentation supporting his assertion of PTSD, there is insufficient evidence to find his misconduct was related to or mitigated by PTSD and therefore insufficient evidence to support an upgrade for reasons of 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 would 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 asserts 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 for the applicant during or after service and he provide no documentation supporting his assertion. In absence of documentation supporting his assertion of PTSD, there is insufficient evidence to find his misconduct was related to or mitigated by PTSD and therefore insufficient evidence to support an upgrade for reasons of medical mitigation.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include DoD guidance on liberal consideration when reviewing cases requesting discharge upgrade requests, the Board determined that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the limited information related to the misconduct leading to the applicant's separation and the findings of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. 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.
2. Prior to closing the case, the board did note the administrative notes below from the analyst of record and recommended that change be completed to more accurately reflect the military service of the applicant.

5/15/2024

X [REDACTED]

CHAIRPERSON
[REDACTED]

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):

A review of the applicant's record shows his DD Form 214, for the period ending 15 June 2002 is missing entries that do not require Board action. As a result, amend the DD Form 214 by adding the following entry to item 13 (Decoration, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized): Global War on Terrorism Service Medal.

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 provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. Army Regulation 600–8–22 (Military Awards) provides that the Global War on Terrorism Service Medal (GWOTSM) was established by Executive Order 13289, 12 March 2003. It is authorized for award to members of the Armed Forces of the United States who have participated in the Global War on Terrorism (GWOT) operations outside of the designated areas of eligibility defined in 2–18g above, on or after 11 September 2001 to a future date to be determined.
4. Army Regulation 15–185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the Army Board for Correction of Military Records (ABCMR). Paragraph 2-9 states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
5. 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 Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. 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.

d. Paragraph 14-12c (Commission of a Serious Offense) applied to Soldiers who committed a serious military or civilian offense, when required by the specific circumstances warrant separation and a punitive discharge was, or could be authorized for that same or relatively similar offense under the UCMJ.

6. 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 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; or sexual harassment. Boards are to give a 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.

7. The Under Secretary of Defense for Personnel and Readiness issued guidance to DRBs and BCM/NR 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//