

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 March 2024

DOCKET NUMBER: AR20230008197

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 is asking for a discharge upgrade to receive full benefits including medical, dental, vision, and qualify for a Department of Veterans Affairs (VA) home loan, and GI bill. He lost his brother, due to a major heart attack with him dying right in front of him in 2007. This altered his mental health for staying in the Army. During this time, he served as platoon sergeant and was found guilty of wrongful treatment of Soldiers. Upon his return from being absent without leave (AWOL), he was placed back in the same unit with this sergeant.
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.
4. A review of the applicant's service record shows he enlisted in the Regular Army on 3 October 2005. He completed training with award of the military occupational specialty 92W (Water Treatment Specialist). The highest grade he held was private first class (PFC)/E-3.
5. A DA Form 3822-R (Report of Mental Status Evaluation), dated 14 May 2007, shows the applicant had no abnormalities in behavior, level of orientation, mood, thinking process, thought content, or memory. He was determined to be mentally capable to understand and participate in the proceedings deemed appropriate by command.

6. A medical examination, dated 23 May 2007 found no abnormalities.
7. The applicant was afforded a medial assessment on 25 May 2007 that found no abnormalities.
8. The applicant received developmental counseling on 10 July 2006 for failure to go to his place of duty.
9. The record indicates the applicant accepted nonjudicial punishment (NJP) on 20 June 2007, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), for being AWOL with intent to remain away permanently, from on or about 12 October 2006 until on or about 4 May 2007. His punishment was reduction to E-1, forfeiture of \$650.00 pay per month for 2 months, 45 days restriction, and 45 days of extra duty.
10. The applicant's immediate commander notified the applicant on 17 July 2007 of his intent to initiate actions to separate him under Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, paragraph 14- 12c for misconduct. His commander noted the specific reason was a period of AWOL.
11. The available records do not contain a copy of the applicant's acknowledgement and options.
12. The applicant's immediate commander formally recommended his separation from service under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14- 12c on 17 July 2007.
13. On 27 July 2007, the appropriate authority approved an unconditional waiver of an administrative board and directed the applicant be discharged and directed the applicant be issued a general discharge.
14. On or about 2 August 2007 an investigation was commenced for illegal use of another Soldier's credit card on at least six occasions. The investigation outlines a series of offences and actions committed including but not limited to:
 - the applicant's admission of the illegal use of another's credit card on 3 August 2007
 - his failure to report for duty on 7 August 2007
 - copies of receipts and credit card statements
 - witness statements
 - the applicant being AWOL at the time of the report

- notification of his status change from present for duty to AWOL, being dropped from the rolls effective 8 August 2007, being declared a deserter on 5 November 2007

15. On 18 January 2008, the applicant was arrested for shoplifting from the Army and Air Force Exchange Service. The report shows that the applicant also had previous offenses of his periods of AWOL in 2006 (surrendered to military authorities) and 2007 (apprehended by civil authorities), his failure to go to his place of duty and his prior statuses as in desertion.

16. Court-martial charges were preferred against the applicant on 11 February 2008 for violations of the Uniform Code of Military Justice (UCMJ). The DD Form 458 (Charge Sheet) shows he was charged with:

- Charge I - Article 121:
 - SPECIFICATION 1: In that [the applicant], U.S. Army, did, at or near Fort Bragg, North Carolina, on or about 27 July 2007, wrongfully appropriate a Visa Debit Card, an item of some value, the property of another Soldier
 - SPECIFICATION 2: In that Private (E-1) [the applicant], U.S. Army, did, at or near Fort Bragg, North Carolina, between on or about 27 July 2007 and 30 July 2007, steal gas, of a value of about \$37.44, the property of the Army Air Force Exchange Service
 - SPECIFICATION 3: In that Private (E-1) [the applicant], U.S. Army, did, at or near Fayetteville, North Carolina, between on or about 27 July 2007 and 30 July 2007, steal clothing, of a value of about \$301.55, the property of A-1 Merchandise
 - SPECIFICATION 4: In that Private (E-1) [the applicant], U.S. Army, did, at or near Fayetteville, North Carolina, between on or about 27 July 2007 and 30 July 2007, steal gas, of a value of about \$65.96, the property of Exxon Mobile Gas Station
- Charge II, Article 134:
 - SPECIFICATION: In that [the applicant], U.S. Army, did, at or near Fayetteville, North Carolina, between on or about 27 July 2007 and 30 July 2007, with intent to defraud, falsely pretend to have authority and permission to use the visa debit card of another Soldier, then knowing that the pretenses were false, and by means thereof did wrongfully obtain from Sprint, telephone services, of a value of about \$370.77 United States dollars to wit: payment of another Soldier's cell phone

17. The applicant's immediate commander recommended the applicant be tried by a special court-martial empowered to adjudge a bad conduct discharge.

18. The applicant consulted with legal counsel on 12 February 2008. He was advised of the basis for the contemplated discharge, the possible effects of an under honorable conditions discharge, and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of trial by court-martial. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request was approved he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Department of Veterans Affairs (VA), and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

b. In a statement on his own behalf the applicant stated he joined the Army to make a better life for himself and his family, he had paid the other Soldier back the monies stolen, he has learned from his mistakes, accepted his punishment, and will not let them happen again.

19. On 21 February 2008, the applicant's immediate commander recommended approval of the applicant's request for discharge in lieu of trial by court-martial.

20. The separation authority approved the applicant's request for discharge on 28 February 2008, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial, and directed that he be discharged with a service characterization of under other than honorable conditions.

21. The applicant was discharged on 10 March 2008 in the grade of E-1. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of court martial and his service was characterized as under other than honorable conditions. He was credited with 2 years and 15 days of active service. His DD Form 214 also shows a period of lost time totaling 146 days. He was awarded or authorized the Global War on Terrorism Service Medal and the Army Service Ribbon.

22. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

23. The Army Review Boards Agency, Case Management Division requested the applicant provide medical documentation to support his contention of PTSD. The applicant did not respond.

24. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

25. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable.

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 3 October 2005.
- Applicant accepted nonjudicial punishment (NJP) on 20 June 2007, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), for being absent without leave (AWOL) with intent to remain away permanently, from on or Charge I - Article 121
- about 12 October 2006 until on or about 4 May 2007.
- On or about 2 August 2007 an investigation was commenced for illegal use of another Soldier's credit card on at least 6 occasions. The Investigation Report outlines a series of offences and actions committed including but not limited to: the applicant's admission of the illegal use of another's credit card on 3 August 2007, his failure to report for duty on 7 August 2007, copies of receipts and credit card statements, and witness statements.
- On 18 January 2008, the applicant was arrested for shoplifting from the Army and Air Force Exchange Service.
- Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ). The DD Form 458 (Charge Sheet) shows he was charged with:
 - SPECIFICATION 1: In that [the applicant], U.S. Army, did, at or near Fort Bragg, North Carolina, on or about 27 July 2007, wrongfully appropriate a Visa Debit Card, an item of some value, the property of Specialist Jxxxx Vxxxx.
 - SPECIFICATION 2: In that Private (E-1) [the applicant], U.S. Army, did, at or near Fort Bragg, North Carolina, between on or about 27 July 2007 and 30 July 2007, steal gas, of a value of about \$37.44, the property of the Army Air Force Exchange Service.
 - SPECIFICATION 3: In that Private (E-1) [the applicant], U.S. Army, did, at or near Fayetteville, North Carolina, between on or about 27 July 2007 and 30 July

2007, steal clothing, of a value of about \$301.55, the property of A-1 Merchandise.

- SPECIFICATION 4: In that Private (E-1) [the applicant], U.S. Army, did, at or near Fayetteville, North Carolina, between on or about 27 July 2007 and 30 July 2007, steal gas, of a value of about \$65.96, the property of Exxon Mobile Gas Station.
- Charge II, Article 134
- SPECIFICATION: In that [the applicant], U.S. Army, did, at or near Fayetteville, North Carolina, between on or about 27 July 2007 and 30 July 2007, with intent to defraud, falsely pretend to have authority and permission to use the visa debit card of Specialist Jxxxx Vxxxx, then knowing that the pretenses were false, and by means thereof did wrongfully obtain from Sprint, telephone services, of a value of about \$370.77 United States dollars to wit: payment of Gxxxx Jxxxx's cell phone
- Applicant was discharged on 10 March 2008. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Code KFS and Reentry Code 4.

c. Review of Available Records Including Medical:

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, ABCMR Record of Proceedings (ROP), and documents from his service record and separation. 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 he is asking for a discharge upgrade to receive full benefits including medical, dental, vision, and qualify for VA home loan, and GI bill. He lost his brother, due to a major heart attack with him dying right in front of him in 2007. This altered his mental health for staying in the Army. During this time, he served as platoon sergeant and was found guilty of wrongful treatment of Soldiers. Upon his return from being absent without leave (AWOL), he was placed back in the same unit with this sergeant. 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 contention.

e. Limited active-duty electronic medical records were available for review and the applicant submitted hard copy documentation from his time in service. Documents from an investigation indicate the applicant was interviewed on 3 August 2007, in a statement he admitted he took another soldier's credit card from his wallet without consent, used

it at several locations, then placed it back in the soldier's wallet. Indicating the applicant's behavior was premeditated, purposeful and intended to avoid detection. A Mental Status Evaluation dated 14 May 2007, for the purpose of separation, shows the applicant had no psychiatric condition or diagnosis. He was determined to be mentally capable of understanding and participating in the proceedings deemed appropriate by command. A medical examination, dated 23 May 2007, found no medical concerns.

f. The VA electronic record available for review shows the applicant is not service connected. The applicant did not submit any medical documentation post-military service substantiating his assertion of PTSD. A letter dated, November 06, 2023, from ARBA's Case Management Division requested the applicant provide medical documentation in support of his contention of PTSD. The applicant did not respond. An entry in his VA electronic record, dated 31 August 2018, indicates the applicant was incarcerated "for the 8th time. His charges include: 1. Simple Burglary, 2. In-state fugitive, 3. Possession of schedule II, 4. Possession of Firearm/concealed weapon by felon, and 5. Possession of firearms/possession of controlled dangerous substance."

g. 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 BH condition during his time in service that would mitigate 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 contends mitigating conditions.

(2) Did the condition exist or experience occur during military service? Yes. The applicant notes post-traumatic stress disorder (PTSD) as related to his request.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is no medical documentation of an in-service BH diagnoses and the VA has not service connected the applicant for any BH condition. In addition, the applicant did not provide any medical documentation substantiating his contention of PTSD. The applicant was discharge from military service due to: with intent to defraud, falsely pretending to have authority and permission to use the visa debit card of another soldier and illegally using the credit card on at least 6 occasions; shoplifting from the Army and Air Force Exchange Service; stealing gas, the property of the Army Air Force Exchange Service; stealing clothing, of a value of about \$301.55, the property of A-1 Merchandise; and stealing gas, the property of Exxon Mobile Gas Station. And while the applicant selected PTSD as related to his upgrade request, PTSD is not a likely cause for premeditated misconduct. There is no nexus or natural sequela between his asserted PTSD and his multiple charges of theft since PTSD would not impact the ability to distinguish right from wrong and act in accordance with the right.

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

2. The Board reviewed and concurred with the medical advisor's review finding no medical documentation of an in-service behavioral health diagnoses. Based on a preponderance of the evidence, the Board determined the characterization of service the applicant received upon separation was not in error or unjust.

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.

[Redacted signature area]

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. 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 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at that time provided that:

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. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

c. Chapter 10 of that regulation provided, in pertinent part, that a member who had committed an offense or offenses for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, an under other than honorable conditions discharge was normally considered appropriate.

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 (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.

5. 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//