

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 March 2024

DOCKET NUMBER: AR20230008203

APPLICANT REQUESTS: in effect:

- upgrade of his under honorable conditions (general) discharge to honorable
- change in the reason and authority for separation.

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

- DD Form 149 (Application for Correction of Military Record), 11 May 2023
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 27 June 1963
- case manager letter, from D.R., 26 June 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, in effect, he is currently homeless, and his DD Form 214, Item 11c. Reason and Authority code are preventing him from obtaining any Department of Veterans Affairs (VA) benefits. When he applies for VA benefits, he is told he does not qualify. The VA says you must have 90 days or 24 months of active service and he argues he spent 118 days in the Army. His intent was to stay in for the full three years but circumstances beyond his control forced him to separate. He additionally references that other mental health is related to his request.
3. In the processing of this case, an Army Review Boards Agency (ARBA) staff member requested the applicant's official military personnel file (OMPF) from the National Archives and Records Administration (NARA) in St. Louis, MO. According to the response received from NARA, his record is currently signed out and is unavailable for review at this time. Despite the lack of his OMPF, the applicant provided a DD Form 214 for the Board to conduct a fair and impartial review of the applicant's petition.

4. The applicant's DD Form 214 shows:

a. He enlisted in the Regular Army on 15 February 1962. His term of service was for 3 years. He held an infantry specialty.

b. He was discharged on 27 June 1963, under the provisions of Army Regulation (AR) 635-209 (Personnel Separations – Discharge– Unsuitability), in the grade of E-1 with an under honorable conditions (general) characterization of service (Separation Program Number (SPN) 264 (Unsuitability, Character, and Behavioral Disorders). He was credited with 3 months and 28 days of net service for this period with 375 days of lost time from 1 June 1962 thru 4 April 1963 and 6 April 1963 thru 11 June 1963.

5. He provides a letter from his case manager, dated 26 June 2023, stating in effect, the case manager is attempting to house the applicant due to his homelessness. The applicant needs his reason and authority to be updated to honorable conditions with SPN 265 [unsuitability, character disorder], and then the applicant will be placed in housing for the remainder of his life. She asks that the board considers this upgrade so the applicant can receive housing and maintain a quality of life.

6. AR 635-209, in effect at the time, set forth the policy and prescribed procedures for eliminating enlisted personnel for unsuitability. Action would be taken to discharge an individual for unsuitability only when, in the commander's opinion, it was clearly established that the individual was unlikely to develop sufficiently to participate in further military training and/or become a satisfactory Soldier or the individual's psychiatric or physical condition was such as to not warrant discharge for disability. A general or an honorable discharge was considered appropriate.

a. AR 635-200 (Personnel Separations – Enlisted Personnel) was revised on 1 December 1976 following the settlement of a civil suit. Thereafter, the type of discharge and the character of service imposed were to be determined solely based upon the individual's military record during the respective period of enlistment. Further, any separation for unsuitability, based on personality disorder, must have included a diagnosis of a personality disorder made by a physician trained in psychiatry.

b. The Brotzman Memorandum required retroactive application of revised policies, attitudes and changes in reviewing applications for upgrade of discharges based on personality disorders.

c. The Nelson Memorandum expanded the review policy and specified that the presence of a personality disorder diagnosis would justify upgrade of a discharge to fully honorable, except in cases where there was "clear and demonstrable reasons" why a fully honorable discharge should not be given.

7. 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.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge to honorable and a change in the reason and authority for separation. He contends he experienced mental health conditions, which mitigates his discharge.

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's complete military records, including the separation packet, are not available for review. Therefore, this case is being considered based the provided DD Form 214; 2) The applicant enlisted in the Regular Army on 15 February 1962; 3) The applicant was discharged on 27 June 1963, under the provisions of AR 635-209 (Personnel Separations – Discharge– Unsuitability), in the grade of E-1. He received an under honorable conditions (general) characterization of service with separation program number (SPN) 264 (unsuitability, character, and behavioral disorders). He was credited with 3 months and 28 days of net service for this period with 375 days of lost time from 1 June 1962 thru 4 April 1963 and 6 April 1963 thru 11 June 1963

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided by the applicant.

d. On his application, the applicant noted mental health conditions were related to his request, as a contributing and mitigating factor in the circumstances that resulted in his separation. There was evidence the applicant was discharged for "unsuitability, character, and behavioral disorders." However, there is insufficient information surrounding the specific events surrounding this administrative separation to discern the specific nature of the a potential mental health condition the applicant may have been experiencing on active service. A review of JLV was void of behavioral health documentation, and he does not receive any service-connected disability.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of mental health condition or experience.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A. There is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of a mental health condition or experience. However, the applicant contends he experienced a mental health condition or experience while on active service, which mitigates his discharge. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition experience actually excuse or mitigate the discharge?
N/A

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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.

a. The applicant's service records, including his separation packet are not available. The available evidence shows, he served on active duty from 15 February 1962 to 27 June 1963. His DD Form 214 shows he was discharged under AR 635-209, in the grade of E-1, for unsuitability, character, and behavioral disorders. He received an under honorable conditions (general) characterization of service and he was credited with 3 months and 28 days of net service for this period with 375 days of lost time from 1 June 1962 thru 4 April 1963 and 6 April 1963 thru 11 June 1963.

b. The Brotzman Memorandum required that the revised provisions of AR 635-200 be applied retroactively when reviewing applications for discharge upgrades based on character and behavior disorder, now called personality disorders. Therefore, his application was reviewed using the revised criteria of AR 635-200. The Nelson Memorandum specified that the presence of a personality disorder diagnosis would justify the upgrade of a discharge to fully honorable except in cases where there are "clear and demonstrable reasons" that an honorable discharge should not be granted.

c. The applicant's available record doesn't contain any disciplinary actions. Therefore, the Board determined it appropriate to upgrade his discharge to honorable based on personality disorder and the absence of substantial instances of indiscipline.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 27 June 1963, showing:

- Character of Service: Honorable
- Separation Authority: AR 635-200
- Separation Code: JFF
- Reentry Code: 1
- Narrative Reason for Separation: Secretarial Authority



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. Army Regulation 635-209 (Personnel Separations – Discharge– Unsuitability), in effect at the time, set forth the policy and prescribed procedures for eliminating enlisted personnel for unsuitability. Action would be taken to discharge an individual for unsuitability only when, in the commander's opinion, it was clearly established that the individual was unlikely to develop sufficiently to participate in further military training and/or become a satisfactory Soldier or the individual's psychiatric or physical condition was such as to not warrant discharge for disability. Unsuitability included: (a) inaptitude; (b) character and behavior disorders, disorders of intelligence and transient personality disorders due to acute or special stress; (c) apathy (lack of appropriate interest), defective attitudes, and inability to expend effort constructively; (d) enuresis, (e) chronic alcoholism; and (f) class III homosexuality (evidenced homosexual tendencies, desires, or interest, but was without overt homosexual acts). Evaluation by a medical officer was required and, when psychiatric indications were involved, the medical officer must have been a psychiatrist, if one was available. A general or an honorable discharge was considered appropriate.
4. Army Regulation 635-5 (Personnel Separations – Separation Documents), Appendix I (Separation Program Number (SPN) and Authority Governing Separations) provides the specific authorities, reasons for separating Soldiers from active duty, and the appropriate SPN to be entered on the DD Form 214. This regulation identifies the following separation program numbers and narrative reasons for Soldiers separated under the authority of AR 635-209:
 - SPN 264 – character and behavior disorders

- SPN 46A – apathy (lack of appropriate interest), defective attitudes and inability to expand effort constructively
- SPN 262 – enuresis
- SPN 362 – homosexual tendencies (discharge for unsuitability pursuant to recommendation of a board of officers convened under provisions of AR 635-89)
- SPN 289 – chronic alcoholism

5. Army Regulation 635-200 was revised on 1 December 1976 following the settlement of a civil suit. Thereafter, the type of discharge and the character of service imposed were to be determined solely based upon the individual's military record during the respective period of enlistment. Further, any separation for unsuitability, based on personality disorder, must have included a diagnosis of a personality disorder made by a physician trained in psychiatry.

a. The Brotzman Memorandum required retroactive application of revised policies, attitudes and changes in reviewing applications for upgrade of discharges based on personality disorders.

b. The Nelson Memorandum expanded the review policy and specified that the presence of a personality disorder diagnosis would justify upgrade of a discharge to fully honorable, except in cases where there was "clear and demonstrable reasons" why a fully honorable discharge should not be given.

c. 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.

d. 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.

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 (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.

7. 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, 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//