

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 February 2024

DOCKET NUMBER: AR20230008206

APPLICANT REQUESTS:

- His under honorable conditions (general) discharge be upgraded to honorable
- His narrative reason for separation be changed to disability

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

- DD Form 149 (Application for Correction of Military Record)
- Notice of lost service medical and dental records
- Private medical treatment records
- Department of Veterans Affairs (VA) Rating decision

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:

a. He is seeking an upgrade as his behavior at the time of separation is now recognized by the VA as post-traumatic stress disorder (PTSD) related. He was punished for being traumatized and for lacking the proper support and treatment after nearly dying in a car accident while on active duty. He was unable to bathe himself and yet was expected to report for duty, which caused him to exhibit poor behavior being unable to cope with the unrealistic expectations. Now his discharge status prevents him from accessing assistance with college tuition.

b. He has suffered with PTSD for many years and only recently have come to understand that what he has been living with and trying to manage is PTSD. He regrets many of his past actions but asks to be excused for them as he was under extreme mental distress at the time and lacking understanding of his condition. He is working on

bettering his life and would like to attend college for a further education using military assistance; however, an upgraded discharge is needed.

c. The VA lost all of his medical records, but private hospital records are attached showing that he was transferred to Darnell Army Community Hospital on 8 April 2002 following emergency treatment caused by the accident and that has led to him developing PTSD.

3. On the applicant's DD Form 149, he indicates post-traumatic stress disorder (PTSD), mental health issues and sexual assault/harassment as contributing and mitigating factors 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 August 2000 for 6 years. He completed training with award of the military occupational specialty 96G (Food Service Specialist). The highest rank he attained was E-3.

5. The service records contain 19 DA Forms 4187 (Personnel Actions) documenting his changes in status related to his periods of absence from between 8 April 2002 and 19 February 2003.

6. The record contains a DA Form 2627 (Record of Proceedings Under Article 15 of the Uniform Code of Military Justice (UCMJ)) that was completed and signed by the applicant's unit commander on 27 June 2002. However, the applicant did not acknowledge or sign the document and it was not completed.

7. Court-martial charges were preferred against the applicant on 15 August 2002 for violations of the Uniform Code of Military Justice (UCMJ). The DD Form 458 (Charge Sheet) shows he was charged with:

- Charge I - Violation of Article 86, UCMJ:
 - Specification 1: fail to go at the time prescribed to his appointed place of duty, on or about 22 March 2002
 - Specification 2: being AWOL from on or about 26 March 2002, until on or about 8 April 2002.
 - Specification 3: being AWOL from on or about on or about 10 March 2002, until on or about 17 June 2002.
 - Specification 4: being AWOL from on or about, 20 June 2002 until on or about 25 June 2002
- Charge II: Violation of The UCMJ, Article 85:

- Specification: absenting himself with intent to remain away permanently from his unit from on or about 2 July 2002 and did remain so absent in desertion until on or about 15 July 2002.

8. A summary court-martial, adjudged on 20 November 2002 found the applicant guilty of the four specifications of AWOL and not guilty of desertion. His sentence was confinement for 30 days, forfeiture of \$737.00, and reduction to E-1.

9. The applicant's immediate commander notified the applicant of his intent to initiate actions to separate him under Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, paragraph 14- 12c for misconduct. Page one of the memorandum is not of record.

10. The applicant consulted with legal counsel and 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. The applicant waived all of his administrative rights except to have legal counsel and he elected not to submit a statement in his own behalf.

11. The applicant's immediate commander formally recommended his separation from service under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14- 12c for commission of a serious offense.

12. The appropriate authority approved the discharge is not of record.

13. The applicant was discharged on 25 March 2003 in the pay grade of E-1. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c for misconduct and his service characterization was under honorable conditions (general). He was credited with 2 years, 4 months, and 9 days of net active service. He is shown to have had seven periods of lost time totaling 103 days. His awards are listed as the National Defense Service Medal, Army Service Ribbon, and the Overseas Service Ribbon.

14. The applicant provided copies of:

a. Private medical records from Scott and White Temple that show the results of a motor vehicle accident of multiple musculoskeletal injuries including open left forearm fracture of both bones, right radial styloid fracture, and a liver laceration on 6 April 2002. He was transferred to the Darnell Army Community Hospital on 8 April 2002 for further care.

b. Two statements from his commander, dated 1 July 2002, indicate that the applicant's medical and dental records were lost.

c. A VA rating decision document dated 21 June 2019 indicates the applicant was granted a service connection for PTSD with a 100 percent disability evaluation and entitlement to special monthly compensation. He was denied service connection for traumatic brain injury.

15. In determining whether to grant relief the Boards for Correction of Military/Naval 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.

16. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge. He contends he experienced mental health issues including PTSD and military sexual trauma (MST) which mitigated his misconduct.

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 in the Regular Army on 3 August 2000; 2) Court-martial charges were preferred against the applicant on 15 August 2002 for failing to be at his place of duty on 22 March 2002; being AWOL from 26 March-8 April 2002; being AWOL from 10 May-17 June 2002; being AWOL from 20-25 June 2002; being AWOL with intent to stay away permanently from 2-15 July 2002. The applicant was found guilty of his charges of AWOL and failure to be at his place of duty but not desertion; 3) On 25 March 2003, the applicant was discharged, Chapter 14, paragraph 14-12c for misconduct. His service characterization was under honorable conditions (general).

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and available military service and medical records. The VA's Joint Legacy Viewer (JLV) and additional medical documentation provided by the applicant were also examined.

d. The applicant noted MST and mental health conditions including PTSD as contributing and mitigating factors in the circumstances that resulted in his separation. There was evidence the applicant was involved in a significant automobile accident on 6 April 2002. He was transferred to a military on 8 April 2002 for further care. The applicant was AWOL at the time of this accident. There was insufficient evidence the applicant reported mental health symptoms while on active service. In addition, there is insufficient evidence he reported MST while on active service. A review of JLV provided evidence the applicant has been diagnosed and treated for PTSD related to his accident. There was insufficient evidence the applicant has reported MST to his VA providers. The applicant receives service-connected disability for PTSD since 2019.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence to support the applicant had condition or experience that partially mitigated his misconduct.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he was experienced MST and mental health conditions including PTSD that contributed to his misconduct. The has been diagnosed with PTSD as a result of an automobile accident that occurred while he was AWOL.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reports experiencing MST and mental health conditions including PTSD while on active service. He has also been diagnosed with service-connected PTSD.

(3) Does the condition experience actually excuse or mitigate the discharge? Partially, there is sufficient evidence the applicant has been diagnosed with service-connected PTSD. The applicant reported his symptoms were related to an accident that occurred on 06 April 2002. The applicant had a history of going AWOL prior to his accident, and he was AWOL at the time of the potentially traumatic event. After his accident, the applicant continued to go AWOL, which can be a sequela to some mental health conditions including PTSD. Therefore, there is some evidence the applicant was experiencing a mitigating mental health condition for some of his instances of misconduct. There was insufficient evidence beyond self-report the applicant experienced MST. However, the applicant contends he was experiencing MST and that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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 Board considered the applicant's statement, the applicant's record of service, the frequency and nature of the applicant's misconduct and the reason for separation.

a. The evidence shows the applicant committed a serious misconduct, in the form of multiple AWOLs and/or desertion. Accordingly, his chain of command initiated separation action against him. He was discharged from active duty due to misconduct and he received a general discharge. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical advisory opinion finding some evidence

the applicant was experiencing a mitigating mental health condition for some of his instances of misconduct. Thus, the Board found a general discharge is appropriate in his case. Also, the applicant provided no 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.

b. The Board noted that the applicant’s narrative reason for separation was assigned based on the fact that he was discharged under paragraph 14-12c of AR 635-200 due to serious misconduct. Absent his serious misconduct, there was no reason to process him for separation. The underlying reason for his discharge was his serious misconduct. The only valid narrative reason for separation permitted under paragraph 14-12c is “Misconduct” and the appropriate separation code associated with this discharge is JKQ.

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.

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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 (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. 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 the 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 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.

4. Army Regulation 635-40 establishes the Army Physical Disability Evaluation System and sets forth the policies, responsibilities, and procedures that apply in determining

whether a soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating.

a. Chapter 3 contains the policy and outlines the standards for determining unfitness because of physical disability. It states, in pertinent part, that for an individual to be found unfit by reason of physical disability, he/she must be unable to perform the duties of his/her office, grade, rank or rating.

b. Paragraph 4-24b(3) provides the authority to separate soldiers by reason of physical disability with severance pay based on a determination by the appropriate medical disability processing agency.

c. The regulation also provides that a soldier who is charged with an offense or is under investigation for an offense for which they could be dismissed or given a punitive discharge may not be referred for disability processing.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records 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//