

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 March 2024

DOCKET NUMBER: AR20230008274

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

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 27 July 1984
- Letter from the Illinois Department of Children and Family Services (DCFS), 14 August 2019
  - behavioral health records from DCFS (87 pages), 20 April 1967 to 31 March 1981
- Suncoast Center, Inc. patient authorization for disclosure of Health information, 28 June 2023
  - behavioral health records from Suncoast Center, Inc. (348 pages), 31 May 2012 to 20 June 2017
  - behavioral health active diagnoses and prescriptions (20 pages), 3 October 2012 to 25 May 2023
- letter from Army Board for Correction of Military Records (ABCMR), 1 September 2023
- Department of Veterans Affairs (VA) Form 21-4138 (Statement in Support of Claim), 18 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 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 was young and under stress and racist tension. The applicant notes post-traumatic stress disorder (PTSD) and other mental health issues as conditions related to his request. On his DD Form 149, the applicant indicates

disability, pay & allowance, and promotion/rank are related to his request; however, he provides no further details on these issues.

3. The applicant enlisted in the Regular Army on 8 February 1983, for 4 years. The highest rank/grade he held was private/E-2.

4. The applicant accepted non-judicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice, on three occasions:

a. On 3 August 1983, for disrespect toward his superior commissioned officer, on or about 20 July 1983. His punishment was 14 days restriction and 14 days extra duty.

b. On 22 March 1984, for being arrested twice and convicted of disorderly conduct by municipal authorities. His punishment was 14 days restriction, 14 days extra duty, and bar to reenlistment.

c. On 5 July 1984, for unlawfully striking another Soldier and for being drunk and disorderly, on or about 3 July 1984. His punishment was reduction to private/E-2.

5. The applicant was received formal counseling on eight occasions between 7 February 1984 to 30 May 1984 for:

- standards of conduct on and off base
- personnel appearance and hygiene
- responsibilities of a Soldier
- disciplinary problems
- personnel hygiene and budgeting
- failure to obey a lawful order and disrespect
- failure to report
- missing formation

6. On 12 July 1984 and 17 July 1984, the applicant underwent a complete mental status evaluation and medical examination as part of his consideration for discharge due to his misconduct. His mental status evaluation noted, he met the retention standards, was mentally responsible, and had the mental capacity to understand and participate in whatever administrative action was deemed appropriate by his command.

7. On 18 July 1984, the applicant's commander notified the applicant of his intent to initiate action to separate him from service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 13, for unsatisfactory performance.

8. On the same day, his commander formerly recommended the applicant's separation from the service. As reasons for the proposed action, the commander cited the applicant's lack of discipline and refusal to adhere to policies and standards of the Army at a level that could no longer be tolerated.

9. On 20 July 1984, the applicant acknowledged receipt of his commander's notification. He consulted with counsel and was advised of the reason for separation and the rights available to him. He understood if he was issued a general discharge, he may encounter substantial prejudice in civilian life. He did not submit a statement in his own behalf.

10. On 24 July 1984, the separation authority approved the recommended discharge and directed the issuance of a DD Form 257A (General Discharge Certificate).

11. The applicant was discharged accordingly on 27 July 1984, under the provisions of AR 635-200, Chapter 13, for unsatisfactory performance, with an under honorable conditions (general) characterization of service. He received a separation code of "JHJ" and a reenlistment (RE) code of "RE-3." He completed 1 year, 5 months and 20 days of net active service during the period covered.

12. The applicant provides:

a. 435 pages of medical documents from the Illinois DCFS and Suncoast Center, Inc., showing a history of behavioral issues and care before and after his military service.

b. A 20-page document showing:

(1) The applicant's active diagnoses of bipolar disorder, paranoid schizophrenia, and schizoaffective disorder.

(2) A list of medication the applicant was prescribed from 3 October 2012 to 25 May 2023.

13. Regulatory guidance in effect at the time provided the service of Soldier's separated because of unsatisfactory performance under the provisions of AR 635, chapter 13 would be characterized as honorable or under honorable conditions.

14. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

#### 15. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service to honorable. He contends that he experienced mental health conditions including PTSD that mitigated his misconduct. 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 8 February 1983; 2) The applicant accepted non-judicial punishment (NJP) between July 1983 and August 1984 for being disrespectful towards a commissioned officer, being arrested twice and convicted of disorderly conduct, and striking another Soldier and being disorderly; 3) The applicant was received formal counseling on eight occasions between 7 February 1984 to 30 May 1984 for: standards of conduct on and off base, personal appearance and hygiene, responsibilities of a Soldier, disciplinary problems, budgeting, failure to obey orders, disrespect, failure to report, and missing formation; 4) The applicant was discharged on 27 July 1984, Chapter 13, for unsatisfactory performance, with an under honorable conditions (general) characterization of service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) and civilian medical records were also examined. On his application, the applicant contends mental health conditions including PTSD were contributing and mitigating factors in the circumstances that resulted in his separation. There is insufficient evidence the applicant reported or was diagnosed with any mental health condition while on active service. On 12 July 1984 and 17 July 1984, the applicant underwent a complete mental status evaluation and medical examination as part of his consideration for discharge due to his misconduct. He was found to meet retention standards, was mentally responsible, and had the mental capacity to understand and participate in whatever administrative action was deemed appropriate by his command. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition, and the applicant receives no service-connected disability. The applicant did provide additional medical documentation. There was sufficient evidence the applicant experienced childhood and adolescent trauma, and he was experiencing mental health problems prior to enlisting in the military. After his discharge the applicant provided civilian medical evidence from 2012-2023 that he had been diagnosed and treated for Bipolar Disorder, Schizoaffective Disorder, and Alcohol Dependence.

c. 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 experiencing mental health conditions, including PTSD that contributed to his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing mental health conditions including PTSD that contributed to his misconduct, while on active service.

(3) Does the condition experience actually excuse or mitigate the discharge? Partially, there is insufficient evidence beyond self-report the applicant has ever reported or been diagnosed with PTSD. However, there is sufficient evidence he was exposed to significant trauma during his childhood and was experiencing resultant mental health concerns. While there is insufficient evidence the applicant met criteria for a mental health condition while on active service, there is evidence after his discharge he was diagnosed with severe mental health conditions. The applicant's erratic misconduct such as being disrespectful, not maintaining personal standards, not following orders, not reporting on time, etc. is likely a natural sequelae of his mental health conditions related to his early childhood trauma and potentially his later diagnoses of severe mental health conditions. However, there is no nexus between his mental health conditions including PTSD and his misconduct related to violence and disorderly conduct: 1) these types of misconduct are not part of the natural history or sequelae of his mental health conditions; 2) His mental health conditions do not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing mental health condition or an experience 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 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 and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was discharged due to unsatisfactory performance following receipt of three NJPs, extensive counseling for various performance-related infractions, lack of discipline and refusal to adhere to policies and standards of the Army at a level that could no longer be tolerated. He received a general discharge after completing 1 year and 5 months of active service. The Board found no error or injustice in his separation processing. 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



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, U.S. Code, Section 1556, 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.

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. Chapter 13 provided for separation due to unsatisfactory performance when in the commander's judgment the individual would not become a satisfactory Soldier; retention would have an adverse impact on military discipline, good order and morale; the service member would be a disruptive influence in the future; the basis for separation would continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, was unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation would be characterized as honorable or under honorable conditions.

b. 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.

c. 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.

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 PTSD; traumatic brain injury; sexual assault; or sexual harassment. Boards are to give 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.

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. This guidance does not mandate relief but 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, BCM/NRs 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//