

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 February 2024

DOCKET NUMBER: AR20230008394

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

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 15 September 2015

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:

a. He is requesting an upgrade of his characterization of service because his discharge was inequitable, based on events that the Army caused. As a 19-year-old boy, he was taught that alcohol and pain medication was the solution to his mental problems. After deploying, he did drink a lot and the solution became his problem and he was pulled over for driving under the influence.

b. The Army did not allow him to finish the Army Substance Abuse Program (ASAP). He believes the Army caused this issue and did not help to its full extent to resolve his problem. The Army discharged him and left him out to dry, despite the deployments he endured. The Army and his unit caused the drinking problems and did not address it or provide a solution to the problem they caused.

3. A review of the applicant's service record shows:

a. DD Form 4 (Enlistment/Reenlistment Document) shows he enlisted in the Regular Army on 19 February 2013.

b. Administrative Orders, dated 24 May 2015, shows the applicant was suspected of DUI in Oregon state on 24 May 2015. Based on his misconduct, his commander gave him an order not to travel outside the limits of the gate/post and not to consume or possess alcohol at any time or in any form.

c. DA Form 8003 (ASAP Enrollment), dated 27 May 2015, shows the applicant was command referred for the ASAP for being arrested on 24 May 2015 for DUI. The applicant's commander/supervisor suspected that the applicant had an alcohol problem.

d. A DUI Arrest Report, dated 12 July 2015, shows he was lawfully arrested. There were reasonable grounds to believe he had been driving or was in actual physical control of a motor vehicle within the state while under the influence of intoxicating liquor or drugs. A breath test administered, and his Blood Alcohol Content (BAC) readings were .086 and .085.

e. United States District Court Violation Notice, dated 12 July 2015, shows the applicant was charged with DUI – Alcohol/Drugs and speeding.

f. A memorandum dated 12 July 2015, shows the applicant was lawfully apprehended for driving while intoxicated or under the influence of drugs or alcohol and his installation driving privileges were suspended. The period of suspension/revocation was for 12 months and prohibited the applicant from operating any motor vehicle, except a tactical vehicle, on any military installation.

g. Administrative Orders, dated 13 July 2015, shows that based on the applicant's suspected DUI on Joint Base Lewis-McChord (JBLM) on 12 July 2015, he was ordered not to travel outside the limits of the installation for any reason. He was ordered not to wear civilian clothing based on the specified misconduct and was ordered to remain in military uniform at all times unless he was sleeping or conducting personal hygiene.

h. DA Forms 268 (Report to Suspend Favorable Personnel Actions (FLAG)), shows the applicant was flagged on 13 July 2015 for alcohol abuse adverse action and involuntary separation/discharge.

i. ASAP Rehabilitation Team Meeting Results, dated 14 July 2015, shows a 60–90-day rehabilitation plan was established.

j. A Law Enforcement Report, dated 23 July 2015, states on 12 July 2015 at 0135hrs, JBLM police observed a vehicle which was owned and operated by the applicant traveling 53 miles per hour (mph) in a posted 35 mph zone. A traffic stop was

initiated and upon contact with the applicant, the odor of intoxicants was detected emanating from his person. The applicant voluntarily submitted to Standardized Field Sobriety Testing (SFST), which showed signs of impairment. He also voluntarily submitted to a Preliminary Breath Test (PBT) with the result of .096. He was arrested, advised of his constitutional rights, and transported to the Provost Marshal Office where he was again advised of his constitutional rights, which he waived. He submitted to a BAC with the results of (.086/.085).

k. On 6 August 2015, the applicant received a General Officer Memorandum of Reprimand (GOMOR) for being apprehended and submitting to a breath test that resulted in a reading of .085 grams of alcohol per 210 liters of breath. The Deputy Commanding General (DCG) stated his misconduct showed contempt for the law and a callous disregard for the safety of others. The DCG stated he was considering whether to direct that the reprimand be filed permanently in his Army Military Human Resource Record (AMHRR) and before making a decision he would consider any matters that the applicant submitted in extenuation, mitigation, or rebuttal. He was given 7 days to submit any matters he wished to be considered.

l. On an unspecified date, the applicant's immediate commander recommended the reprimand be permanently filed in his AMHRR. He stated it was the applicant's second DUI charge in three months. His actions showed a pattern of misconduct, and they were working to chapter him out the military. The applicant was referred to ASAP on 27 May 2015 after his first DUI charge and enrolled on 14 July 2015. He was an outpatient care for 60-90 days.

m. On an unspecified date, the battalion commander recommended that the reprimand be filed in the applicant's AMHRR. He stated the applicant received two DUIs in three months despite counseling, revocation of privileges, and ASAP enrollment.

n. A Report of Medical Examination, dated 13 August 2015, shows the applicant was qualified for chapter.

o. On 17 August 2015 the applicant acknowledged receipt of the reprimand and elected not to submit any matters on his on behalf.

p. A Report of Mental Status Evaluation, dated 20 August 2015, shows he was cleared from a behavioral health perspective for any administrative action deemed appropriate by his command.

q. On 24 August 2015, the applicant's immediate commander notified the applicant of his intent to initiate separation actions against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 14-12c, commission of a serious offense. The commander listed

the following reason for the proposed action: On 12 July 2015 he operated a motor vehicle with a BAC of .085 or higher. The commander informed the applicant he was recommending he receive an under honorable conditions (general) discharge.

r. On 24 August 2015, the applicant acknowledged receipt of his commander's separation notification. The applicant acknowledged he was advised by his consulting counsel of the basis for the contemplated action to separate him for commission of a serious offense under AR 635-200, Chapter 14-12c, and its effects; of the rights available to him. He understood the following:

1) He understood that if he had less than 6 years of total active and Reserve military service at the time of separation, he was not entitled to have his case heard by an administrative separation board.

2) He elected to submit statements in his own behalf.

3) He requested consulting counsel and representation by military counsel and/or civilian counsel at no expense to the Government.

4) He further understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him and as a result of issuance of a discharge that was less than honorable, he may be ineligible for many or all benefits as a veteran under both Federal and State laws.

5) He understood that, if he received a general, under honorable conditions discharge he may make application to the Army Discharge Review Board (ARBA) or the ABCMR for upgrading; however, an act of consideration by either board did not imply that his discharge would be upgraded.

6) He understood that he would be ineligible to apply for enlistment in the United States Army for a period of two years after discharge.

7) He was not a victim of sexual assault for which an unrestricted report was filed within the past 24 months.

s. On 24 August 2015, the applicant provided a statement: Since being in the Army he completed several training cycles, deployed to Afghanistan where he conducted missions, earned his Expert Infantryman Badge (EIB), and completed Ranger School receiving his Ranger Tab. He stated that there was no excuse valid to defend his choice of operating a vehicle while under the influence of alcohol. He was enrolled in ASAP, and it allowed him to reevaluate his life and his decision-making process. His choices over the past few months proved that his maturity level needed to grow, and he believed that remaining in the Army would help him mature and influence others not to make the

high-risk choices that he made. After receiving the DUI, he continued to train his squad and develop new privates. It was a life changing experience for him, and he was determined to be successful in the Army and do what must be done to regain the respect and trust of his peers and chain of command. He humbly asked to be retained in the Army.

t. His supervisor and two of his peers provided letters of support. All stated that he had a strong work ethic, was a great trainer, and had a natural ability to express and communicate his knowledge and experiences in situations that benefit the mission.

u. On 24 August 2015, the applicant's immediate commander-initiated separation under the provisions of AR 635-200, Chapter 14-12c, for commission of a serious offense.

v. On 27 August 2015, the DCG stated that he considered the circumstances surrounding the GOMOR pertaining to the applicant and all allied documents and determined that the GOMOR would be filed in the applicant's Official Military Personnel File.

w. On 27 August 2015, the separation authority approved the discharge and directed the applicant be issued an under honorable conditions (general) discharge and not be transferred to the Individual Ready Reserve.

x. The applicant was discharged on 15 September 2015. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 14-12c, in the rank/grade of specialist/E-4, and his service was characterized as under honorable conditions (general). He completed 2 years, 6 months, and 27 days of net active service this period. Additionally, his DD Form 214 shows in:

- Block 12f (Foreign Service): 3 months and 17 days
- Block 13 ((Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Afghanistan Campaign Medal with campaign star, National Defense Service Medal, Global War on Terrorism Service Medal, Army Service Ribbon, NATO Medal, and the EIB.
- Block 18 (Remarks): Member has not completed first full term of service.

4. Regulatory guidance states when an individual is discharged under the provisions of Chapter 14, AR 635-200 for misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

5. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge processing within that Board's 15-year statute of limitations.

6. 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.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge. He contends he was experiencing mental health conditions that mitigate 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 reenlisted in the Regular Army on 19 February 2013; 2) The applicant had a DUI in May and again in July 2015. He was command referred to ASAP after his first DUI; 3) The applicant was discharged on 15 September 2015, Chapter 14-12c. His service was characterized as under honorable conditions (general).

c. 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) was also examined.

d. The applicant asserts he was experiencing mental health conditions as a result of his military service, which mitigates his misconduct. The applicant was initially seen for a Command Directed evaluation at the Army Substance Abuse Program (ASAP) on 27 May 2015, as a result of his first DUI. He was not initially diagnosed with a substance abuse disorder, but he was recommended for alcohol abuse treatment. After his second DUI, the applicant was seen at the behavioral health clinic and diagnosed with Reactive Depression. The applicant was endorsing negative emotions such as low mood and anxiety in response to the negative consequences of his misconduct. He was only seen for a few sessions due to his report that his symptoms resolved. The applicant continued in substance abuse treatment at ASAP till his discharge and was diagnosed with Alcohol Abuse after his second DUI. On 20 August 2015, the applicant was provided a Mental Status Evaluation, as requested by his command for separation proceedings for a Chapter 14. The applicant was not found to meet the criteria for a psychiatric condition which would warrant disposition through medical channels, and he was psychiatrically cleared for any administrative action deemed appropriate by command. He was appropriately screened for PTSD and a traumatic brain injury.

e. A review of JLV provided insufficient evidence that the applicant has been diagnosed with a service-connected mental health condition, and he does not receive any service-connected disability for a mental health condition presently.

f. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant had condition or experience that 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 a mental health condition while on active service. There is insufficient evidence the applicant was ever diagnosed with a mental health condition beyond Reactive Depression, which was a result of the negative consequences of his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing a mental health condition while on active service. There is insufficient evidence the applicant was ever diagnosed with a mental health condition beyond Reactive Depression, which was a result of the negative consequences of his misconduct.

(3) Does the condition or experience actually excuse or mitigate the discharge? No, there is insufficient evidence the applicant was experiencing a mental health condition beyond Reactive Depression while on active service. The applicant had a history of misconduct associated with alcohol abuse. While some mental health conditions can be associated with avoidant behavior, the presence of the applicant's repeated misconduct associated with alcohol use is not sufficient evidence of a mental health disorder. In addition, the applicant has been evaluated multiple times by different behavioral health providers and found to not meet criteria for a service-connected mental health condition beyond Reactive Depression. 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 and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the repeated misconduct associated with alcohol use, the lack of remorse reflected in the applicant's statement for his misconduct, as well as 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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

5/15/2024

X

CHAIRPERSON

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. Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) set forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion,

or absences without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally considered appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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.

3. 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 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; TBI; sexual assault; sexual harassment. Boards were directed 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

5. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.

6. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//