

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 March 2024

DOCKET NUMBER: AR20230008422

APPLICANT REQUESTS: upgrade of his under other than honorable conditions characterization of service to general, under honorable conditions.

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Statement
- Multiple Certificates of Achievement, Training, Completion, and Participation
- Veteran Dorm Program Participant Agreement

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 his request is related to "Other Mental Health" issues. He did receive three Article 15s and he is not contesting the fact that he was found guilty. His concern is that he was not offered any psychological or medical help. If he had been provided assistance for his substance abuse, it is reasonable to believe he would not have received the second Article 15. It was clear that he had a substance abuse issue and he needed professional help. He was not provided such help. He was at Fort Wainwright, AK, a cold, isolated, and lonely place, far away from family and loved ones, and he felt very depressed. Had he been at a different and less isolated location, his state of mind would have been better and he would have received a better characterization of service. In any case, since his discharge, he has been clean and sober. He has bettered himself and completed several programs to make necessary and positive changes in his life. He has maintained membership in the American Legion for 7 years. He is a good citizen and loves our country. He has attached multiple certificates of training, completion, participation, and achievement, related to self-betterment programs, positive change, anger management, communication, and other related programs.

3. Review of the applicant's service records shows:

a. He enlisted in the Regular Army on 28 July 1987 and held military occupational specialty 11B, Infantryman. He was assigned to 5th Battalion, 9th Infantry, Fort Wainwright, AK, beginning around November 1987.

b. On 16 November 1988, his commander initiated a Bar to Reenlistment Certificate against him citing his misconduct as follows:

- Field Grade Article 15 (Pending) Breaking Restriction from previous Article 15 dated 31 October 1988
- Field Grade Article 15, 31 October 1988, wrongful use of marijuana (Article 112a), Drunk on duty (Article 134); Reduced to E-1, forfeiture of \$339.00 per month for 2 months, 45 days of extra duty and restriction

c. The applicant was provided with a copy of this bar. The battalion commander approved the bar on 28 November 1988.

d. On 22 December 1988, the applicant was convicted by a summary court-martial of the following charges:

- Charge I, one specification of without authority going from his appointed place of duty (Guilty)
- Charge II, one specification of being disrespectful in language towards a noncommissioned officer (Not Guilty)
- Charge III, one specification of wrongfully overindulging himself in intoxicating liquor on 14 December 1988 and twice breaking restriction on 26 October and 15 November 1988 (Guilty)

e. The court sentenced him to forfeiture of \$452.00 pay for one month and confinement for 30 days. He was confined from 22 December 1988 to 13 January 1989.

f. The complete facts and circumstances surrounding his discharge are not available for review. However, his DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 13 March 1989, in accordance with Chapter 1412b of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) due to a pattern of misconduct (Separation Code JKM, Reentry Code 3C) with an under other than honorable conditions characterization of service. He completed 1 year, 7 months, and 16 days of active service and he had 23 days of lost time due to confinement.

4. There is no indication he petitioned the Army Discharge Review Board for review of his discharge within that board's 15-years statute of limitations.

5. By regulation (AR 635-200), Soldiers are subject to separation under the provisions of paragraph 14-12c for misconduct, serious offense, or 14-12b for pattern of misconduct. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

6. In reaching its determination, the Board can consider the applicant's 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 other than honorable conditions (UOTHC) characterization of service to general, under honorable conditions. He contends he had mental health conditions that mitigates 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 into the Regular Army on 28 July 1987; 2) On 16 November 1988, his commander initiated a Bar to Reenlistment Certificate against him citing his misconduct as follows: A) Field Grade Article 15 (Pending) Breaking Restriction from previous Article 15 dated 31 October 1988; B) Field Grade Article 15 on 31 October 1988 for wrongful use of marijuana and being drunk on duty; 3) On 22 December 1988, the applicant was convicted by a summary court-martial of the following charges: A) without authority going from his appointed place of duty; B) wrongfully overindulging himself in alcohol and twice breaking restriction; 4) The complete facts and circumstances surround his discharge are not available for review. However, his DD Form 214 shows he was discharged on 13 March 1989, Chapter 1412b-pattern of misconduct with an under other than honorable conditions characterization of service.

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

d. The applicant asserts he was experiencing mental health concerns while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service. A review of JLV provided insufficient evidence 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.

e. 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 condition

or experience that mitigated his misconduct. In addition, 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 mental health condition or experience.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced mental health conditions that mitigated his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reporting experiencing mental health conditions while on active service.

(3) Does the condition experience actually excuse or mitigate the discharge? No, the applicant reported experiencing mental health conditions while in active service. There is insufficient evidence beyond self-report the applicant was experiencing a mental health condition while on active service. The applicant did engage in misconduct that can be associated with some mental health conditions, but the presence of misconduct is not sufficient evidence of a mental health condition. In addition, 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 mental health condition or experience. However, the applicant contends he was experiencing a mental health condition or experience that mitigated his misconduct, and per Liberal Consideration his assertion is sufficient for the board's consideration.

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 insufficient evidence the applicant experienced mental health concerns while on active duty. 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.

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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, 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 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. 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.

3. Army Regulation 635-200 (Personnel Separations, in effect then sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is given when the quality of the Soldier's service has generally met standards of acceptable conduct and duty performance.

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.

c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or absence without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Army policy states that an under other than honorable conditions discharge is normally considered appropriate for a Soldier discharged for misconduct.

4. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors, when taking action on applications from former service members administratively discharged under other than honorable conditions, and who have been diagnosed with PTSD by a competent mental health professional

representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

5. 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.

6. 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 (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. 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, 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. 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.

7. 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 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//