

IN THE CASE OF: ██████████

BOARD DATE: 21 March 2024

DOCKET NUMBER: AR20230008433

APPLICANT REQUESTS: his under honorable conditions (general) discharge be upgraded.

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

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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. All through basic training and advanced individual training, he developed thoughts and feelings from his experience as an active-duty recruit in his early 20s. He lists post-traumatic stress disorder (PTSD) and other mental health are related to his request.

b. The sense of fear heightened his inner trauma through recurring flashbacks during his sleep as dreams, isolation, and detachment from others while awake. During his study in psychology as a graduate student in 2022, he discovered that the inner working of human behavior could share a dynamic correlation relative to the environment and events of oneself. For example, seeking medical assistance during training is "frowned upon," while promoting sleep deprivation is considered the "norm." Heat exhaustion also became the fashion of acceptance and served as a traumatic moment to lose the balance that often aligns with rationale and sensical thinking. After his initial training as a recruit, his life was never the same. Throughout his permanent military post and life after that, circumstances would alter, and a healthy way of life quivers upon the reach of optimization; to undermine wholeness and restoration.

3. The applicant enlisted in the Regular Army on 2 October 1997 for four years. His military occupational specialty was 71L (Administrative Specialist).

4. An Alcoholic Influence Report, dated 20 February 1998, shows the applicant couldn't stay awake and had a strong alcohol smell on his breath. His sworn statement dated 20 February 1998 shows the applicant thought he entered the male's floor, and he pulled his sweatpants off (semi-intoxicated) when suddenly a female sergeant had him by his arm and pulled him into the dayroom where a specialist cadre took him into Military Police (MP) hold. At no time did he demonstrate a practice of masturbation when he was in the female floor. He meant no harm.
5. The applicant was formally counseled on 20 February 1998, after being apprehended by the MP on or about 20 February 1998 and charged with indecent exposure (substantiated).
6. The applicant accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) on 9 March 1998 for willfully disobeying a lawful order on or about 20 February 1998 and willfully and wrongfully exposing, in an indecent manner to public view, his penis on or about 20 February 1998. He demanded trial by court martial.
7. A Report of Mental Status Evaluation, dated 24 March 1998, shows the applicant had the mental capacity to understand and participate in the proceedings, was mentally responsible, met retention requirements, and there was no psychiatric disease or defect which warranted disposition through medical channels. He was cleared for any administrative action deemed appropriate by command.
8. The applicant was formally counseled on 31 March 1998, for misconduct and his duty performance.
9. The applicant's immediate commander notified him, that he was initiating action to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 14, for misconduct-commission of serious offenses. The recommendation was based upon the applicant failing to obey a lawful order and wrongfully exposing himself in an indecent manner to public view. His commander recommended he receive a under honorable conditions (general) discharge.
10. The applicant consulted with legal counsel on 28 April 1998 and was advised of the basis for his separation under the provisions of AR 635-200, Chapter 14 and the procedures and rights that were available to him. He waived representation, consideration of his case by an administrative separation board contingent upon his receiving a characterization of service no less than under honorable conditions (general).

a. He acknowledged that he may expect to encounter substantial prejudice in civilian life if discharged under honorable conditions (general).

b. He elected not to submit statements in his own behalf.

11. The applicant's immediate commander formally recommended the applicant be separated from the U.S. Army prior to his expiration term of service because of the commission of serious offenses.

12. The applicant's chain of command recommended approval of the discharge and elimination of the applicant from service due to misconduct on 22 April 1998.

13. The separation authority approved the recommended discharge on 26 April 1998 and directed issuance of a general discharge.

14. The applicant was discharged on 6 May 1998. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, paragraph 14-12c, for misconduct (commission of serious offenses). His service was characterized as under honorable conditions (general). He completed 7 months and 5 days of net active service.

15. Soldiers are subject to separation under the provisions AR 635-200, Chapter 14, for misconduct. A discharge under other than honorable conditions is normally appropriate; however, the separation authority may direct a general discharge if such is merited by the overall record.

16. On 29 September 2000, the Army Discharge Review Board (ADRB) determined the applicant was properly and equitably discharged and denied his request for a change in the character and/or reason of his discharge.

17. On 8 January 2013, the ABCMR determined the ADRB could not conduct another records review since the board previously heard his case on 27 September 2000 as a records review.

18. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

19. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, integrated Personnel Electronic Records Management System (iPERMS), and the applicant's medical records in the Armed Forces Health Longitudinal

Technology Application (AHLTA) and Joint Legacy Viewer (JLV) and made the following findings and recommendations: While the applicant marked PTSD and Other Mental Conditions on the application, documentation is void of an in-service diagnosis. Moreover, although the VA diagnosed Unspecified Depressive Disorder, he is not service connected for the condition. Lastly, the applicant did not submit medical records in support of his assertions. Accordingly, there are no diagnoses for mitigation currently. However, the Board could consider the applicant's assertion of mistreatment during training in their deliberation.

b. The applicant was discharged on 06 May 1998 under AR 635-200, para 14-12c, Commission of Serious Offense, with a General characterization. The basis for separation was failure to obey a lawful order and wrongfully exposing himself in an indecent manner to public view. The applicant is requesting a characterization upgrade. The applicant marked PTSD and Other Mental Health on the application.

c. Due to the period of service, active-duty electronic medical records are void.

d. The applicant is not service connected for any conditions. In December 2015, he went to the VA ER requesting help for alcoholism. He noted recent release from prison for a DUI. He was referred to outpatient for further assessment and treatment.

e. In January 2016, the applicant requested inpatient alcohol treatment. He reported after release from jail in October 2015, he completed an intensive outpatient program with ongoing outpatient care. However, outpatient would terminate in 6-9 months and he feared he'd relapse afterward. He reported excessive alcohol use beginning in-service secondary to feeling targeted and physically abused while in training. He noted he "decided to leave the military due to his alcohol use problem." Since discharge, he had six DUIs in two states. His most recent alcohol use was due to psychosocial stressors including divorce, unemployment, and family relational difficulties. Prior to the incarceration, he'd attended a mandatory outpatient program due to the prior DUIs. The provider diagnosed Alcohol Use Disorder and Unspecified Depressive Disorder. The applicant did not return.

f. In September 2017, the applicant was seen for VA Compensation and Pension (C&P) exams for medical conditions; he was not service connected. There were no further contacts.

g. In August and September 2021, VA records document two COVID vaccinations. There are no further contacts.

h. In May 2023, the applicant reached out for housing assistance noting he was a student. He was provided resources.

i. The separation packet contains a Chapter Mental Status Exam (MSE). The applicant was cleared with no concerns or diagnosis.

j. The separation packet contains the Chapter physical. The applicant did not endorse behavioral health symptoms, conditions, or treatment.

**Kurta Questions:**

(1) Does the applicant have a condition or experience that may excuse or mitigate the discharge? YES. The applicant is asserting mistreatment in-service.

(2) Did the condition exist or experience occur during military service? YES. The applicant is asserting mistreatment in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? PARTIAL. If the Board accepts the assertion of mistreatment, disobeying a lawful order would be mitigated. However, wrongfully exposing himself in an indecent manner to public view would not be mitigated.

(4) Does the condition or experience outweigh the discharge? NO. If the Board accepts the assertion of mistreatment, that does not outweigh the unmitigated misconduct.

**BOARD DISCUSSION:**

The Board carefully considered the applicant's request, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's mental health claim and the review and conclusions of the ARBA Medical Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct not being mitigated by a mental health condition. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

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.

6/27/2024

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, 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 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. AR 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.

c. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if merited by the Soldier's overall record.

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 Service Discharge Review Boards (DRB) and Service 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. 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. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service DRBs and BCM/NRs 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//