

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 February 2024

DOCKET NUMBER: AR20230008447

APPLICANT REQUESTS:

- upgrade of his general under honorable conditions discharge to honorable
- change reentry code

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

- DD Form 149 (Application for Correction of Military Record)
- Letter addressed to the Board
- Separation packet
- Veterans Affairs (VA) Rating Decision
- PHR Ambulatory Summary

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, via letter addressed to the Board:

a. During his time in service, he took pride in being the best Soldier he could be. We all have made mistakes and his cost him the most important career he could have ever asked for. He feels that he was not afforded a second chance like most to correct his actions. He was dealing with depression and the passing of close friends during his past deployment. He made the decision on Christmas break to smoke marijuana with old friends back home to relieve some stress, but ultimately it wasn't worth it.

b. During his separation process, he was given 45 days of extra duty, reduced in rank from E-4 to E-3 and was told after 180 days, if he stayed out of trouble, he would be eligible to get his rank back. These terms were given to him at Brigade level but was informed by his first sergeant that they would be pursuing a chapter. He did not understand as he had been told something totally different. He was furious because he

had never been in trouble and this was his only mistake. He was treated like the problem child.

c. Maybe if he had gone and spoke with a JAG lawyer, he would still be in. He does not want to keep stressing about what could have been. He was granted a general discharge; however, he cannot access his education benefits that he invested in. He would really like his discharge upgraded so that he can pursue his education further.

3. The applicant provides:

a. Separation packet, which will be detailed in paragraphs 4 below.

b. Veterans Affairs (VA) Rating Decision, dated 22 February 2021, reflects the applicant's evaluation of PTSD, which was currently 30 percent disabling, was increased to 50 percent effective 37 January 2021.

c. PHR Ambulatory Summary (3 pages).

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

a. He enlisted in the Regular Army on 30 March 2010 for a period of three years..

b. On 24 February 2014, the applicant accepted nonjudicial punishment (NJP) for wrongful use of marijuana, a schedule I controlled substance, between on or about 7 December 2013 and 7 January 2014. The punishment imposed was forfeiture of \$1,107.00 pay per month for two months, suspended, to be automatically remitted if not vacated before 23 August 2014, and extra duty for 45 days. As of note, there is indicator that a reduction in rank from E-4 to E-3 was a part of the punishment imposed.

c. On 3 April 2014, the applicant was notified by his commander of his intent to separate him under the provision of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 14-12c(2), for misconduct – abuse of illegal drugs, with a characterization of service of general under honorable conditions. Specifically, for wrongful use of a controlled substance (marijuana) between on or about 7 December 2013 and 7 January 2014.

d. On 7 April 2014, he acknowledged receipt of the foregoing notice from his commander that informed him of the basis for the contemplated action to separate him under AR 635-200, chapter 14-12c(2), and of the rights available to him. He was advised of his right to consult with counsel prior to submitting his Election of Rights.

e. On 8 April 2014, he consulted with legal counsel who advised his of the basis for the contemplated separation action for misconduct, the type of discharge he could

receive and its effect on further enlistment or reenlistment, the possible effects of this discharge, and of the procedures/rights available to him. He elected not to submit a statement in his own behalf. He also acknowledged he:

- understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him
- understood he could be ineligible for many or all benefits as a veteran under Federal and State laws as a result of the issuance of a discharge under other than honorable conditions
- understood if he received a discharge characterization of less than honorable, he could make an application to the Army Discharge Review Board (ADRB) or the ABCMR for an upgrade, but he understood that an act of consideration by either board did not imply his discharge would be upgraded

f. On 11 April 2014, the separation authority approved the applicant's discharge under the provisions of AR 635-200, chapter 14-12c(2), misconduct – abuse of illegal drugs, with his service characterized as general under honorable conditions.

g. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 1 May 2014, under the provisions of AR 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c(2), misconduct (drug abuse), separation code JKK, Reentry Code 4, and characterization of general under honorable conditions. He served 4 years, 1 month, and 2 days of net active service this period.

5. The applicant applied to the ADRB for an upgrade of his discharge on 29 July 2015. The ADRB determined the applicant was properly and equitably discharged. Accordingly, his request for a change in the character and/or reason for discharge was denied.

6. AR 635-200 states, action will be taken to separate a member for misconduct such as drug abuse. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Drug Abuse), with a separation code of JKK, and a reentry code of 4.

8. 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.

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his general under honorable conditions discharge to honorable. In addition, he is requesting a

change to his reentry code. He contends he experienced PTSD that mitigates 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 30 March 2010; 2) On 24 February 2014, the applicant accepted nonjudicial punishment (NJP) for wrongful use of marijuana; 3) On 1 May 2014, the applicant was discharged-Chapter 14-12c(2) by reason of misconduct (drug abuse) with a general, under honorable conditions characterization of service, a separation code of JKK, and a reentry code; 4) The applicant applied to the ADRB for an upgrade of his discharge on 29 July 2015. The ADRB reviewed and denied his request.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and available medical records. The Armed Forces Health Longitudinal Technology Application (AHLTA) and VA's Joint Legacy Viewer (JLV) were also examined.

c. The applicant asserts he was experiencing PTSD while on active service. There is clear evidence the applicant was enrolled the military substance abuse treatment in February 2014 after testing positive for marijuana. He was Command referred and diagnosed with Cannabis-related disorder. The applicant was enrolled and completed the military substance abuse treatment program. He was seen for a Mental Status Evaluation related to his Chapter 14 separation proceedings on 27 February 2014. The applicant was not diagnosed with a mental health condition including PTSD. He was psychologically cleared for any administrative action deemed appropriate by the separation authority.

d. A review of JLV provided evidence the applicant has been diagnosed and treated for service-connected PTSD. The applicant receives service-connected disability for PTSD (50%). 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 mitigated his misconduct.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed with service-connected PTSD by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed with service-connected PTSD by the VA.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence that the applicant has been diagnosed with service-connected PTSD. The applicant had one incident of reported substance use during his military service after returning from his deployment. PTSD can be associated with

avoidant behavior. The applicant's substance use could be an attempt to self-medicate or to avoid his negative emotional state. Avoidant behaviors are often a natural sequelae to PTSD. Therefore, there is sufficient evidence at this time that the applicant warrants a discharge upgrade with a narrative reason for separation to be changed to "Secretarial Authority."

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was partially 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.

a. The evidence shows the applicant was separated for misconduct – commission of a serious offense after he wrongfully used marijuana. He completed 4 years, 1 month, and 2 days of net active service this period and received a characterization of service as general under honorable conditions. The Board found no error or injustice in his separation processing. The Board also 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 official's finding sufficient evidence to support the applicant had condition or experience that mitigated his misconduct, and thus determined an honorable characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board further unanimously determined no change to the reason for separation and/or associated Separation/RE codes is warranted as the underlying reason for separation remains the same.

b. The Board also noted that the applicant was separated under the provisions of chapter 14-12c of AR 635-200 due to misconduct – commission of a serious offense. Such separation has a Separation Code of JKK and the corresponding RE Code associated with this Separation Code is RE-4, which is properly listed on his DD Form 214. The Board found no error or injustice in his RE Code.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

█ █ █ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 for the period ending 1 May 2014, showing:

- Character of Service: Honorable
- Separation Authority: No Change
- Separation Code: No Change
- Narrative Reason for Separation: No Change

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to changing his Reentry Code.

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

a. Paragraph 3-7a states 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. Paragraph 3-7b states 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, of the version in effect at the time, 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, and convictions by civil authorities. It provided that 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 appropriate for a Soldier discharged under this chapter. However, the separation authority could direct an honorable discharge if merited by the Soldier's overall record.

2. 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.

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 (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 based on 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.

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.

//NOTHING FOLLOWS//