

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 March 2024

DOCKET NUMBER: AR20230008612

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge
- a video/telephonic appearance before the Board
- correction to item 1 (Name) of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his first name as "Jxxxy" instead of "Jxxxxe"

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, 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 he did not smoke any drugs while he was in the Army. He was wrongfully accused of a crime he did not commit and was never given the option to seek legal advice. On his DD Form 149, the applicant indicates post-traumatic stress disorder (PTSD) is related to his request.
3. The applicant enlisted in the Regular Army on 15 March 1978. His DD Form 4 (Enlistment or Reenlistment Agreement) shows his first name as "Jxxxxe." He served in Military Occupational Specialty (MOS) 76Y (Unit Supply Specialist). The highest rank/grade he held was private first class/E-3.
4. On 21 March 1979, he accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for on or about 22 January 1979, without authority, sell military property of the United States of a total value of about \$82.63. His punishment was restriction and extra duty for 15 days (suspended for 60 days).
5. On 21 June 1979, he accepted NJP under Article 15, of the UCMJ, for on or about 8 June 1979, failure to go at the time prescribed to his appointed place of duty. His

punishment was reduction to private/E-2 (suspended for 60 days) and extra duty for 7 days. His first name is shown as "Jxxxxy" on this document.

6. On 21 February 1980, court-martial charges were preferred against the applicant. His DD Form 458 (Charge Sheet) shows he was charged with on or about 20 December 1979, wrongfully having in his possession one hand rolled cigarette containing marijuana.

7. The applicant consulted with legal counsel on 9 April 1980 and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a under other than honorable conditions discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service - in lieu of trial by court-martial. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

b. He elected not to submit a statement in his own behalf. He endorsed this document with his first name shown as "Jxxxxe."

8. The applicant's chain of command recommended approval of the applicant's request for discharge and the issuance of an under other than honorable conditions discharge. The immediate commander noted the applicant failed to meet even the minimum standards desired of a Soldier. He is unable to be in the proper place at the proper time and in the proper uniform. He has proven himself to be unreliable in his MOS.

9. On 17 April 1980, the applicant underwent a complete mental status evaluation as part of his consideration for discharge due to his misconduct. His mental status evaluation noted he met the retention standards, demonstrated no mental illness, was mentally responsible, was able to distinguish right from wrong and to adhere to the right, and had the mental capacity to understand and participate in board proceedings.

10. The applicant's chain of command recommended approval of the applicant's request for discharge and the issuance of an under other than honorable conditions discharge.

11. On 22 April 1980:

a. The separation authority approved the applicant's request for discharge in lieu of court-martial and directed the issuance of an Under Other Than Honorable Discharge Certificate and reduction to the lowest enlisted grade.

b. The applicant's unit reported him absent without leave and on 24 April 1980, his duty status changed to present for duty when he surrendered to military authorities.

12. The applicant was discharged on 1 May 1980, under the provisions of AR 635-200, Chapter 10, for administrative discharge conduct triable by court-martial, with an under other than honorable conditions characterization of service in the grade of E-1. He received a Separation Code of "JFS" and a reenlistment (RE) code "RE-3B." His DD Form 214 contains the following entries:

a. His first name is shown as "Jxxxxe."

b. He completed 2 years, 1 month, and 15 days of active service.

c. Block 29 (Dates of Time Lost During this Period) the entry "800422 – 800423."

13. The applicant petitioned the Army Discharge Review Board (ADRB) for upgrade of his service characterization. On 17 October 1983, after careful consideration the ADRB determined he was properly and equitably discharged.

14. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

15. 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.

16. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable. On his DD Form 149, the applicant indicates post-traumatic stress disorder (PTSD) is related to his request.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- Applicant enlisted in the RA on 15 March 1978.
- On 21 March 1979, he accepted non-judicial punishment (NJP) under Article 15, of the Uniform Code of Military Justice (UCMJ), for on or about 22 January 1979, without authority, selling military property of the United States.
- On 21 June 1979, he accepted NJP under Article 15, of the UCMJ, for on or about 8 June 1979, failure to go at the time prescribed to his appointed place of duty.
- On 21 February 1980, court-martial charges were preferred against the applicant. His DD Form 458 (Charge Sheet) shows he was charged with on or about 20 December 1979, wrongfully having in his possession one hand rolled cigarette containing marijuana.
- Applicant was discharged on 1 May 1980, under the provisions of AR 635-200, Chapter 10, for administrative discharge conduct triable by court-martial, with an UOTHC characterization of service in the grade of E-1. He received a Separation Code of "JFS" and a reenlistment (RE) code "RE-3B."
- Applicant petitioned the Army Discharge Review Board for upgrade of his service characterization. On 17 October 1983, after careful consideration the Board determined he was properly and equitably discharged.

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, DD Form 214, ABCMR Record of Proceedings (ROP), and documents from his service record and separation. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant states he did not smoke any drugs while he was in the Army. He was wrongfully accused of a crime he did not commit and was never given the option to seek legal advice.

e. Due to the time of service, no active-duty electronic medical records were available for review. The applicant submitted hard copy documentation from his time in service. On 17 April 1980, the applicant underwent a mental status evaluation for the purpose of separation. His mental status evaluation shows the applicant had no psychiatric condition or diagnosis, he met retention standards, was mentally responsible, was able to distinguish right from wrong and to adhere to the right, and had the mental capacity to understand and participate in board proceedings.

f. The VA electronic record available for review shows the applicant is not service connected for any BH condition. A note dated 4 February 2005 indicates the applicant presented to the VA emergency department requesting help with his substance abuse problem. The applicant reported daily alcohol and crack cocaine use. He reported a history of having been admitted to a VA inpatient rehabilitation program in 1989, for treatment. The applicant was referred to a local county program since he was ineligible for treatment via the VA. He was diagnosed with Polysubstance Dependency. Another encounter, dated 15 September 2023, indicates the applicant was service connected for treatment purposes only due to a medical condition. The applicant has been provided with ongoing social services support due to issues with homelessness. An in-depth intake assessment, 29 December 2023, once again did not identify any mental health concerns and notes his chief complaint as chronic homelessness. A note, 5 January 2024 indicates the applicant is currently stably housed and progressing on his goals.

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition/diagnosis that mitigates his misconduct.

#### Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant contends a mitigating condition.

(2) Did the condition exist or experience occur during military service? Yes. The applicant selected PTSD as related to his request on his application.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant did not provide any medical documentation substantiating his contention of PTSD. There is no medical documentation of an in-service BH diagnoses and the VA has not diagnosed the applicant with any BH condition other than substance abuse, despite service-connecting the applicant for treatment purposes. The applicant has been repeatedly assessed and has received ongoing support via the VA related to his housing issues and medical concerns, no BH condition has been identified. However, per Liberal Consideration the applicant's assertion of PTSD warrants consideration by the board.

#### 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 the applicant did not provide any medical documentation substantiating his contention of PTSD and his record is void of any medical documentation the applicant as diagnosed with a behavioral health condition. Based on a preponderance of the evidence, the Board determined the characterization the applicant received upon separation was not in error or unjust.

3. The applicant's request for a video/telephonic appearance was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a video/telephonic appearance is not necessary to serve the interest of equity and justice in this case.

4. The Board determined the evidence of record shows the applicant used the contested middle name during his entire period of service. The Army has an interest in maintaining the integrity of its records for historical purposes. The information in those records must reflect the conditions and circumstances that existed at the time the records were created, unless there is sufficient evidence to show a material error or injustice.

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. Title 10, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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. AR 15-185 (ABCMR) states 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.
4. AR 635-5 (Personnel Separations - Separation Documents), in effect at the time, prescribed the separation documents that were prepared for individuals upon retirement, discharge, or release from active military service or control of the Army. It established standardized policy for preparing and distributing DD Form 214. The purpose of the separation document is to provide the individual with documentary evidence of his or her military service at the time of release from active duty, retirement, or discharge. It is important that information entered on the form be complete and accurate, reflective of the conditions as they existed at the time of separation.
5. AR 635-200, in effect at the time, set forth the primary authority for separating enlisted personnel.
  - a. Chapter 10 states in part, a member who has committed an offense or offenses, the punishment for any of which, under the UCMJ and the Manual for Court-Martial, include bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. In addition, the request for discharge may be submitted at any stage in the processing of the charges until the court-martial convening authority's final action on the case. Commanders will also ensure that a member will not be coerced into submitting a request for discharge in lieu of trial by court-martial. The member will be given a reasonable time (not less than 72 hours) to consult with a consulting counsel and to consider the wisdom of submitting such a request for discharge.
  - b. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient



performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability, and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. An under honorable conditions (general), discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. An under other than honorable discharge is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and in lieu of trial by court-martial.

6. 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.

7. 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//