

IN THE CASE OF: ██████████

BOARD DATE: 20 March 2024

DOCKET NUMBER: AR20230008699

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

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, he was pulled over for driving under the influence (DUI) and discharged for misconduct. He was self-medicating with alcohol, which was related to post-traumatic-stress disorder (PTSD). He was unaware that his condition was manifesting destructive behavior. His service record was impeccable until this time. He received numerous awards and had two honorable discharges.
3. The applicant enlisted in the Regular Army on 11 January 1993 for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty 91B (Medical Specialist). He reenlisted on 30 May 1995 and 9 December 1996. The highest rank he attained was sergeant/E-5.
4. The applicant received an administrative reprimand from the Assistant Division Commander (Support), Headquarters, 25th Infantry Division (Light), Schofield Barracks, HI, on 12 May 1998, for driving a motor vehicle while his blood alcohol content was .138 percent (%). He was further informed the reprimand was an administrative action, not punishment under the Uniform Code of Military Justice, and the reprimand may be filed in his Official Military Personnel File (OMPF). The applicant could submit matters for consideration prior to the final filing decision.
5. In a statement in his own behalf, dated 1 June 1998, the applicant stated, in effect, he recognized the seriousness of the incident and the danger he placed himself and

others in. No injury was inflicted. The shame and negative consequences were enough to ensure it would never happen again. It was an isolated incident of poor judgment. He requested the letter of reprimand remain in his local file.

6. The applicant's immediate and intermediate commanders recommended the letter of reprimand be filed in his OMPF. On 7 July 1998, the Assistant Division Commander (Support) directed the letter of reprimand be filed in the applicant's OMPF.

7. The applicant's immediate commander notified the applicant on 10 August 1998 of her intent to initiate separation action against him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12c, by reason of commission of a serious offense. The commander cited the applicant's DUI as the specific reason for the action. The applicant acknowledged receipt of the notification.

8. The applicant consulted with counsel on that same date. He was advised of the basis for the contemplated separation action, the rights available to him, and the effect of a waiver of his rights. He elected not to submit a statement in his own behalf.

9. The applicant's immediate commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 14-12c, by reason of commission of a serious offense. The intermediate commander reviewed and concurred with the recommendation, further recommending the issuance of an under honorable conditions (general) characterization of service.

10. The separation authority approved the recommended separation action on 10 August 1998. She further directed the issuance of an under honorable conditions (general) characterization of service and waiver of transfer to the Individual Ready Reserve (IRR).

11. The applicant was discharged on 9 December 1998, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of misconduct. His DD Form 214 (Certificate of Discharge or Release from Active Duty) confirms his character of service was under honorable conditions (general), with separation code JKQ and reentry code RE-3. He was credited with 5 years, 10 months, and 29 days of net active service, with 1 year and 19 days of foreign service. He was authorized or awarded the:

- Army Lapel Button
- Army Commendation Medal (4th award)
- Army Achievement Medal (3rd award)
- Army Good Conduct Medal (2nd award)
- National Defense Service Medal
- Southwest Asia Service Medal with three bronze service stars

- Noncommissioned Officers Professional Development Ribbon with Numeral 2
- Army Service Ribbon
- Kuwait Liberation Medal (K)
- Expert Field Medical Badge
- Air Assault Badge
- Driver and Mechanic Badge with Driver-W bar

12. The applicant was granted a waiver of disqualification and enlisted in the Army National Guard on 15 August 2000 for a 6-year period.

13. He was honorably discharged from the Army National Guard and transferred to the IRR on 25 September 2002, by reason of in the best interest of the State. His National Guard Bureau (NGB) 22 (Report of Separation and Record of Service), shows he was credited with 2 years, 1 month, and 11 days of net service this period.

14. A letter from the Army Review Boards Agency (ARBA), Case Management Division (CMD), dated 25 October 2023, shows CMD requested a copy of any Redacted Criminal Investigation Division (CID) reports and Military Police Reports (MPR) which pertained to the applicant.

15. Additionally, ARBA, CMD sent a letter to the applicant on 26 October 2023, requesting copies of medical documents to support his claim of PTSD. To date, no additional documentation has been received.

16. CID responded to CMD's request on 21 November 2023, and provided a redacted copy of MPR Number 00600-98-MPC208, which further confirms the applicant was cited for DUI, on the installation, at Honolulu, HI, on 19 April 1998. The resultant punishment included command directed enrollment in the Army Drug and Alcohol Prevention and Control Program, suspended driving privileges on all U.S. Army installations by the Schofield Barracks Community for one year, and a General Letter of Reprimand.

17. Regulatory guidance provides when an individual is discharged under the provisions of Army Regulation 635-200, Chapter 14, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. Characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate.

18. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

19. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) characterization of service to honorable.

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 11 January 1993. He reenlisted on 30 May 1995 and 9 December 1996.
- Applicant received an administrative reprimand from the Assistant Division Commander (Support), Headquarters, 25th Infantry Division (Light), Schofield Barracks, HI, on 12 May 1998, for driving a motor vehicle while his blood alcohol content was .138 percent (%). He was further informed the reprimand was an administrative action, not punishment under the Uniform Code of Military Justice, and the reprimand may be filed in his Official Military Personnel File (OMPF). The applicant could submit matters for consideration prior to the final filing decision.
- In a statement in his own behalf, dated 1 June 1998, the applicant stated, in effect, he recognized the seriousness of the incident and the danger he placed himself and others in. No injury was inflicted. The shame and negative consequences were enough to ensure it would never happen again. It was an isolated incident of poor judgment. He requested the letter of reprimand remain in his local file.
- Applicant's immediate commander notified the applicant on 10 August 1998 of her intent to initiate separation action against him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12c, by reason of commission of a serious offense. The commander cited the applicant's DUI as the specific reason for the action. The applicant acknowledged receipt of the notification.
- Applicant was discharged on 9 December 1998, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of misconduct. His DD Form 214 (Certificate of Discharge or Release from Active Duty) confirms his character of service was under honorable conditions (general), with separation code JKQ and reentry code RE-3.
- Applicant was granted a waiver of disqualification and enlisted in the Army National Guard on 15 August 2000 for a 6-year period. He was honorably discharged from the Army National Guard and transferred to the IRR on 25 September 2002, by reason of in the best interest of the State.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, his ABCMR Record of Proceedings (ROP), DD Form 214, and documents from his service record and separation packet. 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 was pulled over for driving under the influence (DUI) and discharged for misconduct. He was self-medicating with alcohol, which was related to post-traumatic-stress disorder (PTSD). He was unaware that his condition was manifesting destructive behavior. His service record was impeccable until this time. He received numerous awards and had two honorable discharges.

e. Due to the time of service no active-duty electronic medical records were available for review. The applicant is 80% service connected, including 70% for PTSD. The applicant had a mental health contact after calling the Veteran's Crisis Line on 31 December 2014 due to anger, agitation, and anxiety. The applicant participated in and initial mental health assessment with the VA, on 13 January 2015, and he was referred to the Trauma Recovery Outpatient Program (TRP). He did not present for his intake appointment, or subsequent appointments, and the referral was cancelled. A note dated 12 December 2015 states the applicant is service connected for PTSD but was refusing mental health treatment at the time. The applicant has connected with the VA for medical care but has remained reluctant to participate in mental health services. Although the VA electronic record does not evidence treatment for mental health related symptoms, the applicant's service connection provides sufficient evidence of a mitigating condition.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence the applicant had a behavioral health condition during military service that mitigates his discharge.

#### 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 asserts a mitigating condition.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 70% service-connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to a DUI. Given the nexus between PTSD and the use of alcohol to alleviate/cope with the symptoms of his behavioral health condition, the applicant's DUI is mitigated by his diagnosis of PTSD.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board considered the advising official finding sufficient evidence the applicant had a behavioral health condition during military service that mitigates his discharge. The opine found there to be a nexus between PTSD and the use of alcohol to alleviate/cope with the symptoms of his behavioral health condition, the applicant's DUI is mitigated by his diagnosis of PTSD.

2. The Board determined, the applicant provided no post service achievements or character letters of support to attest to his honorable conduct for the Board to weigh a clemency determination. The Board, however determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of driving a motor vehicle under the influence with a blood alcohol content of .138 %, three times over the legal limit. Furthermore, the Board found the applicant is not remorseful for his actions whereas in his self-authored response to his division commander he noted that no injury was inflicted, and his shame and negative consequences are enough. Additionally, evidence shows on several occasions the applicant refused mental health treatment. The Board found no evidence the applicant was unable to distinguish right from wrong and determined his actions put the lives of others in jeopardy while operating his personal owned vehicle on a military installation while intoxicated three times over the legal limit.

3. The Board, notwithstanding the advising official findings, agreed there is insufficient evidence to support mitigation of the applicant's DUI as a noncommissioned officer. The Board carefully considered the applicant's two prior periods of honorable service along with his awards and decorations. However, the Board noted the applicant was discharged for misconduct and was provided an under honorable conditions (General) characterization of service. Furthermore, the Board agreed that the applicant's discharge characterization is appropriate based on his misconduct and did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an honorable discharge. The Board, during deliberation determined the applicant had prior periods of honorable service which is not currently reflected on his DD Form 214 and recommended that change be completed to more accurately show his period of honorable service by granting a partial upgrade to correct his DD Form 214.

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 amending the applicant's DD Form 214 for the period ending 9 December 1998 by adding the following entry in item 18 (Remarks), CONTINUOUS HONORABLE SERVICE FROM 19930111 UNTIL 19961208.

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 an upgrade of the applicant's under honorable conditions (general) characterization of service.

3/25/2024

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.

ADMINISTRATIVE NOTE(S): N/A

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. Section 1556 of Title 10, USC, 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. 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.
3. Army Regulation 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 (UOTHC) was normally considered appropriate. However, the separation authority could direct a general discharge if such was merited by the Soldier's overall record.



4. Army Regulation 635-5 (Personnel Separations), 15 August 1979, in effect at the time did not provide for an additional entry for continuous honorable active service, when a Soldier who previously reenlisted without being issued a DD Form 214 was discharged with any characterization of service except honorable. However, an interim change, published on 2 October 1989 does provide for such an entry.

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 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 (TBI); sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

6. 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 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//