

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 March 2024

DOCKET NUMBER: AR20230008800

APPLICANT REQUESTS:

- a. Correction of his DD Form 214 (Certificate of Discharge or Release from Active Duty) for the period ending 15 April 1988 to upgrade his character of service from under honorable conditions to honorable due to his disability (traumatic brain injury (TBI)).
- b. A personal appearance before the Board via video/telephone.

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

DD Form 149 (Application for Correction of Military Record), 12 May 2023

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, in effect, at the time of his discharge, his TBI was affecting his judgement and behavior. He was informed he could visit mental health but it was not made available to him.
3. The applicant's record is incomplete. His separation processing documentation or any adverse counseling's is not available for the Board's review. However, the applicant's service record does reflect the following:
 - a. DD Form 4 (Enlistment/Reenlistment Document) shows he enlisted in the Regular Army on 4 December 1985.
 - b. His DA Form 2-1 (Personnel Qualification Record) shows in item 18 (Appointments and Reduction): Reduced to the rank of PV1 on 22 October 1987.

c. Memorandum: Subject: Letter of Reprimand, dated 17 July 1987, reflects on 4 July 1987 he received a letter of reprimand for driving while intoxicated. Test conducted determined his blood alcohol content was .19 percent.

d. On 22 October 1987, he received non-judicial punishment under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for assault by cutting another service member with a letter opener above the knee, with a means to likely produce grievous bodily harm, and biting a service member on his upper right arm on 4 July 1987. He was found guilty and received a reduction in grade to E-1, forfeitures of pay of \$204.00 for two months, and 45 days restriction and extra duty. He did not appeal.

e. On 3 March 1988, the applicant's commander received a summary of the Army Drug and Alcohol Prevention and Control Program (ADAPCP) of his rehabilitation efforts as follows:

- primary substance of abuse was alcohol
- medical evaluation was not conducted
- he was provided with resources for rehabilitation such as counseling, alcoholics anonymous (AA) meetings, medication, Track II (nonresident rehabilitation, individual or group counseling), urine analysis and command consultation
- he did not make satisfactory progress as he failed to comply with treatments and for testing positive for alcohol while on duty
- he was not addicted to alcohol
- ADAPCP resources were exhausted, and separation was recommended

f. On 4 April 1988, his command recommended discharge pursuant to Army Regulation (AR) 635-200, Chapter 9 (Alcohol or Other Drug Abuse Rehabilitation Failure) and recommended that he be furnished a general discharge, due to failure of rehabilitation and a failure to comply with treatments.

g. On 6 April 1988, the applicant was advised and acknowledged his pending separation. He understood the following:

- he was afforded the opportunity for consultation
- he was advised of the separation action by his counsel
- he did not submit statements on his behalf
- he understood that failure to appear before a separation board would wave his rights
- he understood that he may encounter prejudice in life with a general discharge
- he understood that he may apply to ABCMR for an upgrade to his discharge

- he understood that up to the date of his separation, he could have withdrawn his waiver and requested an administrative separation board
- he understood that he could not enlist in the Army for a period of two years after discharge.

h. On 7 April 1988, the applicant was notified that, after consulting with ADAPCP Rehabilitation Team, his command determined that further rehabilitative efforts were not practical, rendering the applicant a rehabilitative failure and recommend that he be given a general discharge pursuant to Army Regulation 635-200, Chapter 9 (Alcohol or Other Drug Abuse Rehabilitation Failure).

i. On 11 April 1988, the separation authority directed that the applicant be separated from the Army due to personal abuse of alcohol or other drugs and the impracticality of further rehabilitation efforts and that he be furnished a General Discharge Certificate, with an SPD code of "JPD".

h. His DD Form 214 shows he was discharged on 15 April 1988 for alcohol abuse and rehabilitation failure. He completed 2 years, 4 months, and 12 days of net active service this period. This document also shows in:

- Item 23 (Type of Discharge): Discharge
- item 24 (Character of Service): Under Honorable Conditions (General)
- item 25 (Separation Authority): Army Regulation 635-200, Chapter 9
- Item 26 (Separation Code): "JPD"
- Item 27 (Reenlistment Code): RE-3
- item 28 (Narrative Reason for Separation): Alcohol abuse-rehabilitation failure

i. The applicant did not provide any medical documentation to support his claim TBI.

4. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting a discharge upgrade and, in essence, a referral to the Disability Evaluation System (DES). On his DD Form 149, he notes that traumatic brain injury (TBI) is an issue related to his request. He states:

“At the time of my discharge, my TBI was affecting my judgement and behavior. Was informed to go to mental health but was not made available. I wish I had known back then the extent of my injuries from the assault.”

c. The Record of Proceedings outlines the applicant’s military service and the circumstances of the case. The applicant’s DD 214 for the period of service under consideration shows he entered the regular Army on 4 December 1985 and received an under honorable conditions (general) discharge on 15 April 1988 under the separation authority provided in chapter 9 of AR 635-200, Personnel Separations – Enlisted Personnel (5 July 1984): Alcohol or Other Drug Abuse Rehabilitation Failure.

d. No documentation was submitted with the application. Because of the period of service under consideration, there are no records in AHLTA or iPERMS.

e. The applicant received a General Officer Memorandum of Reprimand on 17 July 1987 for “driving while intoxicated on 4 July 1987. Test conducted determined your blood alcohol content was .19 percent.”

f. The applicant under evaluation for and was entered into the Army’s Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) on 22 July 1987.

g. He received an Article 15 on 22 October 1987 for the 4 July DWI, for assaulting a fellow Soldier by cutting him with a letter opener on 4 July 1987, and for unlawfully biting a fellow Soldier with his teeth on 17 August 1987.

h. In a 3 March 1988 memorandum to his company commander, an ADAPCP Alcohol and Drug Control Officer informed the commander that “Further rehabilitation efforts in the military environment are not justified in light of the Soldier’s lack of progress and discharge from military service should be effected.”

i. On 4 April 1988, his company commander informed the applicant of his initiation of action to separate him from the Army under provisions in chapter 9 of AR 635-200. His discharge was approved by the battalion commander on 11 April 1988.

j. There is no evidence the applicant had a mental health or other medical condition which would have failed the medical retention standards of chapter 3, AR 40-501, Standards of Medical Fitness and been a cause for referral to the DES prior to his discharge. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of her office, grade, rank, or rating prior to his discharge.

k. JLV shows he was awarded a 40% VA service-connected disability rating for traumatic brain disease effective 26 April 2017. He has no service-connected mental health conditions but has been diagnosed with non-service-connected PTSD.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: TBI

(2) Did the condition exist or experience occur during military service? YES: TBI

(3) Does the condition or experience actually excuse or mitigate the discharge? NO: While TBI and/or concussion may, in some instances, result in frontal lobe dysfunction leading to poor decision making, and the applicant states he sustained a TBI from an assault, the circumstances of the assault, the possible injuries sustained at the time, and the temporal relationship of the assault/TBI to his multiple UCMJ violations are all unknown. Thus, a recommendation for mitigation cannot be made. However, as per Liberal Consideration guidance, the applicant's diagnosis of a service-connected traumatic brain disease alone merits 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 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 the medical review, the Board concurred with the advising official finding insufficient evidence the applicant had a mental health or other medical condition which would have failed the medical retention standards and been a cause for referral to the DES prior to his discharge.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the serious misconduct of assaulting another Soldier with a letter opener as well as driving under the influence. Furthermore, the Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to honorable. Therefore, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable

decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.



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 (Army Board for Correction of Military Records) 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. The applicant has the burden of

proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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.

3. Army Regulation AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

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. Chapter 9 provides the authority and outlines the procedures for discharging enlisted personnel for alcohol or other drug abuse rehabilitation failure. The member is entitled to request a hearing before an administrative separation board if he or she has 6 or more years of total active and reserve military service. A member who has less than 6 years of military service is not entitled to a board. Discharge is based on alcohol or other drug abuse such as the illegal, wrongful, or improper use of any controlled substance, alcohol, or other drug when the member is enrolled in ADAPCP. The commander determines that further rehabilitation efforts are not practical, rendering the member a rehabilitation failure. This determination will be made in consultation with the rehabilitation team.

c. No member will be separated under this program unless the Army member voluntarily consents to the proposed separation. The Army member's acceptance of separation may not be withdrawn after the date the separation authority approves the separation.

4. Army Regulation 635-5 (Separation Documents). The DD Form 214 is a summary of a soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active duty service at the time of release from active duty, retirement, or discharge. The DD Form 214 is not intended to have any legal effect on termination of a Soldier's service. Item 28 (Narrative Reason for Separation) is based on regulatory or other authority guidance.

5. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the

Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE-1 Applies to persons completing an initial term of active service who were fully qualified when last separated.
- RE-3 Applies to persons who are not qualified for continued Army service, but the disqualification is waivable.
- RE-4 Applies to persons separated from last period of service with a nonwaivable disqualification.

6. Army Regulation 635-5-1 (Separation Program Designator Codes) states that the Separation Program Designator (SPD) codes are three-character alphabetic combinations which identify reasons for, and types of, separation from active duty. SPD code "JPD" is the appropriate code to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200, Chapter 9, based on Alcohol Abuse-Rehabilitation Failure.

7. 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.

8. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

9. 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.

//NOTHING FOLLOWS//