

IN THE CASE OF: ██████████

BOARD DATE: 14 March 2024

DOCKET NUMBER: AR20230008803

APPLICANT REQUESTS: upgrade of his general discharge from the U.S. Army Reserve (USAR).

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Benefits Letter, dated 26 June 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). 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 at the time of his separation, they told him he could come back within 6 months if he wanted to; however, he was unable to return due to his condition (apparently referring to post-traumatic stress disorder (PTSD)). The applicant contends, in effect, the Board should favorably consider his request because a number of years have passed since his discharge and he is finally receiving the help he needs.

a. On his DD Form 149, in item 14 (Are Any of the Following Issues/Conditions Related to Your Request), the applicant has checked the box for "PTSD."

b. In support of his request, the applicant provides a VA letter, dated 26 June 2023, which shows the VA granted him a 50 percent disability rating for service-connected PTSD with nightmare disorder and unspecified substance related disorder; the applicant's combined rating is reflected as having been increased from 10 percent (effective 31 October 2018) to 60 percent (effective 26 April 2023).

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

a. On 28 June 1983, the USAR discharged the applicant from the delayed entry program and he enlisted in the Regular Army for 3 years.

b. Following the completion of initial entry training, orders assigned him to Fort Hood, TX, and he arrived, on or about 2 November 1983. Effective 28 December 1983, the applicant's chain of command promoted him to private (PV2)/E-2.

c. On 6 January 1984, the applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for having been absent from his unit on 27 December 1983. On 28 March 1984, the applicant accepted NJP for writing bad checks, amounting to \$400; the imposing commander directed a suspended reduction in rank to private (PV1)/E-1.

d. On 11 April 1984, after the applicant provided a urine sample, an Army laboratory detected THC (tetrahydrocannabinol, the primary psychoactive ingredient in marijuana). On 14 May 1984, the applicant's battalion commander offered him NJP due to the applicant's wrongful use of marijuana.

e. On 15 May 1984, the applicant's company commander advised him, via memorandum, that he was initiating separation action against the applicant, in accordance with Chapter 13 (Separation for Unsatisfactory Performance), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel).

(1) The commander's stated reasons were the applicant's numerous letters of indebtedness, leadership's numerous counseling statements for duty performance, and the applicant's positive urinalysis test.

(2) After consulting with counsel, the applicant acknowledged counsel had advised him of the basis for the separation action and elected not to waive his rights and not to submit statements in his own behalf.

f. On 16 May 1984, the applicant accepted NJP from his battalion commander, and, after a closed hearing, the battalion commander found the applicant guilty and directed his reduction to PV1.

g. On 17 May 1984, the separation authority approved the company commander's separation recommendation and directed the applicant's honorable release from active duty and transfer to the USAR. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 11 months and 3 days of active service.

h. On 21 June 1989, the USAR Personnel Center issued an order directing the applicant's general discharge from the Ready Reserve, effective 27 June 1989; the cited authority is AR 135-178 (Army National Guard and Army Reserve – Separation of

Enlisted Personnel), and it showed the applicant's assignment to the USAR Control Group (Annual Training). The applicant's available service record is void of documentation explaining the basis for the general discharge.

i. The applicant's available service record includes a DARP Form 1984-2 (Extension Worksheet), dated 5 July 1989, which indicates ARPERCEN considered extending the applicant's military service obligation; item 7 (Discharge Info) shows a discharge had not yet been issued.

j. ARPERCEN memorandum, dated 7 July 1989 addressed to the applicant announced it had granted the immediate extension of the applicant's enlistment in the USAR and assigned him to the USAR Control Group (Reinforcement). The letter added that ARPERCEN had enclosed the necessary extension form with completion instructions and instructed the applicant to send the form to ARPERCEN as quickly as possible; doing so would preclude the applicant's discharge.

4. 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.

5. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) characterization of service from the U.S. Army Reserve (USAR). He contends PTSD mitigates his discharge.

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:

- On 28 June 1983, the USAR discharged the applicant from the delayed entry program and he enlisted in the Regular Army for 3 years.
- Following the completion of initial entry training, orders assigned him to Fort Hood, TX, and he arrived, on or about 2 November 1983. Effective 28 December 1983, the applicant's chain of command promoted him to private (PV2)/E-2.
- On 6 January 1984, the applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for having been absent from his unit on 27 December 1983. On 28 March 1984, the applicant accepted NJP for writing bad checks, amounting to \$400; the imposing commander directed a suspended reduction in rank to private (PV1)/E-1.
- On 11 April 1984, after the applicant provided a urine sample, an Army laboratory detected THC (tetrahydrocannabinol, the primary psychoactive ingredient in marijuana). On 14 May 1984, the applicant's battalion commander offered him NJP due to the applicant's wrongful use of marijuana.

- On 15 May 1984, the applicant's company commander advised him, via memorandum, that he was initiating separation action against the applicant, in accordance with Chapter 13 (Separation for Unsatisfactory Performance), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). The commander's stated reasons were the applicant's numerous letters of indebtedness, leadership's numerous counseling statements for duty performance, and the applicant's positive urinalysis test.
- On 17 May 1984, the separation authority approved the company commander's separation recommendation and directed the applicant's honorable release from active duty and transfer to the USAR. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 11 months and 3 days of active service.
- On 21 June 1989, the USAR Personnel Center issued an order directing the applicant's general discharge from the Ready Reserve, effective 27 June 1989; the cited authority is AR 135-178 (Army National Guard and Army Reserve – Separation of Enlisted Personnel), and it showed the applicant's assignment to the USAR Control Group (Annual Training). The applicant's available service record is void of documentation explaining the basis for the general discharge.

c. 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, VA benefits letter, ABCMR Record of Proceedings (ROP), 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 at the time of his separation, they told him he could come back within 6 months if he wanted to; however, he was unable to return due to his condition (apparently referring to post-traumatic stress disorder (PTSD)). The applicant contends, the Board should favorably consider his request because a number of years have passed since his discharge, and he is finally receiving the help he needs.

e. Due to the period of service, no active-duty electronic medical records were available for review. The VA electronic record available for review indicates the applicant is 60% service connected, including 50% for PTSD. The record indicates he initiated behavioral health services with the VA on 2 May 2023, with a mental health consult/intake indicating he reported being injured when he fell off the top bunk in basic training, causing severe injury to his face. In addition, he reported experiencing the Claymore mine exploding right behind him and a grenade launcher misfiring and detonating within 10 feet. Per the applicant, these events caused him to experience bed wetting, hypervigilance, embarrassment/shame, hearing problems, and difficulty eating due to a plate in his mouth. The applicant further reported that as a result he started

self-medicating. The applicant was diagnosed with Post-traumatic Stress Disorder (PTSD) and provided with therapy and a psychiatry consult on 4 August 2023. During that appointment, he shared a lengthy history of substance abuse, homelessness, and an extensive legal history including, two DUI's, repeated arrests for indecent exposure, and warrants for lapses on child support. The applicant was provided with specialized PTSD treatment, with the first session of Cognitive Processing Therapy (CPT) on 11 August 2023. The applicant did not attend subsequent appointments and was discharge from treatment and referred back to supportive services. A C and P examination dated 8 June 2023 diagnosed the applicant with Posttraumatic Stress Disorder, Nightmare Disorder, and Unspecified Other Substance Related Disorder (Polysubstances).

f. Based on the information available, this Agency Behavioral Health Advisor is unable to opine regarding medical mitigation based on a BH condition without the specific facts and circumstances that led to the applicant's discharge. However, the applicant is service connected for PTSD.

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 50% service-connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? This advisor is unable to opine regarding medical mitigation without the specific facts and circumstances that led to his discharge. The available record shows that despite his unsatisfactory performance, numerous letters of indebtedness, and positive urinalysis test, on 17 May 1984, the applicant was discharged from active duty with an honorable release and transferred back to the USAR. Over five years later, On 21 June 1989, the USAR Personnel Center issued an order directing the applicant's general discharge from the Ready Reserve. The specific facts and circumstances that led to this discharge are not available in the record rendering this advisor unable to opine regarding medical mitigation. However, the medical record does evidence the applicant's service connection for PTSD which could potentially mitigate certain misconduct if it did not involve violence, bodily harm, or major crimes.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, 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 PTSD 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 there being insufficient information regarding the misconduct that led to the character of service he received upon discharge from the USAR to determine if the misconduct was mitigated by PTSD. 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.

6/25/2024

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.

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, United State Code, section 1556 (Ex Parte Communications Prohibited) 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, in effect at the time, set forth the basic authority for the separation of enlisted personnel. Chapter 13 stated:

a. Commanders could initiate separation action against Soldiers when, in the commanders' judgment:

- they would not develop sufficiently to participate in satisfactorily in training and/or become satisfactory Soldiers;
- the seriousness of the circumstances were such that the Soldiers' retention would have an adverse impact on the military discipline, good order, and morale; and
- it was likely the Soldiers would continue to be disruptive influences in present and future assignments

b. Prior to the initiation of separation action, the regulation stipulated that commanders ensure Soldiers had received adequate counseling and rehabilitation. The regulation pointed out that military service was a calling different from any civilian occupation, and as such, commanders were not to consider separation solely due to unsatisfactory performance unless the leadership had made efforts to rehabilitate the Soldiers.

c. The regulation permitted separation authorities to furnish Soldiers separated under this provision with either an honorable or a general discharge under honorable conditions.

4. AR 135-178, in effect at the time, outlined policies and procedures for the administrative separation of Army National Guard and USAR enlisted Soldiers.

a. Paragraph 1-18b (1) (Characterization of Service – Types of Characterization – Honorable). An honorable character of service was appropriate when the quality of the member's service had generally met standards of acceptable conduct and performance of duty for military personnel or was so meritorious, any other characterization would clearly be inappropriate.

b. Section V (Transfer to the Individual Ready Reserve (IRR) in Lieu of Discharge), paragraph 1-22 (Policy). In order to retain potential mobilization assets, all personnel who had not completed their military service obligation were to be transferred to the IRR. The regulation mandatorily required the IRR transfer of Soldiers who had completed basic combat training or at least 8 weeks of OSUT.

c. Paragraph 1-24 (Character of Service). The service of members who were transferred to the IRR was to be characterized as honorable or under honorable conditions.

5. AR 140-10 (Army Reserve – Assignments, Attachments, Details, and Transfers), in effect at the time, prescribed policies, criteria, and procedures for assignment, detail, removal, and transfer of members of the Army Reserve. Paragraph 2-9 (USAR Control Group (Annual Training) stated the regulation authorized the assignment of Soldiers to this group if they had a remaining statutory service obligation and were credited with less than 3 years of active military service. This included members released from active duty who did not immediately join a Troop Program Unit (TPU).

6. AR 135-91 (Army National Guard and Army Reserve – Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Procedures), in effect at the time, defined USAR service obligations and participation requirements.

a. Paragraph 2-3 (Ready Reserve Obligation). The Ready Reserve obligation was part of the statutory and/or contractual obligation, which required Soldiers to remain in an active Reserve unit or the USAR Control Group (Annual Training).

b. Paragraph 2-4 (Mandatory Training Requirement). A mandatory training requirement was a part of the Ready Reserve obligation when assignment to the USAR Control Group (Annual Training) was mandatory.

c. Paragraph 3-2 (Satisfactory Participation of Control Group Members). Soldiers assigned to Control Groups (i.e., Annual Training or Reinforcement) had participation requirements. Soldiers not directed to participate in some phase of training for which they would receive pay were deemed satisfactory participants if they completed and promptly returned all military correspondence; promptly reported any change in address to ARPERCEN; and complied with other requirements imposed by ARPERCEN.

d. Section III (Enlisted Members), paragraph 3-10 (General Participation Requirements).

(1) Two important factors were considered in determining participation and/or service required by enlisted members in the Ready Reserve: the terms of the contract under which enlisted members came into the Armed Forces and the number of months served on active duty. Once active duty had been performed, the period of Ready Reserve Service during which training was mandatory could be reduced by satisfactory participation in a TPU.

(2) Non-prior service Soldiers who were transferred to the USAR were required to remain in the Ready Reserve for the full period of their statutory service obligations. Personnel who enlisted in options that did not require TPU participation were to serve the remainder of their statutory service obligations in the USAR Control Group (Annual Training), where they would be scheduled each year for annual training.

6. 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 UOTHC 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.

7. 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; 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

8. 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, 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.

9. AR 15-185 (ABCMR) 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, which means the Board presumes what the Army did was correct. The Board is not an investigative body, and the applicant bears the burden of providing a preponderance of evidence to support claims of inequity and/or injustice. The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the evidence he or she presents is sufficient for the Board to find that there is a greater than 50-50 chance that an error or injustice did, in fact, occur.

//NOTHING FOLLOWS//