

IN THE CASE OF: ██████████

BOARD DATE: 20 March 2024

DOCKET NUMBER: AR20230008854

APPLICANT REQUESTS: Upgrade of his under honorable conditions (general) discharge.

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 was subjected to extremely harsh training conditions, resulting in post-traumatic stress disorder (PTSD). It was so bad; he was prescribed medication that he was not able to take. Self-medication was his only option. He suffered from alcoholism and drug abuse before he became clean and received treatment.
3. On 16 February 2006, the applicant enlisted in the Regular Army. Upon completion of training, he was awarded military occupational specialty 92F (Petroleum Specialist). The highest grade he attained was E-2.
4. The applicant received formal counseling on 1 November 2006 for missing formation; being drunk on duty; threatening a noncommissioned officer, and confessing to drug abuse.
5. On 14 November 2006, the applicant tested positive for cocaine on a urinalysis test.
6. On 18 December 2006, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

7. On 16 January 2007, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for wrongfully using cocaine, from on or between 8 October 2006 and 7 November 2006. His punishment included reduction to E-1, forfeiture of \$636.00 pay per month for two months, and 45 days restriction and extra duty.
8. On 17 January 2007, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military authorities on 22 January 2007.
9. On 22 January 2007, the applicant accepted NJP under Article 15 of the UCMJ, for going AWOL from on or about 17 January 2007 until 22 January 2007. His punishment included 14 days restriction and extra duty.
10. On 6 February 2007, the applicant again tested positive for cocaine on a urinalysis test.
11. The applicant's commander notified the applicant that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, paragraph 14-12c, for commission of a serious offense. He noted the applicant had tested positive for cocaine twice and had a period of AWOL.
12. On 15 February 2007, the applicant consulted with counsel and was advised of the basis for the contemplated separation action, the possible effects of the discharge, and the rights available to him. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him and he could be ineligible for many or all benefits as a veteran under Federal and State laws as a result. He declined to submit a statement in his own behalf.
13. The applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 14, prior to his expiration term of service.
14. Consistent with the chain of command's recommendations, the separation authority approved the recommended separation action on 23 February 2007, with issuance of an under honorable conditions (general) characterization of service.
15. The applicant was discharged on 1 March 2007. His DD Form 214 (Certificate of Release or Discharge) confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c (2), for misconduct (drug abuse). He was discharged in the lowest enlisted grade and his service was characterized as under honorable conditions (general). He was assigned Separation Code JKK and Reentry Code 4. He completed 1 year and 16 days of net active service this period.

16. On 25 August 2023, the ABCMR staff requested the applicant provide medical documents that support his mental health issues. He was advised that he could contact the doctor that diagnosed him or his Veterans Affairs regional office for assistance. He did not respond.

17. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

18. MEDICAL REVIEW:

a. 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 16 February 2006.
- On 1 November 2006, the applicant received formal counseling for missing formation; being drunk on duty; threatening a noncommissioned officer and confessing to drug abuse.
- On 14 November 2006, the applicant tested positive for cocaine on a urinalysis test.
- On 16 January 2007, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for wrongfully using cocaine, from on or between 8 October 2006 and 7 November 2006.
- On 17 January 2007, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military authorities on 22 January 2007.
- On 6 February 2007, the applicant again tested positive for cocaine on a urinalysis test.
- Applicant was discharged on 1 March 2007. His DD Form 214 (Certificate of Release or Discharge) confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c (2), for misconduct (drug abuse). He was discharged in the lowest enlisted grade and his service was characterized as under honorable conditions (general). He was assigned Separation Code JKK and Reentry Code 4.

b. 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.

c. The applicant states he was subjected to extremely harsh training conditions, resulting in post-traumatic stress disorder (PTSD). It was so bad; he was prescribed medication that he was not able to take. Self-medication was his only option. He suffered from alcoholism and drug abuse before he became clean and received treatment.

d. Active-duty electronic medical records available for review show the applicant underwent a mental status evaluation on 18 December 2006. During that evaluation he reported being treated for anxiety for six months as a teenager but evidenced no symptoms of anxiety or depression during this assessment. He further reported a history of cocaine use prior to military service as well as extensive methamphetamine use. The applicant was diagnosed with Cocaine Abuse. The clinician noted the applicant did not have a serious mental health problem that would render him incapable of understanding and participating in chapter proceedings. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command. The record further indicates he participated in four sessions between January 2007 to March 2007 in the Substance Abuse Rehabilitation Department (SARD) and was diagnosed with Cocaine Abuse.

e. No VA electronic medical records were available for review and the applicant is not service connected. In addition, the applicant did not submit any medical documentation post-military service substantiating his assertion of PTSD. On 25 August 2023, the ABCMR case management division requested the applicant provide medical documentation in support of his asserted behavioral health condition. He did not respond.

f. 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 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 self-asserts a mitigating condition.

(2) Did the condition exist or experience occur during military service? Yes. The applicant asserts PTSD; however, he provides no documentation.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant provides no medical documentation substantiating any BH diagnosis. There is no evidence of any in-service BH diagnoses, other than Cocaine Abuse, and the VA has not service-connected the applicant for any BH condition. And while the applicant self-asserts PTSD, he did not provide any medical documentation

substantiating the diagnoses. However, per Liberal Consideration guidelines, the applicant's self-assertion of PTSD 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 medical review, the Board concurred with the advising official finding insufficient evidence to support the applicant had a behavioral health condition that mitigates his misconduct. The opine noted the applicant provided insufficient evidence of any in-service BH diagnoses, other than Cocaine Abuse, and the VA has not service-connected the applicant for any BH condition.

2. The Board found there is insufficient evidence of in-service mitigating factors to overcome the misconduct of drunk of duty, threatening a noncommissioned officer to include testing positive for cocaine use. 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 applicant was discharged for misconduct. He was credited with 1 year and 16 days of net active service and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Therefore, the Board denied relief.

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.

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.

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. Section 1556 of Title 10, U.S. Code, 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 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. It states that action will be initiated to separate a Soldier for misconduct when it was clearly established that rehabilitation was impracticable or unlikely to succeed. Paragraph 14-12c (Commission of a Serious Offense) applied to commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense. First time offenders below the grade of sergeant, and with less than 3 years of total military service, may be processed for separation as appropriate.

4. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR), on 3 September 2014, 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.

5. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury, 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 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//