

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 23 February 2024

DOCKET NUMBER: AR20230008906

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (General) discharge
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 8 April 1996

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 immature and reckless while serving. However, he feels that if he had received extra training and/or drug and alcohol counseling it would have made a difference. He is now clean and sober and works for the Department of Veterans Affairs (VA) Medical Center in Wilmington, MD. The applicant listed four additional supporting documents; however, they were not included with his application or available for the Board to review.
3. On the applicant's DD Form 149, he indicates other mental health issues as an issue/condition related to his request.
4. A review of the applicant's service record shows he enlisted in the Regular Army on 4 October 1994 and completed training with award of the military occupational specialty 92Y (Unit Supply Specialist). The highest grade he held was private/E-2.
5. Between 27 September 1995 and 18 January 1996, the applicant was formally counseled on six occasions for various infractions including, but not limited to failure to

report for duty, disobeying a lawful order, missing a medical appointment, leaving his place of duty without proper relief, and a positive drug test.

6. The applicant accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice on the following dates for the indicated offenses:

- 11 August 1995, for disrespectful language toward a noncommissioned officer, disobeying a lawful order, failure to go to his place of duty on six occasions; his punishment was reduction to E-1, forfeiture of \$195.00 and 14 days of extra duty
- 30 November 1998, for between 18 July 1995 and 17 August 1995, illegal use of marijuana; his punishment was forfeiture of \$200.00 pay per month for 2 months, 45 days of extra duty and restriction to the company area for 45 days
- 29 February 1996, for breaking restriction on 6 January 1996, his punishment was forfeiture of \$427.00 pay per month for 2 months, 45 days of extra duty and restriction to the company area

7. A DA Form 3822-R (Report of Mental Status Evaluation), dated 23 January 1996, shows the applicant had no abnormalities in behavior, level of orientation, mood, thinking process, thought content, or memory. He was determined to be mentally capable to understand and participate in the proceedings deemed appropriate by command.

8. The applicant's immediate commander notified the applicant on 5 March 1996 of his intent to initiate action to separate him under Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, paragraph 14-12c for commission of a serious offense. His commander noted the specific reasons as the applicant's positive drug test, his repeated nonjudicial punishment, and his pattern of not showing up for work.

9. The applicant consulted with legal counsel on 8 March 1996. He was advised of the basis for the contemplated discharge, the possible effects of an under honorable conditions discharge, and the procedures and rights that were available to him. He elected not to submit a statement in his own behalf.

10. The applicant's immediate commander formally recommended his separation from service under the provisions of AR 635-200, Chapter 14, paragraph 14-12c for commission of a serious offence.

11. The applicant was discharged on 8 April 1996 in the pay grade of E-1. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 14-12c for misconduct and his service characterization was under honorable conditions (General). He was credited with 1 year, 6 months, and 5 days of active service. His was

awarded or authorized the National Defense Service Medal, Army Service Ribbon, and the Marksman Marksmanship Qualification Badge with Rifle Bar.

12. The applicant petitioned the Army Discharge Review Board (ADRB) for consideration of an upgrade of his characterization of service. On 7 July 2010, the ADRB, after carefully examining the applicant's record of service during the period of enlistment under review, determined the discharge was both proper and equitable and voted to deny relief.

13. 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.

14. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Armed Forces Health Longitudinal Technology Application (AHLTA), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests discharge upgrade from Under Honorable Conditions, General to Honorable. He indicated that 'Other Mental Health' was related to his request. He also mentioned alcohol and substance use issues. His case was previously viewed by the ADRB in 2010.

b. The ABCMR Record of Proceedings summarized the applicant's records. Of note, the applicant entered active duty in the Regular Army 04Dec1994. His MOS was 92Y Supply. There was no record of combat deployment. He was separated under provisions of AR 635-200 para 14-12c for misconduct. He was advised that the reason for the separation was he wrongfully used marijuana; he broke restriction; and he had a pattern of not showing up for work. His service was characterized as under honorable conditions (General).

c. During the 23Jan1996 Mental Status Evaluation he demonstrated normal behavior, and clear thinking with normal content. The examiner did not find any evidence of a psychiatric condition. The applicant was deemed to have the mental capacity to understand and participate in administrative proceedings. He was assessed to meet retention standards of AR 40-501, Chapter 3.

d. JLV search revealed the applicant has not been service-connected by the Department of Veterans Affairs (VA) for a disability. In the 07Oct2003 Substance Abuse Counseling Note, he reported history of drinking alcohol and use of marijuana since age 16. No prior treatment was documented. He reported being depressed and moody when

he was drinking. A history of psychiatric illness was denied during the 08Oct2008 Addiction Psychiatry Note. The applicant's background/family history was not discussed. He had lost many jobs due to his addictions. The psychiatrist did not diagnose a psychiatric condition.

e. The applicant claimed 'Other Mental Health' condition. The 03Sep2014 Secretary of Defense Liberal Guidance Memorandum and the 25Aug2017 Clarifying Guidance, were considered; however, there was no documentation to support a boardable behavioral health diagnosis at the time of his discharge and thus no diagnosis to consider with respect to mitigation of misconduct for the purpose of a discharge upgrade. Substance abuse issues alone are not mitigating for misconduct.

#### Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? No. A mitigating BH condition was not found/diagnosed.

(2) Did the condition exist, or did the experience occur during military service? No. A mitigating BH condition was not found/diagnosed. However, under liberal consideration guidance, the applicant's self-assertion of Other Mental Condition merits consideration by the board.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A mitigating BH condition was not found/diagnosed.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record, and published DoD guidance for liberal consideration of discharge upgrade requests, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

2. The Board notes the applicant's contention concerning his age at the time of his misconduct; however, reviewed and concurred with the medical official's review noting a mitigating behavioral health condition was not found or diagnosed during the applicant's service.

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

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, USC, section 1556 provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (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. Army Regulation 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 is that what the Army did was correct. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, 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. 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 Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 (Separation for Misconduct) establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave.

d. Paragraph 14-12c (Commission of a Serious Offense) applied to Soldiers who committed a serious military or civilian offense, when required by the specific

circumstances warrant separation and a punitive discharge was, or could be authorized for that same or relatively similar offense under the UCMJ.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//