

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 November 2024

DOCKET NUMBER: AR20230008950

APPLICANT REQUESTS:

- in effect, amendment of his re-entry eligibility (RE) code
- reinstatement of his rank to specialist (SPC)/E-4
- 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)
- Eight certificates of achievement and/or appreciation
- Associate degree, January 1989
- Certification in biblical studies, 17 May 2017
- Three character references
- A letter issued by the Department of Veterans Affairs (VA), 10 June 2020

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 during his service he was experiencing symptoms of a depressive disorder that unfortunately went undiagnosed. Due to his condition, he engaged in activity that adversely affected his career. He believes if he was properly diagnosed at the onset of his symptoms and received proper care and treatment for his mental health, the chain of command would have shown compassion and understanding. Proper care would have prevented his erratic behavior and irrational decisions that ended his Army career. Had he not been reduced in grade, he would have reenlisted for an additional 4 years. Furthermore, had he not received unfavorable RE codes at the time of his release from active duty that prohibited him from reenlisting, he would have rejoined the military. He served honorably and even received commendations, but through it all he was not aware that he was struggling with a mental illness.

3. The applicant provides:

a. Eight certificates of achievement and/or appreciation, that highlight his achievements, his meritorious service, and accomplishments.

b. Education accomplishments:

- Associate degree, January 1989
- Certification in biblical studies, 17 May 2017

c. Three character references, which show:

(1) Ms. [REDACTED] (the applicant's sister) states, in effect, he is reliable, trustworthy, and dependable. He is a devoted father, brother, and man of faith. She has witnessed his life evolve to a well-grounded man with humility and increased wisdom worthy to be shared. She very proud of the progress he has made.

(2) Ms. [REDACTED] (the applicant's cousin) states, in effect, he cares for others, and when he sees someone in need, he just steps in to help! Not for the accolades, but because he is full of compassion and believes in caring for his entire family. He is an outstanding human being, you can trust and depend on him.

(3) Ms. [REDACTED] states, in effect, in the 30 years she has known the applicant, he has displayed his professionalism in many aspects to include leadership, work ethic and dedication, empathy for others and conflict resolution. He is a great father, that possesses the talents to benefit any organization.

d. A letter issued by the VA, 10 June 2020, shows his entitlement to individual unemployability was granted, with an effective date of 5 September 2019. This is a partial document; however it does reflect depression as one of the applicant's conditions.

4. The applicant's service record reflects the following:

a. He enlisted in the Regular Army on 31 August 1982.

b. DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)), 16 April 1985, reflects the applicant accepted nonjudicial punishment on or between 15 January 1985 and 26 February 1985, knowingly and wrongfully using marijuana. His punishment included reduction to private (PV2)/E-2.

c. DA Form 2-1 (Personnel Qualification Record), shows in item 21 (Time Lost): from 6 July 1983 to 10 July 1983, five days of absent without leave (AWOL).

d. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably relieved from active duty on 4 September 1985 pursuant to Army Regulation 635-200, Chapter 4, due to his Expiration of Term of Service (ETS). He received a separation code of "LBK" and the reentry codes of "RE-3B" and "RE-3C". He completed 3 years of active service. His grade at the time of discharge was PV2/E-2. He had lost time from 6 July 1983 to 10 July 1983. He was awarded the Army Service Ribbon and the Overseas Service Ribbon.

f. Orders D-08-064240, 24 August 88, show he was honorably discharged from the Individual Ready Reserve (IRR), with an effective date of 30 August 1988.

5. In a prior ABCMR Docket Number AC8605087, on 6 March 1988, the applicant requested a correction of his records, in order to change his RE code. His request was returned without action, and the applicant was instructed to obtain a waiver for his disqualifications. He was further advised that recruiting personnel were the approving authority for such requests.

6. Army Regulation 15-185 (Army Board for Correction of Military Records), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

7. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an amendment of his re-entry code and reinstatement of his rank to E-4. He contends he experienced a mitigating undiagnosed mental health condition.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted into the Regular Army on 31 August 1982.
- The applicant accepted NJP on 16 April 1985 for knowingly and wrongfully using marijuana. His punishment included reduction to private (PV2)/E-2.
- He was also AWOL from 6 to 10 July 1983.
- The applicant was honorably discharged on 4 September 1985 due to his ETS, and he completed 3 years of active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he was experiencing an undiagnosed mental health condition that caused him to engage in activity that adversely affected his career, and if he had received proper care and treatment, his erratic behavior and irrational decisions could

have been prevented. Additionally, because of his unfavorable reenlistment code, he was unable to rejoin the military despite having received an honorable discharge. The application included a VA Rating Decision letter dated 10 June 2020, which showed that the applicant was granted unemployability and a decision on his entitlement to compensation for Somatic Symptom Disorder Secondary to Depression was deferred. There was a VA medical record document included that showed a history of diagnosis of depression in February 2016. There was insufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed that the applicant is 80% service connected for several condition, including 70% for Mood Disorder. The applicant initiated mental health treatment through the VA on 19 October 2010 and reported depression due to pain, lack of income, and not being able to work, and he had not worked since February 2010 and was applying for benefits. His mental health treatment was transferred to the VA, and he was continued on an antidepressant medication. It was noted that he did not have a combat history or in-service trauma exposure. A Compensation and Pension (C&P) examination was conducted on 26 February 2014, and the applicant reported a history of mental health treatment for depression since “between 2006 and 2008,” and he started medication in 2010. The evaluator determined that his depressive symptoms, which are secondary to a severe in-service knee injury, were “as likely as not” preventing him from securing and maintaining gainful employment. The applicant’s most recent visit with psychiatry was on 4 November 2024, and his diagnosis showed Major Depressive Disorder. He reported stable symptoms and was continued on two antidepressant medications and melatonin for sleep.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition at the time of the misconduct. There were no mental health records from his time in service, and VA records showed he is 70% service connected for Mood Disorder secondary to a service incurred knee injury.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence, beyond self-report, that the applicant was experiencing a

mental health condition while on active service. He provided no records of a mental health diagnosis, and VA records indicate he was initially diagnosed with a mental health condition sometime between 2006 and 2008, and his service connected Mood Disorder is secondary to his knee injury. Substance use could be an attempt to avoid negative emotions, but the presence of misconduct is not sufficient evidence of a mental health condition. However, the applicant contends he was experiencing mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, 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 review based on law, policy, and regulation. Upon review of the applicant's petition and available military records, the Board made the following recommendations:

a. Amendment of his RE-Code. Deny. The Board noted the applicant's record of nonjudicial punishment and period of AWOL and found no error in his RE-Code. The Board found the applicant presented no evidence to support an error or injustice to amend the previous Board's decision.

b. Reinstatement of his rank to SPC/E-4. Deny. The Board determined his record is absent evidence that shows he was promoted to SPC/E-4 prior to his discharge from active duty on 4 September 1985 after his reduction to PV2/E-2 by nonjudicial punishment.

2. 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:

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.



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 (Armed Forces), 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 AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provides policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

a. Honorable discharge. An honorable discharge is a separation with honor. 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty (AD) or active duty training (ADT), or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Chapter 4 (Separation for Expiration of Service Obligation). A service member will be separated upon expiration of enlistment or fulfillment of service obligation. This includes members within 10 days of the date of expiration of term of service (ETS) who return to the continental United States (CONUS) for separation.

3. Army Regulation 635-5 (Personnel Separations - Separation Documents), in effect at the time, provides the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of REFRAD, retirement, or discharge. The DD Form 214 is not intended to have any legal effect on termination of a Soldier's service.

4. 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.

a. Table 3-1 provides a list of RE codes:

- RE code "1" applies to personnel who have completed their obligated term of active service and are considered qualified to reenter the U.S. Army if all other criteria are met
- RE code "2" Applies to persons not eligible for immediate reenlistment
- RE code "3" applies to personnel who are not considered fully qualified for reentry or continuous service at time of separation, but whose disqualification is waivable. They are ineligible unless a waiver is granted
- RE code "4" applies to personnel separated from last period of active-duty service with a nonwaivable disqualification

b. Table 3-6 further provides:

- RE code "3B" applies to personnel who have lost time during their last period of service. They are ineligible for enlistment unless a waiver is granted
- RE code "3C" applies to personnel who have completed over four months of service who meet the basic eligibility pay grade requirements. They are ineligible for enlistment unless a waiver is granted

5. Army Regulation 635-5-1 (Separation Program Designator Codes), in effect at the time, 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 "LBK" and RE code of "3", are the appropriate codes to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200, Chapter 4, based on Completion of Required Active Service.

6. Army Regulation 15-185 (Army Board for Correction of Military Records), currently in effect, 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.

7. Title 10 (Armed Forces), U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.

8. 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//