

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2024

DOCKET NUMBER: AR20230009001

APPLICANT REQUESTS: a change to his in-reentry eligibility (RE) code

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

- DD Form 293 (Application for the Review of Discharge)
- self-authored statement, undated
- Army Achievement Medal Certificate, 30 September 2020
- DD Form 2697 (Report of Medical Assessment), 1 April 2021
- Page 1 of DD Form 2807-1 (Report of Medical History), 14 April 2021
- Certificate of Fetal Death, [REDACTED]
- pictures of body cream bottle, undated

FACTS:

1. The applicant states:

a. His unit accused him of allegedly failing a UA [urinalysis], but they did not inform him until months later when he disagreed with someone senior on an issue. His unit was already upset because he did not want to reenlist due to his wife's stillbirth. He believed his unit became upset because he was the only one in his Terminal High Altitude Area Defense Unit with a 91D (Tactical Power Generation Specialist) military occupational specialty.

b. While on deployment, he started getting harassed by a Sergeant (SGT). He tried to report the harassment up his chain of command, but his Captain did not care because he was leaving the unit. He received counseling and lost rank due to the same SGT yanking him off his top bunk and calling him the aggressor. Although witnesses said he was not the aggressor, no one listened. Once they came back from deployment, things got worse.

c. He was a great soldier and did his job and everybody else's, especially while on deployment. He knows he did not smoke anything and only smoked cigarettes occasionally. He tried to fight the allegations, but his leadership kept saying he did not

want to reenlist anyway, so it should not matter. He should not have listened. He did not do what his unit said he did.

2. The applicant enlisted in the Regular Army on 3 April 2018, for 3 years and 25 weeks. The highest rank/grade he held was specialist/E-4.

3. The complete facts and circumstances surrounding his discharge processing are not available for review. However, his record contains a duly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty) that shows On 6 July 2021, the applicant was discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Active Duty Enlisted Administrative Separations), paragraph 14-12c (2), by reason of misconduct (drug abuse), with an under honorable conditions (general) characterization of service in the grade of E-1. He was issued separation code "JKK" and RE code 4.

a. He completed 3 years, 3 months, and 4 days of net active service with 1 year, and 9 days of foreign service during the period covered.

b. Block 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) shows the:

- Army Achievement Medal
- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon
- Overseas Service Ribbon

d. Block 18 (Remarks) shows the entries:

- "SEVICE IN SAUDI ARABIA 20191203 – 20201008"
- "MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE"

4. The applicant provides:

a. A DD Form 2697 and the first page of A DD Form 2807-1, which show several health issues including bruised ribs and left knee, back, and right-side problems.

b. Certificate of Fetal Death, verifying his child's stillbirth/fetal death on 7 June 2021.

c. Pictures (front and back) of a body cream bottle with cannabis listed as one of the ingredients.

5. On 24 August 2024, in the processing of this case the U.S. Army Criminal Investigation Division, searched their criminal file indexes, which revealed no Criminal Investigative and/or Military Police Reports pertaining to the applicant.

6. There is no indication the applicant petitioned to the Army Discharge Review Board for an upgrade of his discharge within that Boards 15-year Statute of limitations.

7. Regulatory guidance in effect at the time provided a discharge under other than honorable conditions was normally considered appropriate for Soldier's discharged by reason of misconduct (drug abuse). However, the separation authority could direct a general discharge if such were merited by the Soldier's overall record. Additionally, the established RE code for Soldiers separated under this authority and for this reason is RE code 4.

8. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a change to his in reentry eligibility (RE) code. He contends he experienced harassment that mitigated his misconduct.

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: 1) The applicant enlisted in the Regular Army on 3 April 2018; 2) The complete facts and circumstances surrounding his discharge processing are not available for review. However, his record contains a dully constituted DD Form 214 (Certificate of Release or Discharge from Active Duty) that shows On 6 July 2021, the applicant was discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Active Duty Enlisted Administrative Separations), paragraph 14-12c (2), by reason of misconduct (drug abuse), with an under honorable conditions (general) characterization of service in the grade of E-1. He was issued separation code "JKK" and RE code 4.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and medical records. The Armed Forces Health Longitudinal Technology Application (AHLTA) and the VA's Joint Legacy Viewer (JLV) were also examined. No additional medical documentation was provided.

d. On his application, the applicant contends he experienced harassment, which was a contributing and mitigating factor in the circumstances that resulted in his separation. There is evidence the applicant was engaged in substance abuse treatment as the result of being command referred for a positive urinalysis for marijuana. The applicant

was diagnosed with Cannabis Dependence Disorder, and he completed a few sessions of substance abuse treatment. On 25 May 2021, the applicant underwent a Mental Status Evaluation as part of his Chapter 14-12c administration separation. The application was appropriately evaluated for PTSD, TBI, Substance Use Disorders, Depression, and Sexual Assault. He was not diagnosed with any of these conditions, and he was found to meet retention standards from a psychiatric perspective. He was found mentally responsible and cleared for administrative action. A review of the medical records did not provide evidence the applicant reported being exposed to harassment while on active service to his behavioral health providers.

e. A review of JLV was void of mental health documentation, and the applicant receives no service-connected disability. The applicant did not provide any additional medical documentation from a licensed behavioral health provider.

f. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant had condition or experience that mitigated his misconduct.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A. There is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of a mental health condition or experience. However, the applicant contends he experienced harassment while on active service, which mitigates his discharge. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition experience actually excuse or mitigate the discharge? N/A

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. Upon review of the applicant's petition and available military records, the Board concurred with the advising official finding insufficient evidence to support the applicant had condition or experience that mitigated his misconduct. The opine noted the applicant's record was void of mental health documentation, and the applicant

receives no service-connected disability. Additionally, the applicant did not provide any additional medical documentation from a licensed behavioral health provider.

2. The Board agreed with the opine which found there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of a mental health condition or experience. The Board determined there is insufficient evidence of in-service mitigating factors for the misconduct that would warrant a change to the applicant's RE=Code. The Board noted, the applicant was discharged for misconduct and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's reentry code is appropriate. 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.

3/1/2024
X [REDACTED]
CHAIRPERSON [REDACTED]

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. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, USAR, and ARNG. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable – they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from their last period of service with a non-waivable disqualification

2. 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 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

3. 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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges

due in whole or in part to: mental health conditions, including post-traumatic stress disorder; 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.

4. 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.

//NOTHING FOLLOWS//