

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 April 2024

DOCKET NUMBER: AR20230009346

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) characterization of service.

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

- DD Form 149 (Application for Correction of Military Record)
- SF Form 180 (Request Pertaining to Military Records)

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 received an under honorable conditions discharge and did not receive a chance to make corrections in his life. He also states his mother was sick and his father had cancer; these situations placed a lot of stress on him and it took him some time to get himself together and seek help. He tried to clean up his record and get it together but was told, "no," and was discharged.
 - a. The applicant states he suffers from post-traumatic stress disorder (PTSD) because of all the things he was going through while serving in the military. He feels he deserves a discharge upgrade because before his parents got sick, he had no problems, and he regrets all the things he did and has since learned how to control his anger.
 - b. With a discharge upgrade he will be able to receive professional help with his symptoms of PTSD. Also, a discharge upgrade will provide a way for him to get help with pain and numbness in his left ankle that was broken while serving.
 - c. His application notes his request is related to PTSD and other mental health.

3. The applicant provides SF 180 (Request Pertaining to Military Records), dated 21 April 2023, which shows he was requesting his service records for the purpose of obtaining benefits, applying for a Department of Veteran's Affairs (VA) Loan, medical, and personal reasons.

4. A review of the applicant's service records show:

a. He enlisted in the Army National Guard on 4 May 1978 and served with the New Jersey National Guard, to include completing a period of active duty training (ADT) (30 May 1987 – 13 June 1987) with his unit at Fort Drum, New York. During his ADT, he sprained his left ankle; it was determined the injury occurred in the line of duty and a formal line of duty investigation was not required.

b. On 26 February 1998, he was discharged for acts or patterns of misconduct with an under honorable conditions discharge under the provisions of National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), paragraph 8-26e(2). His NGB Form 22 (Report of Separation and Record of Service) shows he completed 19 years, 9 months, and 23 days of net service. He was awarded or authorized:

- Army Service Ribbon
- National Defense Service Medal
- Noncommissioned Officer Professional Development Ribbon
- Army Reserve Component Achievement Medal 3d Award
- Armed Forces Reserve Medal
- New Jersey Merit Award 17th Award
- New Jersey National Guard Good Conduct Ribbon 5th Award
- New Jersey Medal Honor 2d Award
- New Jersey National Guard State Service Award

5. On 26 September 2023, a representative from the Army Review Boards Agency requested a copy of the applicant's medical documentation associated with his claim of PTSD from the applicant. To date, the applicant has not provided a response.

6. 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.

MEDICAL REVIEW:

1. The applicant requests an upgrade of his Under Honorable Conditions, General, discharge to Honorable. He contends his misconduct was related to PTSD and Other Mental Health Issues.
2. 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 Army National Guard on 4 May 1978 and served with the New Jersey National Guard, to include completing a period of active duty training (ADT) (30 May 1987 – 13 June 1987) with his unit at Fort Drum, New York; 2) On 26 February 1998, he was discharged for acts or patterns of misconduct with an under honorable conditions discharge under the provisions of National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), paragraph 8-26e(2).
3. The VA electronic medical record (JLV), ROP, and casefiles were reviewed. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. No BH-related military records were provided for review. A review of JLV was void of any BH treatment history for the applicant and he does not have a SC disability. No civilian BH-related records were provided for review.
4. The applicant requests upgrade his Under Honorable Conditions, General, discharge to Honorable. He contends his misconduct was related to PTSD and Other Mental Health Issues. A review of the records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of PTSD or Other Mental Health Issues. In absence of documentation supporting his assertion there is insufficient evidence to establish his misconduct was related to or mitigated by PTSD or Other Mental Health Issues and insufficient evidence to support an upgrade based on BH medical mitigation.
5. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends his misconduct was related to PTSD and Other Mental Health Issues, and per liberal guidance his assertion is sufficient to warrant the Board's consideration.
6. Kurta Questions:
 - a. Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant contends his misconduct was related to PTSD and Other Mental Health Issues.
 - b. Did the condition exist or experience occur during military service? Yes.

c. Does the condition or experience actually excuse or mitigate the discharge? No. A review of the records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of PTSD or Other Mental Health Issues. In absence of documentation supporting his assertion there is insufficient evidence to establish his misconduct was related to or mitigated by PTSD or Other Mental Health Issues and insufficient evidence to support an upgrade based on BH medical mitigation.

BOARD DISCUSSION:

1. The applicant's contentions, the military record, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted.
2. Other than the applicant's own statement, the Board found insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct.

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. National Guard Regulation (NGR) 600-200, paragraph 8-26e(2), (Enlisted Personnel Management), in effect at the time, prescribes standards, policies and procedures for the management of Army National Guard (ARNG) enlisted Soldiers in the functional areas of: (1) Accessions and retention (2) Civilian acquired skills (3) Initial active duty for training and voluntary active duty (4) Personnel management (5) Promotion, appointment and Reduction (6) Extensions, bars to reenlistments, immediate reenlistment and extensions (Discharge).

a. Discharge from State ARNG and/or Reserve of the Army. Following are reasons, applicability, codes, and board requirements for administrative discharges from the Reserve of the Army, the State ARNG only, or both. These reasons for discharge may be used for discharge from the State ARNG only. See AR 135-178, paragraph 1-22, to determine whether to assign a soldier to the IRR. Do not transfer soldiers who have not completed IADT and are therefore not mobilization assets. Required administrative discharge boards are indicated. All soldiers will be notified of a commander's recommendation for their involuntary discharge. If the characterization is any except honorable conditions the soldier will be informed of the specific factors in the service record that warrant such characterization.

b. Refer to AR 135-178, chapter 7, for the following reasons for discharge: Acts or Patterns of Misconduct. Administrative discharge board is required, unless the soldier waives it, when either the soldier has 6 or more years of total military service, or the separation authority considers discharge under other than honorable conditions appropriate. See paragraph 8-28 of this regulation. This reason includes Misconduct-Abuse of Illegal Drugs. All soldiers identified as abusers of illegal drugs will be referred for treatment or counseling as appropriate regardless of the commander's intent to take administrative, nonjudicial or judicial actions. Commanders must begin separation action or recommend retention of soldiers identified in (a) and (c) below who are not being referred to a court-martial authorized to impose a punitive discharge or processed under f below. Forward recommendations for retention and separation through command channels to the separation authority. See AR 135-178, chapter 2. Soldiers whose discharge authority decides to retain them will, as a condition of retention, enroll in a rehabilitation program as soon as possible, but within 90 days of notification.

Enrollment and participation will be at no expense to the government. Commanders will immediately begin discharge actions for soldiers who refuse or fail to enroll in a rehabilitation program as a result of committing a drug offense.

c. Types of administrative discharges and character of service:

(1) Honorable is issued on NGB Form 55, to Soldiers concurrently discharged from the ARNGUS and as a Reserve of the Army with honor. Character of discharge and service is Honorable. The honorable characterization must be awarded to a Soldier upon ETS fulfillment of service obligation, or when required under the specific reason for discharge.

(2) Normally a General discharge will NOT be issued to Soldiers upon discharge at ETS or fulfillment of military service obligation unless specifically authorized by State code. (1) NGB Form 56 is issued to Soldiers concurrently discharged from the ARNGUS and as a Reserve of the Army and whose discharge is Under Honorable Conditions, but whose military record is not sufficiently meritorious to warrant an Honorable discharge. Character of discharge and service is Under Honorable Conditions. (2) NGB Form 56a is issued to Soldiers who are discharged from the ARNGUS only, who revert to the control of the Army Reserve, and whose discharges from such service are Under Honorable Conditions, but whose military records are not sufficiently meritorious to warrant an Honorable discharge. Character of discharge and service is Under Honorable Conditions.

(3) Under Other Than Honorable Conditions is issued to Soldiers who concurrently discharged from the ARNGUS and as a Reserve of the Army when character of discharge and service are Under Other Than Honorable Conditions. This characterization is authorized only if the Soldier has been afforded the right to present their case before an administrative discharge board. The discharge may be issued for misconduct, fraudulent entry, or homosexual conduct. Assign a reenlistment code of RE 4 if the reason for discharge is not waivable for enlistment or reenlistment, or RE 3 if the reason for discharge is waivable.

3. 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 post-traumatic stress disorder (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.

4. 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, on 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.

5. 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.

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 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.

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.

6. Section 1556 of Title 10, United States Code, 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.

//NOTHING FOLLOWS//