

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 April 2024

DOCKET NUMBER: AR20230009414

APPLICANT REQUESTS, in effect, correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 24 March 2014, due to mental health issues, to show in:

- Item 24 (Character of Service) from a bad conduct discharge to something better
- Item 26 (Separation Code) "JJD" to something better
- Item 27 (Reentry Code) RE -4 to something better
- Item 28 (Narrative Reason for Separation) Court-Martial, Other to something better

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

- DD Form 293 (Application for The Review of Discharge from The Armed Forces of The United States)
- Department of Veterans Affairs (VA) Form 21-526EZ sample

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: "At the time of the charges I was in a depressed and angry mindset. I never meant to handle things in the way that I did. I was mentally coping with my issues by drinking, trying to find ways to cope without losing it mentally. I apologize for my actions and just hope I can at least get basic benefits". He applicant provides a sample VA Form 21-526EZ.

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

a. The applicant enlisted in the Regular Army on 27 August 2007. He reenlisted on 20 November 2009. He served in Iraq from 8 December 2008 to 26 November 2009.

b. The applicant was assigned to 3rd Battalion, 21st Infantry Regiment, 25th Infantry Division at Fort Wainwright, Alaska when he was convicted by a general court-martial, adjudged on 3 July 2012. The general order that convicted him is not available for review.

c. On 17 December 2013, the applicant was administratively assigned to the Personnel Control Facility, Fort Sill, Oklahoma. The applicant was placed on appellate leave pending review of his punitive discharge.

d. On 13 March 2014, Joint Base Elmendorf-Richardson, Alaska published General Court Order Number 6. This order shows the sentence to hard labor without confinement for 90 days and a bad conduct discharge, adjudged on 3 July 2012 as promulgated by a previous General Order Number 2, dated 24 January 2013 (not available for review), was finally affirmed. Article 71(c) having been complied with and the bad conduct discharge would be executed.

e. On 17 June 2014, Headquarters, U.S. Army Garrison, Fort Sill published Orders 079-309, reassigning him to the U. S. Army transition point for transition processing.

f. He was discharged from active duty on 24 March 2014. His DD Form 214 shows he was discharged from active duty on 24 March 2014. pursuant to Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 3. His DD Form 214 shows he was discharged with a BCD, due to a Court Martial, He received a separation code of "JJD" (court-martial – other) and a reentry code of "4". He completed 6 years, 6 months, and 28 days of net active service this period. This document also shows in:

- item 12f (Foreign Service): 1 year, 10 months, 21 days
- item 18 (Remarks): does not reflect continuous honorable service
- item 24 (Character of Service): Bad Conduct
- item 25 (Separation Authority): Army Regulation 635-200, Chapter 3
- Item 26 (Separation Code): "JJD"
- Item 27 (Reentry Code): RE -4
- item 28 (Narrative Reason for Separation): Court-Martial, Other
- item 29 (Dates of Time Lost During This Period): None

5. A representative from the Army Review Boards Agency Case Management Division contacted the applicant on 24 October 2023 to request medical documentation in support of his contention of mental health issues. The applicant did not provide any supporting medical documentation.

6. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his bad conduct discharge (BCD) as well as upgrades of his separation code, reentry code, and narrative reason for separation. 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 27 August 2007 and reenlisted on 20 November 2009.
- The available record is void of a separation packet containing the specific facts and circumstances surrounding the applicant's discharge processing.
- General Court Order Number 6, dated 13 March 2014 shows in the General Court Martial, he was found guilty and sentenced to hard labor without confinement for 90 days and a BCD, adjusted on 3 July 2012 as promulgated by a previous General Order Number 2, dated 24 January 2013 (not available for review), and was finally affirmed.
- His DD Form 214 for the period ending 24 March 2014 shows he was discharged with a BCD, due to a Court Martial, pursuant to Army Regulation 635-200, Chapter 3. He received a separation code of "JJD" (court-martial – other) and a reentry code of "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 293, his ABCMR Record of Proceedings (ROP), and documents from his service record and separation packet. 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.

The applicant states: "At the time of the charges I was in a depressed and angry mindset. I never meant to handle things in the way that I did. I was mentally coping with my issues by drinking, trying to find ways to cope without losing it mentally. I apologize for my actions and just hope I can at least get basic benefits".

c. Active-duty electronic medical records available for review indicate the applicant was seen on 31 January 2012 for an ASAP assessment interview. He did not meet criteria for a substance use disorder, but the clinician had concerns he was not being honest in the interview and recommended enrollment in outpatient treatment. On 6 February 2012, the applicant presented with members of his chain of command for a Rehabilitation Team Meeting and was enrolled in outpatient treatment. Per the clinician, it was recommended he participate in a minimum of 12 weekly group counseling

sessions and bi-weekly individual therapy sessions. There is evidence he participated in treatment, but it is unclear whether he completed the treatment program.

d. 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 having a mental health condition. A representative from the ARBA Case Management Division contacted the applicant on 24 October 2023 to request medical documentation in support of his contention of mental health issues. The applicant did not provide any supporting medical documentation.

e. Based on the information available, the Agency Behavioral Health Advisor is unable to opine regarding medical mitigation without the specific facts and circumstances that led to his discharge. However, there is no evidence of the applicant having any BH condition.

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 asserts a mitigating condition.

(2) Did the condition exist or experience occur during military service? No. The applicant reports a depressed and angry mindset but provides no medical documentation in support of any BH condition.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. This advisor is unable to opine regarding medical mitigation without the specific facts and circumstances that led to his discharge. However, the applicant provides no medical documentation substantiating any BH diagnosis. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. And while the applicant self-asserts OMH, he did not provide any medical documentation substantiating any BH diagnoses.

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. Discharge upgrade: Deny. The evidence shows he was convicted by a general court-martial of violating the UCMJ and sentenced to a bad conduct discharge. His original court-martial order is not available for review. However, his record contains a final court-martial order that shows his sentence included a bad conduct discharge,

adjudged on 3 July 2012, had been affirmed, and the bad conduct discharge was ordered duly executed. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. The Board agreed with the medical reviewers finding that medical mitigation is not possible without the specific facts and circumstances that led to his discharge and that there is no evidence of the applicant having any behavioral health condition.

b. Separation Code, Reentry Code, and Reason for Separation. Deny. The evidence shows the applicant violated the UCMJ and was convicted by a court-martial, which led to his punitive discharge. His DD Form 214 correctly lists the reason for discharge as court-martial. Additionally, enlisted Soldier who are separated under chapter 3 of AR 635-200 due to conviction by a court-martial are assigned Separation Code JJD which has a corresponding RE Code of 4.

c. Based on a preponderance of available evidence, the Board determined that the character of service, Reason for Separation, Separation Code, and Reentry Code the applicant received upon separation were not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

█ █ █ DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, the Board found 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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows he reenlisted on 20 November 2009 for five years. As a result, amend his DD Form 214 for the period ending on 24 March 2014 by adding to item 18 (Remarks): "Continuous Honorable Active Service from 27 August 2007 to 19 November 2009".

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. Army Regulation 15-185 (Army Board for Correction of Military Records) 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.

3. Army Regulation AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, MSO, or period for which called or ordered to active duty.

c. A discharge under other than honorable conditions is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

d. Chapter 3 provides that a Soldier will be given a BCD pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing staff judge advocate.

4. Army Regulation 635-8 (Separation Processing and Documents). 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.

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

- RE-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

6. Army Regulation 635-5-1 (Separation Program Designator Codes) 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 "JJD" is the appropriate code to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200, Chapter 3, based on Court Martial.

7. 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 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.

8. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

9. 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.

10. Title 10, U.S. Code, section 1552, the authority under which this Board acts, provides that the ABCMR is not empowered to set aside a conviction. Rather it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to modify the severity of the punishment imposed.

11. Title 10, 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.

//NOTHING FOLLOWS//