

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 April 2024

DOCKET NUMBER: AR20230009535

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)
- self-authored statement, 8 June 2023
- Department of Veterans Affairs (VA) medical records, 15 June 2023

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 made several mistakes when he was younger. He grew up in a safe and loving home with his parents and two older siblings. He performed academically and enjoyed sports such as track and field and weightlifting. He was mentally and physically in excellent shape, loved, and lived life to its fullest. His belief in God was so powerful he prayed daily for God to show him God's will for his life. After finishing basic and advanced individual training, he was sent overseas to Darmstadt, Germany, for his first duty station. He started drinking and smoking hash to try and fit in with other Soldiers. He felt depressed mentally and emotionally and became moody. He fought with other Soldiers a lot and started drinking and smoking hash more and more. He would look in the mirror and did not like what he saw; he felt out of control. After he was discharged from the Army, he returned home but had difficulty adjusting to civilian life, so his drinking and drugging continued. He was so depressed he wanted to die. His anger was terrible, and driving under the influence took his driving privileges away. He asks the Board to grant him relief and help him make everything in his life right.

3. The applicant enlisted in the Regular Army on 29 July 1981 for 4 years. The highest rank/grade he held was private first class/E-3.

4. The applicant accepted non-judicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on three occasions:
 - a. On 21 September 1981, for failing to go at the time prescribed to his appointed place of duty, on or about 13 September 1981. His punishment was forfeiture of \$75.00, 14 days extra duty, and 14 days restriction.
 - b. On 30 September 1982, for attempting to steal some amount of money, on or about 19 September 1982. His punishment was reduction to private/E-1, forfeiture of \$275.00 pay per month for two months, 45 days extra duty and restriction.
 - c. On 3 August 1983, for knowingly and wrongfully using marijuana, on or about 11 May 1983. His punishment was reduction to private/E-1, forfeiture of \$286.00 pay per month for two months, 45 days extra duty and restriction.
5. A DA Form 4430-R (Report of Result of Trial), shows the applicant went before a summary court-martial on 21 September 1983, and was found guilty of one charge and two specifications of breaking restriction and disrespecting a noncommissioned officer and one charge of disobeying a noncommissioned officer.
6. On 10 November 1983, the applicant's commander notified the applicant of his intent to initiate action to separate him from service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 14 (Separation for Misconduct), for a pattern of misconduct. As reason for the proposed action, the commander noted the applicant's unsatisfactory duty performance while enrolled in a closely monitored training program demonstrated poor potential for productive service. Additionally, his inconsistent weekly evaluations, adverse disciplinary history, and numerous training deficiencies.
7. The applicant's immediate and intermediate commanders formally recommended the applicant's discharge from service under the provisions of AR 635-200, paragraph 14-12b.
8. On 18 November 1983:
 - a. The applicant acknowledged receipt of his commander's notification. He consulted with counsel and was advised of the reason for separation and the rights available to him. He understood if he was issued a general discharge, he may encounter substantial prejudice in civilian life. He elected not to submit statements in his own behalf.
 - b. He underwent a complete medical examination and mental status evaluation as part of his consideration for discharge due to his misconduct. His mental status

evaluation noted, he met the retention requirements, was mentally responsible, and had the mental capacity to understand and participate in the proceedings.

9. On 30 November 1983, the separation authority approved the recommended discharge and directed the issuance of a General Discharge Certificate.

10. The applicant was discharge accordingly on 2 December 1983, under the provisions of Army Regulation 635-200, Chapter 14, by reason of misconduct - pattern of misconduct, with a under honorable conditions (general) characterization of service in the grade of E-1. His DD Form 214 contains the following entries:

a. He completed 2 years, 3 months, and 11 days of net active service with 1 year, 9 months, and 19 days of foreign service during the period covered.

b. Block 29 (Dates of Time Lost During This Period) the entry "830921 – 831013."

11. The applicant provides a VA problem list, last updated on 11 May 2023, showing the applicant was diagnosed with:

- essential (primary) hypertension
- vitamin D. deficiency
- cocaine dependence
- nicotine dependence
- bipolar disorder
- thrombocytopenic disorder
- hypo-osmolality and hyponatremia
- homelessness
- cannabis dependence

12. Regulatory guidance in effect at the time provided a discharge under other than honorable conditions was normally considered appropriate for Soldier's discharged under the provisions of AR 635-200, Chapter 14. However, the separation authority could direct a general discharge if such were merited by the Soldier's overall record.

13. 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.

14. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service. He contends he was experiencing mental health conditions that mitigate 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 29 July 1981; 2) The applicant accepted nonjudicial punishment (NJP) on three occasions between September 1981-August 1983 for: A) failing to go at the time prescribed to his appointed place of duty; B) attempting to steal money; and C) using marijuana; 3) The applicant was discharged on 02 December 1983, Chapter 14, by reason of misconduct - pattern of misconduct, with a under honorable conditions (general) characterization of service.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed the supporting documents and available military service and medical records. The VA's Joint Legacy Viewer (JLV) and hardcopy VA documentation provided by the applicant were also examined. No additional medical documentation was provided for review.

d. The applicant noted mental health conditions as a contributing and mitigating factor in the circumstances that resulted in his separation. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service. The applicant was seen for a Mental Status Exam as part of his separation proceedings on 18 November 1983. He was not diagnosed with a mental health condition, found to have the mental capacity to participate in the proceedings, and was mentally responsible. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition or has been awarded any service-connected disability. He has been assisted by the VA since 2022 for homelessness and treated for poly-substance abuse. There was also evidence that in 2023 he was diagnosed with Bipolar Disorder.

e. 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 mitigates his misconduct.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant reports experiencing a mental health condition while on active service, which mitigates his misconduct. In 2023, he was diagnosed with Bipolar Disorder.

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

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

health condition while on active service. The applicant did engage in some misconduct, which can be a sequela to some mental health conditions. Specifically, he was found to be engaged in substance abuse and avoidant behavior, such as not showing up on time to his place of duty. Substance abuse and his avoidant misconduct could be an attempt to avoid his negative emotions, but this is not sufficient to establish a history of a condition during active service. He did provide evidence of being diagnosed with Bipolar Disorder in 2023, but there was insufficient evidence the applicant was demonstrating this condition during his active service. Lastly, there is no nexus between the applicant's report of experiencing mental health conditions and his attempt to steal money. However, the applicant contends he was experiencing a mental health condition that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's mental health claim and the review and conclusions of the ARBA BH Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct not being mitigated by a mental health condition. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

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.

8/27/2024

X 

CHAIRPERSON


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, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.
3. 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. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is 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.

b. 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.

c. 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.

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 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.

5. 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//