

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 April 2024

DOCKET NUMBER: AR20230009621

APPLICANT REQUESTS: in effect, reconsideration of his previous request to upgrade his characterization of service.

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

- DD Form 293, Application for the Review of Discharge
- Character references (2)
- Department of Veterans Affairs (VA)-Mental Disorders (Other than Post-Traumatic Stress Disorder and Eating Disorders) Disability Benefits Questionnaire

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20180015476 on 18 June 2019.

2. The applicant indicates that his request is related to a mental health condition. He states, in effect-

a. While serving overseas he had family problems which caused him a great deal of stress. His mother was injured and could no longer work to support herself and his three younger siblings. He was later informed that the family had received several eviction and electricity cut-off notices due to his mother's inability to pay the bills. He requested to be transferred to Oklahoma so he could be close to his family and once assigned to Fort Sill, Oklahoma, he informed his command about his family's financial problems, but they were not sympathetic to his worries. The stress from worrying about his family, coupled with the pain he suffered for injuries from serving in the Army, caused him to develop depressive disorder. The decline in his mental health affected his ability to distinguish between right and wrong, so that he no longer could determine whether his actions were proper. It was during that time that he committed the offenses that the Army later court-martialed him for.

b. He went to a psychologist for evaluation, and she diagnosed him with depressive disorder. She specifically stated: "It is the opinion of this evaluator that the veteran's mental state at the time he was court-martialed in service should be considered, and the character of the discharge assigned should be reconsidered based upon same."

3. The record shows the applicant enlisted in the Regular Army on 3 October 1990. He served as a cannon crew member. He as promoted to the highest rank he held, private first class, pay grade E-3, on 1 October 1991.

4. His DA Form 2-1, Personnel Qualification Record, shows the applicant had three periods of lost time.

- 20 September 1994 to 26 September 1994, pretrial confinement
- 27 September 1994 to 2 October 1994, imprisonment
- 3 October 1994 to 22 September 1995, imprisonment past expiration term of service

5. General Court-Martial (GCM) Order Number 132, 1 December 1994, published by Headquarters, U.S. Army Field Artillery Center and Fort Sill (USAFACFS), Fort Sill, OK, shows -

a. the applicant, before a general court-martial at Fort Sill, Oklahoma, pled guilty and was found guilty of the following specifications:

- conspiring to commit forgery between on or about 10 October 1993 and 2 November 1993
- commission of larceny, on or about 19 October 1993
- commission of larceny, on or about 26 October 1993
- commission of forgery, between on or about 18 October 1993 and 19 October 1993
- commission of forgery, on or about 19 October 1993
- commission of forgery, on or about 20 October 1993
- commission of forgery, on or about 23 October 1993
- commission of forgery, between on or about 24 October 1993 and 28 October 1993
- commission of forgery, on or about 29 October 1993
- making and uttering certain checks with intent to defraud, between on or about 13 May 1993 and 31 August 1993
- making and uttering certain checks with intent to defraud, between on or about 14 May 1993 and 31 August 1993
- wrongfully and falsely altering a military identification card, on or about 19 October 1993

- wrongfully and falsely altering a military identification card, on or about 26 October 1993
- wrongfully soliciting another to commit larceny, between on or about 10 October 1993 and 2 November 1993

b. The applicant was charged with 21 other specifications related to larceny, forgery, altering a military identification card, and concealing stolen property, which were dismissed.

c. The court sentenced him to confinement for 38 months, forfeiture of all pay and allowances, reduction to private/E-1, and to be separated from service with a dishonorable discharge. The sentence was adjudged on 27 September 1994. The sentence was later approved, and except for the part of the sentence extending to dishonorable discharge, was directed to be executed.

6. GCM Order Number 61, 8 June 1995, USAFACFS, Fort Sill, OK, shows that before a GCM at Fort Sill, Oklahoma, the applicant pled guilty and was found guilty of one specification of testifying falsely. The court sentenced him to perform hard labor without confinement for three months.

7. On 19 July 1995, the U.S. Army Court of Appeals for the Armed Forces denied the applicant's petition for review of the decision of the U.S. Army Court of Criminal Appeals.

10. GCM Order Number 148, 21 August 1995, published by U.S. Disciplinary Barracks, U.S. Army Combined Arms Center and Fort Leavenworth, Fort Leavenworth, Kansas, shows that the applicant's sentence having been affirmed, ordered the dishonorable discharge be duly executed.

11. The applicant was discharged on 22 September 1995. His DD Form 214, Certificate of Release or Discharge from Active Duty shows he was discharged under the provisions of Army Regulation 635-200, Personnel Separations – Enlisted Personnel, Chapter 3, as a result of court-martial. He was credited with 3 years, 11 months, and 17 days of net active service for the period. His service was characterized as dishonorable.

12. The applicant provided:

a. Character references (2) from his siblings which attest to the upstanding person their brother had become after losing his way. The siblings credit their success to the applicant. In the end the mistakes he made and the lessons he learned ultimately gave him the foundation to become a great basketball coach, marry and raise a son, take

care of his family, be a valued employee, and contribute to his community. He is deserving of forgiveness and grace.

b. A Department of Veterans Affairs (VA) Mental Disorders Disability Benefits Questionnaire, 19 December 2022, which shows the VA examiner stated, "it was reasonable to conclude that the veteran meets the diagnostic criteria for Depressive Disorder due to chronic pain, with depressive features. This diagnosis is consistent with his self-report and presentation and accounts for the symptoms described. It is the opinion of this evaluation that the veteran's mental state at the time he was court-martialed in service should be considered, and the character of the discharge assigned should be reconsidered based upon the same."

13. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, Section 1552, the authority under which this Board acts, 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 moderate the severity of the punishment imposed.

14. The Board should consider the applicant's statement and overall service record in accordance with the published equity, injustice, or clemency determination guidance.

#### MEDICAL REVIEW:

1. The applicant requests reconsideration of his previous request to upgrade his Dishonorable discharge to Honorable. He contends his misconduct was related to 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 into the Regular Army on 3 October 1990; 2) As detailed in the ROP, On 1 December 1994, General Court-Martial (GCM) Order Number 132 was published. Before the GCM the applicant pled and was found guilty of multiple charges, to include forgery, larceny, uttering checks with the intent to defraud, wrongly altering a military ID card, and wrongfully soliciting another to commit larceny; 3) The court sentenced him to confinement for 38 months, forfeiture of all pay and allowances, reduction to private/E-1, and to be separated from service with a dishonorable discharge. The sentence was adjudged on 27 September 1994; 4) GCM Order Number 61, 8 June 1995, USAFACFS, Fort Sill, OK, shows that before a GCM at Fort Sill, Oklahoma, the applicant pled guilty and was found guilty of one specification of testifying falsely; 5) GCM Order Number 148, 21 August 1995, published by U.S. Disciplinary Barracks, U.S. Army Combined

Arms Center and Fort Leavenworth, Fort Leavenworth, Kansas, shows that the applicant's sentence having been affirmed, ordered the dishonorable discharge be duly executed. The applicant was discharged on 22 September 1995, accordingly.

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 military BH-related 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. Included in the casefile was a psychological evaluation, dated 19 December 2022 that shows the applicant diagnosed with Depressive Disorder due to Chronic Pain. The provider noted the depression was secondary to injuries incurred during military service. The provider further noted that the applicant mental state at the time of the court-martial should be considered. No additional BH-related documentation was provided for review.

4. The applicant requests reconsideration of his previous request to upgrade his Dishonorable discharge to Honorable. He contends his misconduct was relate to Other Mental Health Issues. A review of the records was void of any BH diagnosis or treatment history for the applicant during service. Post-service records show he was diagnosed with Depressive Disorder related to Chronic Pain purportedly secondary to injuries acquired during service. However, the applicant misconduct characterized by multiple instances of larceny, forgery, altering of military identification cards, and other related misconduct is not mitigated by the Depressive Disorder diagnosis as the misconduct is not normal sequelae of the disorder. Additionally, despite the applicant's assertion to the contrary, Depressive Disorder related to Chronic Pain does not impair an individual's ability to differentiate between right and wrong and adhere to the right.

5. Based on the available information, it is the opinion of the Agency BH Advisor that there is evidence that the applicant had a condition or experience during his time in service. However, the condition or experience does not mitigate his misconduct.

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 is diagnosed with Depressive Disorder secondary to Chronic Pain, purportedly related to injuries incurred during military service.

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 service. Post-service records show he was diagnosed with Depressive Disorder related to Chronic Pain purportedly secondary to injuries acquired during service. However, the applicant misconduct characterized by multiple instances of larceny, forgery, altering of military identification cards, and other related misconduct is not mitigated by the Depressive Disorder diagnosis as the misconduct is not normal sequelae of the disorder. Additionally, despite the applicant's assertion to the contrary, Depressive Disorder related to Chronic Pain does not impair an individual's ability to differentiate between right and wrong and adhere to the right.

#### 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. The Board concurs with the opinion of the ARBA medical advisor, who notes the applicant's record is void of any BH diagnosis or treatment history for the applicant during service. His post-service records show he was diagnosed with Depressive Disorder related to Chronic Pain purportedly secondary to injuries acquired during service.

a. The applicant misconduct was characterized by multiple instances of larceny, forgery, altering of military identification cards, and other related misconduct which is not mitigated by the Depressive Disorder diagnosis as the misconduct is not normal sequelae of the disorder.

b. Depressive Disorder related to Chronic Pain does not impair an individual's ability to differentiate between right and wrong and adhere to the right.

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 to amend decision of the ABCMR set forth in Docket Number AR20180015476, dated 18 June 2019.

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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, USC, section 1552(b), provides that applications for correction of military records must be filed within three years after discovery of the alleged error or injustice. This provision of law also allows the Army Board for Correction of Military Records (ABCMR) to excuse an applicant's failure to timely file within the three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 635-200, Personnel Separations-Enlisted Personnel, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provided that 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. Paragraph 3-7b provided that 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 3 provided that an enlisted person would be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed.

3. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, Section 1552, the authority under which this Board acts, 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 moderate the severity of the punishment imposed.

4. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.



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, Boards 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.

5. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

6. AR 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 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.

//NOTHING FOLLOWS//