

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 April 2024

DOCKET NUMBER: AR20230009715

APPLICANT REQUESTS:

- reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable
- change to his reentry eligibility (RE) code and separation code
- change of his narrative reason for separation

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement, 5 May 2023
- nine statements of support, dated 8 May to 24 May 2023

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 AR20160009337 on 17 December 2018.

2. As a new argument, the applicant states:

a. He joined the Army after high school and had a tough time adjusting to being away from home and in a completely different environment than his small town in Mississippi. He did not like the structure and discipline that the Army was enforcing, and at the time, he felt he was under a lot of pressure and did not meet the Army standards. Some of his fellow Soldiers got him to try marijuana, cocaine, and meth, and he became addicted immediately.

b. Because of his drug addiction and the bad choices he made while being on drugs, he now has hearing loss and a constant ringing in his ears, pain in his joints, trouble sleeping, low blood pressure, kidney damage, and Human Immunodeficiency Virus (HIV). He used drugs until 2021 but is now drug-free.

c. He regrets the wrong choices he made during his military service and beyond and is determined to work hard to be a productive member of society, make better choices, and be a better person. He asks the Board to grant him relief so he can obtain medical benefits from the Department of Veterans Affairs (VA). The applicant notes substance abuse disorder and other mental health issues as conditions related to his request.

3. The applicant enlisted in the Regular Army on 22 April 1999 for 4 years. The highest rank/grade he held was private/E-1.

4. On 17 November 2000, court-martial charges were preferred against the applicant. His DD Form 458 (Charge Sheet) shows he was charged with:

- on or about 2 October 2000, 6 October 2000, and 20 September 2000, failing to go at the time prescribed to his appointed place of duty
- on or about 1 October 2000, absenting himself from his unit and did remain so absent until on or about 15 October 2000
- on or about 15 November 2000, behaving himself with disrespect toward his superior commissioned officer
- on or about 23 October 2000, 12 November 2000 (twice), and 15 November 2000, willfully disobeying a lawful order from his superior commissioned officer
- on or about 19 September 2000 and 15 November 2000, willfully disobeying a lawful order from a noncommissioned officer
- on or about 24 October 2000, forging and signing an official record (DD Form 689, individual sick slip) with intent to deceive
- on or about 15 November 2000, willfully destroying military property of the United States of a value of about \$200.00
- on or about 24 October 2000, feigning a lower back strain for the purpose of avoiding his duty

5. The applicant consulted with legal counsel on 17 November 1999 and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the uniform code of military justice (UCMJ); the possible effects of a UOTHC discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, discharge in lieu of trial by court-martial. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charges against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits

administered by the Department of Veterans Affairs, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

b. He elected not to submit a statement in his own behalf.

6. The applicant's chain of command recommended approval of the applicant's request for discharge and the issuance of a discharge UOTHC.

7. On 12 December 2000, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial and directed the issuance of an UOTHC discharge.

8. The applicant was discharged accordingly on 20 December 2000, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial, with an UOTHC characterization of service in the grade of E-1. He received a separation code of "KFS" and reentry code "4." His DD Form 214 contains the following entries:

a. He completed 1 year, 6 months, and 17 days of net active service during the period covered.

b. Block 18 (Remarks), the entry "MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE."

c. Block 29 (Dates of Time Lost During This Period), the entry 16 November 2000 thru 13 December 2000 and 1 October 2000 thru 14 October 2000.

9. The applicant provides nine statements of support from family members available for the Board's review, stating that the applicant was a regular and polite child and was excited about going to the Army and making it a career. However, since he had never been away from home and his family, the Army was a significant adjustment. At the beginning of his service, everything seemed fine, but as time passed, he could not adapt to the demands of the military. He began to get into a lot of trouble in the military, was incarcerated, and eventually discharged from the Army. His drug problems and physical and mental problems started when he was in the Army and got worse when he returned home. After years of drug addiction and mental and physical medical issues, he entered and completed a drug rehabilitation program two years ago. Since then, he has been off drugs and has been doing remarkably well. His family asks the Board to grant the applicant relief so he can receive help from the VA for his mental and physical problems, which have lingered for over twenty years.

10. The ABCMR considered the applicant's request for an upgrade on 17 December 2018. After reviewing the application and all supporting documents, the Board determined relief was not warranted. The Board found the evidence presented did not

demonstrate the existence of a probable error or injustice as a basis for correction of the applicant's records.

11. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial. Additionally, the established RE code for Soldiers separated under this authority and for this reason is RE code 4.

12. 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.

13. MEDICAL REVIEW:

a. The applicant requests reconsideration of previous request to upgrade his UOTHHC discharge to Honorable. He contends his misconduct was related to Other Mental Health Issues.

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 22 April 1999; 2) As detailed in the ROP, on 17 November 2000, court-martial charges were preferred against the applicant for multiple infractions including FTR, AWOL, disrespect of an officer, disobeying and office, and disobeying an NCO; 3) The applicant consulted with legal counsel on 17 November 1999 and was advised of the basis for the contemplated trial by court-martial. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10; 4) The applicant's chain of command recommended approval of the applicant's request for discharge and the issuance of a discharge UOTHHC. On 12 December 2000, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial and directed the issuance of an UOTHHC discharge; 5) The applicant was discharged accordingly on 20 December 2000.

c. 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 treatment history for the applicant and he does not have a SC disability. No civilian BH-related records were provided for review.

d. The applicant requests reconsideration of previous request to upgrade his UOTHHC discharge to Honorable. He contends his misconduct was related to 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 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 Other Mental Health Issues and insufficient evidence to support an upgrade based on BH medical mitigation.

e. Based on the available information, it is the opinion of the Army Review Boards Agency Behavioral Health 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 Other Mental Health Issues, and per liberal guidance his assertion is sufficient to warrant the Board's consideration.

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 contends his misconduct was related to Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes.

(3) 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 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 Other Mental Health Issues and insufficient evidence to support an upgrade based on BH medical mitigation.

BOARD DISCUSSION:

1. 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 Army Review Boards Agency Behavioral Health Advisor.

2. The Board concurred with the conclusion of the medical advising official regarding there being insufficient evidence to establish that his misconduct was mitigated by a mental health issue. However, a majority of the Board found the statements of support

he provided sufficient as a basis for clemency. A majority of the Board determined his character of service should be changed to under honorable conditions (general).

3. The Board unanimously determined the reason for his separation and the associated codes are not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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| : | : | : | GRANT FULL RELIEF |
| █ | : | █ | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| : | █ | : | DENY APPLICATION |

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 to show his character of service as under honorable conditions (general).

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to an honorable character of service or changing his separation and reentry codes.

9/18/2024

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 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
2. 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 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
3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. It states that the separation code "KFS" is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial.
4. Army Regulation 635-200, in effect at the time, set forth the primary authority for separating enlisted personnel.
 - a. Chapter 10 states in part, a member who has committed an offense or offenses, the punishment for any of which, under the UCMJ and the Manual for Court-Martial, include bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. In addition, the request for discharge may be submitted at any stage in the processing of the charges until the court-martial convening authority's final action on the case. Commanders will also ensure that a member will not be coerced into submitting a request for discharge in lieu of trial by court-martial. The member will be given a reasonable time (not less than 72 hours) to consult with a

consulting counsel and to consider the wisdom of submitting such a request for discharge.

b. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability, and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. An under honorable conditions (general), discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. An under other than honorable discharge is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and in lieu of trial by court-martial.

5. 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.

6. 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//