

IN THE CASE OF: ██████████

BOARD DATE: 17 April 2024

DOCKET NUMBER: AR20230009941

APPLICANT REQUESTS: an upgrade of his characterization of service.

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), 17 May 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 19 January 2017
- Department of Veterans Affairs (VA) decision screenshot, date unknown
- character reference, from Pastor ██████, 15 May 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 while serving he struggled with anxiety and depression and dealt with this by drinking and smoking marijuana. He regrets how he handled his mental health but plans to continue getting better. While he is bettering himself, he wants to attend college and would need a discharge upgrade to use his Montgomery GI Bill. The applicant references other mental health is related to his request.
3. The applicant enlisted in the Regular Army on 5 May 2015, for a period of 6 years and 28 weeks. He was awarded the military occupational specialty of 25Q (Multichannel Transmission Systems Operator-Maintainer) and the highest rank he attained was private first class/(E-3).
4. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing. However, his DD Form 214 shows he was discharged on 19 January 2017, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c (2), by reason of misconduct (drug abuse), with separation code JKK and reentry code 4. His service

was characterized as under honorable conditions (general) and he was credited with 1 year, 8 months, and 15 days of net active service this period.

5. The Army Discharge Review Board (ADRB) reviewed the applicant's request for discharge upgrade. After careful review of his application, military records, and all other available evidence, the ADRB determined that he was properly and equitably discharged and denied his request for a change and/or reason of his discharge.

6. The applicant provides:

a. A phone screenshot taken from his VA decision document, which shows he was assigned a 70% evaluation for his adjustment disorder with anxiety.

b. A character reference letter from Pastor [REDACTED] who summarizes the applicant as being a lost soul with anger, trust, and behavior issues when they first met. The Pastor says he helped the applicant obtain a disability rating where he is able to be counseled and seek medical attention. He has grown and made significant improvements but has room for more growth. The Pastor states he will continue to mentor and guide the applicant to help him grow to be a better Christian man for himself and his family.

7. Regulatory guidance provides when an individual is discharged under the provisions of Army Regulation 635-200, Chapter 14, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. Characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate.

8. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

9. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his general under honorable conditions discharge. He contends other mental health condition mitigates his discharge.

b. 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 5 May 2015.
- Applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing. However, his DD Form 214 shows he was discharged on 19 January 2017, under the provisions of Army

Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c (2), by reason of misconduct (drug abuse), with separation code JKK and reentry code 4. His service was characterized as under honorable conditions (general).

- Army Discharge Review Board (ADRB) reviewed the applicant's request for discharge upgrade. After careful review of his application, military records, and all other available evidence, the ADRB denied his request.

c. 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, ABCMR Record of Proceedings (ROP), VA decision screenshot, character reference letter, DD Form 214, 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.

d. The applicant states while serving he struggled with anxiety and depression and dealt with this by drinking and smoking marijuana. He regrets how he handled his mental health but plans to continue getting better. While he is bettering himself, he wants to attend college and would need a discharge upgrade to use his Montgomery GI Bill.

e. Active-duty electronic medical records available for review indicate the applicant was assessed on 10 May 2016 following a car accident and diagnosed with adjustment disorder with anxiety. The applicant self-referred on 2 June 2016, reporting feelings of stress due to the car accident one month prior, adjusting to the Army, and living in a new city. During that encounter, the applicant was diagnosed with Other Reactions to Severe Stress. On 27 September 2016, the applicant participated in a chapter evaluation. The note indicates the chapter 14-12c was due to a positive urinalysis; no significant mental health issues were identified. The VA electronic medical record available for review indicates the applicant is 90% service-connected, including 70% for Major Depressive Disorder. The applicant initiated behavioral health services with the VA related to his symptoms of depression in May 2022. The applicant has engaged intermittently in behavioral health services with the VA.

f. After review of all available documentation, it is the opinion of the Agency Behavioral Health Advisor that there is evidence the applicant had a behavioral health condition during military service that would potentially mitigate his discharge, if it was solely based on substance use.

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? Yes, the applicant self-asserts depression and anxiety during his time in service and he is currently 70% service connected for Major Depressive Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. However, given the lack of available information regarding the specific circumstances that led to the applicant's discharge, this advisor is cautiously providing an opine regarding mitigation based on the understanding that his misconduct was based on substance use, not some other form of substance-based misconduct such as sales or distribution. The applicant's active-duty electronic medical record indicates BH encounters while in service due to stress and anxiety. In addition, the applicant is 70% service connected for Major Depressive Disorder. Given the nexus between depression/anxiety and self-medicating with substances, his BH condition provides mitigation for the use of substances to cope with the symptoms of depression and anxiety.

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board considered the advising official finding evidence the applicant had a behavioral health condition during military service that would potentially mitigate his discharge, if it was solely based on substance use. The opine noted the applicant's self-asserts depression and anxiety during his time in service.

2. However, the Board determined under liberal consideration there is insufficient evidence of in-service mitigating factors to overcome the misconduct. The Board notwithstanding the advising official noting there is a nexus between depression/anxiety and self-medicating with substances, the applicant's BH condition provides mitigation for the use of substances to cope with the symptoms of depression and anxiety. The Board carefully considered the applicant's service-connected disability and character

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. Section 1556 of Title 10, USC, 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. 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.
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. Paragraph 3-7a provides 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 states 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 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.
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. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

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, 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.

//NOTHING FOLLOWS//