

IN THE CASE OF: ██████████

BOARD DATE: 10 April 2024

DOCKET NUMBER: AR20230010118

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), 30 May 2023
- DD Form 214 (Report of Separation from Active Duty), 13 April 1977

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, in effect, while serving in Korea he was having severe anxiety, and tried to commit suicide. Around 1982, he sought help and saw a psychiatrist where he was committed to a hospital for 5 weeks. He references other mental health is related to his request.
3. The applicant enlisted in the Regular Army on 27 June 1974, for a 2-year period. On 9 June 1976, he was honorably discharged for immediate reenlistment in the grade of E-2. His DD Form 214 shows he was awarded military occupational specialty of 26L (Tactical Microwave Systems Repairman) and he served 1 year, 11 months, and 13 days of net active service for this period. Additionally, he was awarded the National Defense Service Medal. On 10 June 1976, he reenlisted for a 5-year period.
4. On 16 March 1977, he accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice for operating a vehicle while drunk on or about 10 March 1977. His punishment imposed was reduction to private first class/E-3 and extra duty for 45 days.
5. The applicant's immediate commander notified the applicant on 21 March 1977 of his intent to initiate action to discharge the applicant under the provisions of Army

Regulation 635-200 (Personnel Separations-Enlisted Personnel), Chapter 5, the Expeditious Discharge Program (EDP), with the issuance of a general discharge certificate. The commander stated the reasons for his proposed action were:

- a. Personal problems which were hindering the applicant's function in the unit.
 - b. His charge of attempted suicide.
 - c. His field grade Article 15 for operating a vehicle while under the influence.
 - d. His inability to adjust to the unit, stating he was extremely under pressure by the amount of work they did.
 - e. Additionally referencing the applicant requested this action.
6. The applicant acknowledged receipt of the notification. He consulted with counsel and was advised of the reason for separation and the rights available to him. The applicant voluntarily consented to the discharge. He understood if he was issued a general discharge, he may encounter substantial prejudice in civilian life. He did not submit a statement in his behalf.
7. Subsequently, the immediate commander formally recommended the applicant's separation from service under the EDP, with the issuance of a general discharge certificate.
8. The applicant's intermediate commander recommended approval for separation under the EDP, stating the applicant be furnished a general discharge certificate.
9. The separation authority approval memorandum is void from the applicant's official military personnel records. However, the applicant received a memorandum stating he was being issued a general discharge from the Army.
10. The applicant was discharged on 13 April 1977, under the authority of Army Regulation 635-200, paragraph 5-37. His DD Form 214 confirms his characterization of service was under honorable conditions (general), with separation program designator code JGH and reenlistment code RE-3. He was credited with 10 months and 4 days of net active service for this period with 2 years, 9 months, and 17 days of total active service. He was awarded the Army Good Conduct Medal.
11. The EDP provides that members who have demonstrated they cannot or will not meet acceptable standards required of enlisted personnel in the Army may be separated when they have failed to respond to counseling.

12. 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.

13. 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 experienced mental health conditions that mitigates 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 into the Regular Army on 27 June 1974; 2) On 16 March 1977, the applicant accepted nonjudicial punishment for operating a vehicle while drunk; 3) The applicant was discharged on 13 April 1977, under the authority of Army Regulation 635-200, paragraph 5-37. His DD Form 214 confirms his characterization of service was under honorable conditions (general).

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

d. The applicant asserts he was experiencing mental health conditions, which mitigates his misconduct. Specifically, he reported experiencing "severe anxiety and tried to commit suicide" while on active service. There is evidence the applicant was experiencing difficulty in his unit at the time of his discharge and attempted suicide. The applicant's immediate commander notified the applicant on 21 March 1977 of his intent to initiate action to discharge the applicant for his misconduct of operating a vehicle while drunk, attempting suicide, experiencing personal stress, and difficulty managing occupational stress. A review of JLV provided insufficient evidence the applicant has been diagnosed with and or treated for any service-connected mental health condition by the VA. He also does not receive any service-connected disability. The applicant stated he was admitted to and inpatient psychiatric treatment program at the VA in [REDACTED] [REDACTED] after his discharge in 1982. The applicant did not provide a hard copy of this medical of this treatment.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient 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 asserts he experienced a mental health condition that

mitigates his misconduct. There was evidence the applicant was experiencing personal problems, occupational problems, and attempted suicide while on active service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced a mental health condition that mitigates his misconduct. There was evidence the applicant was experiencing personal problems, occupational problems, and attempted suicide while on active service.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing a mental health condition while on active service. The applicant did engage in misconduct related to alcohol use. Alcohol use or abuse can be a natural sequelae to mental health conditions like anxiety. Therefore, there is evidence the applicant's misconduct is mitigatable per Liberal Consideration.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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 the medical review, the Board concurred with the advising official finding sufficient evidence to support the applicant had condition or experience that mitigates his misconduct. The Board noted the opine found the applicant assertions that he experienced a mental health condition that mitigates his misconduct. There was evidence the applicant was experiencing personal problems, occupational problems, and attempted suicide while on active service.

2. The Board determined based on the advising opine, liberal consideration and the preponderance of evidence regarding the applicant's mental health conditions, there is sufficient evidence to mitigate the applicant's characterization of service with an upgrade to honorable. Therefore, the Board granted relief.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

In addition to the administrative notes annotated by the Analyst of Record (below the signature), the Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 for the period ending 13 April 1977, to show his characterization of service as honorable.

4/11/2024

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CHAIRPERSON

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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.

ADMINISTRATIVE NOTES:

A review of the applicant's records shows he is authorized additional awards not annotated on his DD Form 214 for the period ending 13 April 1977. As a result, amend his DD Form 214 by adding: Korea Defense Service Medal

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. Section 1556 of Title 10, U.S. Code, 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

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.

c. Paragraph 5-37 of the regulation in effect at the time provided for the discharge of enlisted personnel whose performance of duty, acceptability for service, and potential for continued effective service fall below the standards required for enlisted personnel. The philosophy for this policy is that commanders will be able to anticipate and preclude the development of conditions which clearly indicate that Soldiers concerned are becoming problems to an extent likely to lead to board or punitive action which could result in their separation under conditions which would stigmatize them in the future. No individual would be discharged under this program unless the individual voluntarily consented to the proposed discharge. Individuals discharged under this provision of the regulation were issued either a general or honorable discharge.

d. The EDP provides that members who have demonstrated they cannot or will not meet the acceptable standards required of enlisted personnel in the Army because of

the existence of one or more of the following conditions may be separated when they fail to respond to counseling.

- poor attitude
- lack of motivation
- lack of self-discipline
- inability to adapt socially or emotionally
- failure to demonstrate promotion potential

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 (PTSD); 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. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs on 25 July 2018, 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 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.

//NOTHING FOLLOWS//