

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 22 May 2024

DOCKET NUMBER: AR20230010121

APPLICANT REQUESTS: reconsideration of his prior request for upgrade of his under other than honorable conditions characterization of service to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Aperion Care Lakeshore Admission Record, dated 18 July 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 AR2003091124 on 15 January 2004.
2. The applicant states he is requesting that his discharge be changed from dishonorable to honorable. He is residing in a mental health facility. He has marked the blocks on the application form indicating his issues are related to disability, post-traumatic stress disorder (PTSD), and other mental health conditions.
3. The applicant's discharge packet, containing any nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), his notification of proposed separation, acknowledgement of notification, rights election, chain of command endorsements, and approval, is not in his available service records for review. However, this information was captured in a previous Army Review Board Agency decisional document, and in the previous ABCMR decisions.
4. The applicant enlisted in the Regular Army on 30 January 1980, and was awarded the Military Occupational Specialty (MOS) 11B (Infantryman).
5. Headquarters, Berlin Brigade Special Court-Martial Order Number 9, dated 29 June 1981, shows:
 - a. The applicant was arraigned and tried before a special court-martial which convened in Berlin, Germany, pursuant to Court-Martial Convening Number 6, this

headquarters, dated 13 February 1981, where he was charged with, pled guilty to, and found guilty of:

(1) Absenting himself from his unit without authority from 21 March 1981 through 25 March 1981;

(2) Failing to go at the time prescribed to his appointed place of duty at morning formation on 26 March 1981; and

(3) Absenting himself from his unit without authority from 28 March 1981 through 23 April 1981.

b. On 19 May 1981, the applicant was sentenced to reduction to the rank/grade of private (PVT)/E-1 and confinement at hard labor for 2 months.

c. On 29 June 1981, the portion of the sentence that provides for confinement at hard labor for 2 months was approved and would be duly executed. The accused would be confined in the U.S. Army Retraining Brigade, Fort Riley, KS, or elsewhere as competent authority may direct.

6. He accepted NJP under Article 15 of the UCMJ on the following occasions for the following misconduct:

- on 3 July 1980, for failure to go to his appointed place of duty on 31 May 1980
- on 24 July 1981, for disobeying a lawful order on 18 July 1981

7. On 5 August 1981, he was notified of pending discharge proceedings under the provisions of Army Regulation 635-200, paragraph 14-33, due to misconduct, frequent incidents of a discreditable nature and was advised of his rights.

8. On 9 August 1981, he accepted NJP under Article 15 of the UCMJ for disobeying a lawful order on 9 August 1981.

9. On 25 August 1981, the intermediate commander recommended approval.

10. On 27 August 1981, the applicant acknowledged notification, consulted with counsel, and declined to submit a statement in his own behalf.

11. On 4 September 1981, he accepted NJP under Article 15 of the UCMJ for disobeying a lawful order on 3 September 1981.

12. On 8 September 1981, the discharge authority directed his receipt of an under other than honorable conditions character of service under the provisions of Army Regulation 635-200, chapter 14.

13. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under other than honorable conditions on 11 September 1981, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-33b (misconduct - frequent incidents of a discreditable nature with authorities) with corresponding separation code JKA. He was credited with 1 year, 4 months, and 22 days of net active service this period, with lost time from 21 May 1981 through 24 March 1981; 28 March 1981 through 22 April 1981; and 19 May 1981 through 7 July 1981.

14. The applicant's available service records do not contain any documentation reflective of his diagnosis of or treatment for a mental health condition.

15. The applicant applied to the Army Discharge Review Board (ADRB) in July 1982, requesting an upgrade of his discharge characterization, which was disapproved in March 1983, as his discharge was deemed proper and equitable.

16. The applicant previously applied to the ABCMR in September 2003, requesting upgrade of his discharge, stating he accepted NJP only on three occasions and that someone broke into his room and stabbed him in the back. On 15 January 2004, the Board denied the applicant's request, determining the evidence presented and merits of the case were insufficient to warrant the requested relief.

17. The applicant provided an Aperion Care Lakeshore Admission Record, dated 18 July 2023, which shows his admission to that facility from acute care hospitalization at Chicago Behavioral Health on 15 March 2023. His admitting diagnoses include:

- major depressive disorder, recurrent, unspecified
- bipolar disorder, unspecified
- anxiety disorder, unspecified
- brief psychotic disorder
- auditory hallucinations
- visual hallucinations

18. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration of an upgrade to his characterization of service from under other than honorable conditions to honorable. He contends he experienced an undiagnosed mental health condition, including PTSD, 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:

- The applicant enlisted into the Regular Army on 30 January 1980.
- The applicant was arraigned, tried, and found guilty by a Court-Martial in February 1981 for absenting himself from his unit without authority; failing to be at his appointed place of duty; and a second charge of absenting himself from his unit without authority. Additionally, he accepted NJP under Article 15 of the UCMJ for failure to go to his appointed place of duty and disobeying a lawful order. As discharge proceedings were pending, the applicant received another NJP for disobeying a lawful order.
- The applicant's DD Form 214 shows he was discharged under other than honorable conditions on 11 September 1981, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-33b (misconduct - frequent incidents of a discreditable nature with authorities) He was credited with 1 year, 4 months, and 22 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts "I am residing in a mental health facility" as his reasoning for the request to the change in characterization of discharge. Records from a psychiatric rehabilitation facility dated July 2023 provided by the applicant showed the following diagnoses: Major Depressive Disorder, Bipolar Disorder, Anxiety Disorder, Unspecified, Brief Psychotic Disorder, and auditory hallucinations (diagnoses dated 15 March 2023). In the document titled "Army Council of Review Boards" dated July 1982, the applicant explains that "In December 1980, I began having misunderstandings with my fellow soldiers. I felt and still feel that this was due to the pressure and strain I was undergoing with my MOS, which was very strenuous. I tried talking to my squad leader, but he appeared to be unconcerned. Feeling the need to get away for awhile, I requested leave, which was denied." This document indicates that a mental status examination was conducted on 31 August 1981, but that evaluation is not available for review. Additionally, documentation from the applicant's initial DD Form 149 reflects that the applicant asserts that one of the charges was related to "somebody broke into my room and stabbed me in the back." That request, which was denied, was for an upgrade in characterization of his discharge to general. In sum, there was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed a history of intermittent engagement with VA through the ER as related to homelessness and physical health problems. Documentation from civilian providers also indicate a history of healthcare utilization through the ER, including a diagnosis of Schizoaffective Disorder. In 2022, documentation showed the applicant was prescribed both mood stabilizing and antipsychotic medications. In February 2023 there is documentation of

the applicant presenting at an ER with disorganized thinking, agitation, combativeness, and inability to respond to questions. The notes indicate transfer to a psychiatric facility with similar medications as stated above. Documentation reflected diagnosis of Schizoaffective Disorder.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition at the time of the misconduct. There is no indication in records from his time in service or after discharge that he has ever been diagnosed with PTSD, but there is documentation that he was diagnosed with Schizoaffective Disorder after discharge from service.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence that the applicant was experiencing a mental health condition, including PTSD, while on active service. There is a documented history of a diagnosis of Schizoaffective Disorder, but he was not determined to meet criteria for this diagnosis during his time in service. The applicant's behavior, while on active service, did demonstrate difficulty in maintaining his military duties and standards. Additionally, he was of the age when it is likely to have a first psychotic episode, especially given the stress that he reported he was under. There is a nexus between poor judgment and disorganized thinking and the applicant's later in life diagnosis of Schizoaffective Disorder. However, the onset of his psychotic symptoms is unknown, and the applicant's mental status examination was not available for review.

g. Per Liberal Consideration, the applicant's contention that he was experiencing a mental health condition that mitigated his misconduct should be strongly considered by the board.

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 and available military records, the Board concurred with the advising official finding insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. The opined noted the applicant's record is absent evidence that the applicant was experiencing a mental health condition, including PTSD, while on active service. There is a documented history of a diagnosis of schizoaffective disorder, but he was not determined to meet criteria for this diagnosis during his time in service.

2. The Board recognized there is a nexus between poor judgment and disorganized thinking and the applicant's later in life diagnosis of Schizoaffective Disorder. However, the applicant's psychotic symptoms is unknown, and his mental status examination was not available for review. The Board determined the applicant's service record exhibits numerous instances of misconduct during his enlistment period for 1 year, 4 months, and 22 days of net active service this period with three (3) separate periods of lost time. The Board noted the applicant provided insufficient evidence of post service achievements or character letters of support for the Board to weigh a clemency determination. Furthermore, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the pattern of misconduct. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust. Therefore, relief was denied.

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 Board found 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 the decision of the ABCMR set forth in Docket Number AR2003091124 on 15 January 2004.



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. 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 (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) 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 (TBI), 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, on those conditions or experiences.
2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 14 (Separation for Misconduct) establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, use of illegal drugs, and convictions by civil authorities. 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 considered appropriate for a Soldier discharged under this chapter.
 - b. Chapter 3 (Character of Service and Description of Separation) provides:

(1) An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct.

(2) 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.

(3) A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial when the reason for separation is based upon a pattern of behavior that constitutes a significant departure from the conduct expected of Soldiers of the Army or when the reason for separation is based upon one or more acts or omissions that constitutes a significant departure from the conduct expected of Soldiers of the Army. Examples of factors that may be considered include the following:

- use of force or violence to produce serious bodily injury or death
- abuse of a special position of trust
- disregard by a superior of customary superior-subordinate relationships
- acts or omissions that endanger the security of the United States or the health and welfare of other Servicemembers
- deliberate acts or omissions that seriously endanger the health and safety of other persons

3. 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//