

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 May 2024

DOCKET NUMBER: AR20230010404

APPLICANT REQUESTS: his under other than honorable conditions (UOTHC) discharge be upgraded.

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

- DD Form 293 (Application for the Review of Discharge)
- Self-Authored Statement

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 before entering the military, he did not have any drug problems. During his military tour he used drugs and alcohol to cope with the white racism from superior officers and other higher ranking Caucasian military personnel. Examples: a white sergeant(SGT)/E-5 told him that he did not mean anything to him, he was like the black sole under his boot. SGT R\_\_ used to tell him to duck walk around the barracks and then said to get up and walk like he was being sold. Under these conditions, it caused depression, anxiety, and low self-esteem and that is why he turned to drugs and alcohol. Later he asked to be placed in a drug treatment program at Fort Bragg, NC in 1995. He is currently in Narcotics Anonymous fellowship.
3. The applicant enlisted in the Army National Guard (ARNG) on 7 July 1982. He served in the ARNG from 7 July 1982 to 21 November 1982.
4. He entered active duty on 22 November 1982. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was released from active duty and discharged from the Reserve of the Army on 7 March 1983 and transferred to the ARNG. He was discharged under the provisions of Army Regulation (AR) 635-200, Paragraph 11-3a. for entry level status performance and conduct with Separation Code

JGA and Reenlistment Code. He completed 3 months and 16 days net active service. His service was uncharacterized.

5. National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows he was honorably discharged from the ARNG on 3 August 1985.
6. He reenlisted in the ARNG on 13 February 1987. Orders 139-15, dated 20 July 1989, issued by the Fifth Regiment Armory Baltimore, MD, discharged the applicant from the ARNG on 17 July 1989. His character of service was "uncharacterized".
7. NGB Form 22 shows the applicant was transferred to the U.S. Army Reserve (USAR) Control Group. Effective date 21 November 1991. Orders 218-18, dated 21 November 1991, show the applicant received a under honorable conditions (general) discharge characterization.
8. Orders C-03-311705, dated 30 March 1993, issued by the USAR Personnel Center, St. Louis, MO, reassigned the applicant to the USAR Control Group (Reinforcement). Effective date 24 February 1993.
9. The applicant had unexcused absences in 1993. Orders 67-10, dated 22 July 1993, reassigned the applicant to the USAR Control Group (Reinforcement). Reason: Individual Ready Reserve (IRR) no show. Effective date 22 July 1993.
10. On 12 August 1994 the applicant requested enlistment into the Regular Army.
11. The applicant enlisted in the Regular Army on 14 November 1994 for 3 years. His military occupational specialty was 88M (Motor Transport Operator).
12. The applicant received formal counseling between 27 February and 6 September 1995 for:
  - failure to repair (two)
  - can't follow instructions
  - failure to report (two)
  - unauthorized people in his room
  - duty performance and personal performance
  - performs all duties as a driver
  - portion counseling-not being recommended for promotion
  - unsatisfactory performance
  - missing accountability formation
  - repeated acts of missing formations
  - failure to follow instruction (two)
  - indebtedness

- failure to provide for family
- alleged use of drugs
- bar to reenlistment
- missing place of duty

13. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on 22 June 1995, for without authority, failing to go at the time prescribed to his appointed place of duty on or about 2 February 1995. His punishment consisted of reduction to private/E-1, forfeiture of \$427.00 pay per month for two months, extra duty and restriction.

14. A Report of Mental Status Evaluation, dated 19 July 1995, shows the applicant had the mental capacity to understand and participate in the proceedings and was mentally responsible. He was referred for psychiatric evaluation by command in conjunction with separation actions under the provisions of AR 635-200, Chapter 14, for misconduct. There was no evidence of any psychiatric condition which would warrant disposition through medical channels. The applicant was psychiatrically cleared for any administrative action deemed appropriate by his command.

15. Military Police Report, dated 29 October 1995, shows a complaint of burglary, the applicant was a person related to the report. Investigation revealed that quarters had been broken into and that persons had removed a television, video recorder, one duffle bag and one ruck sack were secure and unattended. The delay in reporting was due to the fact that the applicant was intoxicated at the time of the initial report and the interviewer had to wait to interview him.

16. In his sworn statement, dated 9 November 1995, the applicant states he is sorry for the trouble he caused. He has a lot of problems on his mind and was not thinking.

17. Further investigation disclosed the applicant falsified his statement and committed the above offenses. There was sufficient evidence to title the applicant with the charges of damage to government property and false official statement.

18. The applicant accepted NJP under Article 15 of the UCMJ on 22 November 1995 for:

- without authority, failing to go at the time prescribed to his appointed place of duty on or about 14 September 1995
- failing to obey a general regulation by wrongfully operating a motor vehicle while his driving privileges were suspended on or about 25 October 1995
- physical control of a vehicle, a passenger car, while his breath was 0.12 grams of alcohol per 210 liters of breath or greater as shown by chemical analysis on or about 25 October 1995

- his punishment consisted of reduction to private/E-1, forfeiture of \$427.00 pay per month for two months, extra duty and restriction

19. The applicant received a General Officer Memorandum of Reprimand (GOMOR), the record is void of the GOMOR; however, on 28 November 1995 the commander directed the GOMOR be filed in the applicant's Official Military Personnel File.

20. The Results of Biochemical Testing, dated 30 November 1995, shows a positive urinalysis result for cocaine with the applicant's social security number.

21. The applicant's immediate commander notified him on 6 December 1995, that he intended to recommend administrative separation under the provisions of AR 635-200, Chapter 14c, for misconduct-commission of a serious offense. The reason for the proposed action was there was sufficient evidence to tile him with charges of falsifying an official statement and Article 15 for failure to repair, driving while his driving privileges were suspended and driving while intoxicated. His commander recommended he receive a UOTHC discharge. The applicant acknowledged receipt of the notification on the same date.

22. The applicant consulted with legal counsel on 27 December 1995 and was advised of the basis for his separation and the procedures and rights that were available to him. He waived a personal appearance before an administrative separation board and representation by counsel.

a. He acknowledged that he may expect to encounter substantial prejudice in civilian life, and he may be ineligible for any or all benefits as a veteran under both federal and State laws if discharged UOTHC.

b. He elected not to submit statements in his own behalf.

23. The applicant's immediate commander formally recommended the applicant be separated under the provisions of AR 635-200, Chapter 14, and recommended his service be characterized as UOTHC. His chain of command recommended an UOTHC discharge.

24. The separation authority approved the recommended discharge on 9 January 1996, and directed that the applicant be separated with a UOTHC discharge, and the applicant would not be transferred to the IRR.

25. The applicant was discharged on 12 March 1996. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 14-12c, for misconduct with Separation Code JKQ (commission of a serious offense) with Reentry Code 3. His service was characterized as under other than honorable conditions. He completed

1 year, 3 months, and 29 days of net active service. His awards include the National Defense Service Medal, and the Army Service Ribbon.

26. Soldiers are subject to separation under the provisions AR 635-200, Chapter 14, for misconduct. A discharge under other than honorable conditions (UOTHC) is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the overall record.

27. On 9 March 2009, the Army Discharge Review Board determined the applicant was properly and equitably discharge and denied his request for a change in the character and/or reason of his discharge.

28. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

29. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting an upgrade of his Under Other Than Honorable (UOTHC) characterization of service to Honorable. The applicant contends he had Other Mental Health Issues, specifically that he used alcohol and drugs to cope with depression, anxiety and low self-esteem as a result of racism he experienced while in the military.

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 first enlisted in the Army National Guard (ARNG) on 07 July 1982. The applicant has a history of several enlistments and discharges in the ARNG and US Army Reserves (USAR) from 1983-1991. His records indicate he was discharged three times with a characterization of uncharacterized. He was first discharged from the US Army Reserves on 07 March 1983 after being transferred from active duty under the provisions of Army Regulation (AR) 635-200, Paragraph 11-3a for entry level status performance and conduct. The other reasons for discharge are not described. He has a history of one honorable discharge from the Army National Guard (ARNG) on 21 November 1991 upon transfer from the ARNG to USAR.
- The applicant enlisted in the Regular Army on 14 November 1994. He was formally counseled on multiple occasions for failure to repair, failure to report, inability to follow instructions, unauthorized people in his room, duty performance and personal performance, performs all duties as a driver, not being recommended for promotion, unsatisfactory performance, missing accountability

formation, repeated acts of missing formation, failure to follow instructions, indebtedness, failure to provide for family, alleged use of drugs, bar to reenlistment, missing place of duty. The applicant received nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on 22 June 1995 for failing to be at his appointed place or duty. He also received NJP on 22 November 1995 for failing to go at the time prescribed to his appointed place of duty, disobeying an order by operating a motor vehicle while his driving privileges were suspended, and driving while under the influence of alcohol.

- The applicant had a positive urinalysis on 30 November 1995 for cocaine.
- The applicant's commander counseled him that he intended to recommend administrative separation for misconduct-commission of a serious offense. The reason for the proposed action was sufficient evidence to title him with charges of falsifying an official statement and Article 15 for failure to repair, driving while privileges were suspended and driving while intoxicated. The applicant was discharged on 12 March 1996 under the provisions of AR 635-200, Paragraph 14-12c for misconduct.
- On 09 March 2009, the Army Review Board (ARBA) determined the applicant was properly and equitably discharged and denied his request for a change in the character and/or reason of his discharge.

c. Review of Available Records Including Medical. All supporting documents reviewed. Lack of citation or discussion in this section should not be interpreted as lack of consideration. The VA electronic medical record (JLV), ROP and casefiles were reviewed. No records were available in MEDCHART. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Medical and mental status exams conducted while in-service as part of the applicant's chapter 14 proceedings were provided for review. There were no in-service military BH treatment records available for review. No civilian BH records were provided for review.

d. VA records were available for review through JLV from 19 December 1996 through 31 August 2023. The applicant is not service-connected (SC) for any BH conditions through the VA. Regarding BH conditions, his VA problem list includes combinations of drug dependence excluding opioid type drug, in remission, added January 13, 1997. He attended recovery group twice in December 1996 and January 1997 and attended a stress management class in December 1996. Records show the applicant was previously prescribed Prazosin which was discontinued in 2021. For BH purposes, Prazosin is typically prescribed for nightmares. The applicant had reported experiencing violent nightmares around that time though no further elaboration was

provided. Per JLV, the applicant currently receives psychiatric care outside of the VA and is currently prescribed Trazodone and Sertraline, indication(s) unspecified.

e. On 21 September 2021, the applicant self-reported a history of depression which he said dates back to the 1990s and possibly extended back to childhood. He was not diagnosed with depression through the VA and the VA provider did not associate his self-reported depressive symptoms to his history of alcohol or substance use nor time in the military. It was also documented in the record that the applicant has a history of cocaine use for approximately 35 years though has been in remission since 2010. It was also documented that the applicant has a history of trauma-related experiences though no elaboration was provided as to specified events or symptoms aside from nightmares. Date of onset was also not documented.

f. The applicant underwent an in-service mental status examination (MSE) on 19 July 1995 as part of his Chapter 14 separation. It was documented the applicant had no evidence of a psychiatric condition that would warrant disposition through medical channels and was cleared to participate in administrative proceedings. On his medical examination conducted on 14 July 1995 as part of his Chapter 14 separation he marked 'yes' for having a history or now of depression. Elaboration on the form indicated childhood depression.

g. The applicant was counseled on 06 July 1995 for admitting to another Soldier that he was using cocaine. It was documented that the applicant would self-refer to the ADACP for treatment. There is no documentation available for review indicating if the applicant self-referred treatment nor the course of treatment and/or diagnosis.

h. The applicant requests an upgrade of his characterization from UOTHC. He contends his misconduct was due to Other Mental Illness, specifically alcohol and substance use secondary to depression, anxiety and low self-esteem as a result of experiencing racism while in the military. A review of the available records was void of any BH diagnosis or treatment history for the applicant while in-service. His in-service MSE indicated he did not have a psychiatric condition at the time of assessment and was cleared for administrative action. Per review of VA records, he was diagnosed with a substance use disorder after separation from the military. There are no records available establishing a nexus between his misconduct, substance use and 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.

i. Based on the available information, it is the opinion of the Agency BH 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 that his behavior

was due to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

j. 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 due to self-medicating with alcohol and substances secondary to Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant asserts mitigation due to alcohol and substance use secondary to Other Mental Health Issues at the time of discharge. This assertion alone is worthy of consideration by the Board. A review of the available records was void of any in-service BH diagnosis or treatment history. Although there is evidence the applicant has received BH treatment since being discharged from the military, there is insufficient information available to establish a nexus between his misconduct and Other Mental Health Illness. Through the VA he was diagnosed with a history of a substance use disorder, in remission. While it is apparent that he is currently undergoing treatment outside of the VA for a BH-related condition given his current prescriptions of Trazodone and Sertraline, there is no documentation available as to the diagnosed conditions that are being treated, onset of those conditions, and an association between his misconduct and the condition. As such, medical mitigation is not supported.

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, the applicant's record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was discharged from active duty due to Misconduct, following a series of serious offenses ranging from falsifying an official statement, failure to repair, driving while his driving privileges were suspended, and driving while intoxicated. He received an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical advisory opinion finding insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency



determination. 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.

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 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 for correction of the records of the individual concerned.

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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 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. Title 10, USC, 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.

3. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could 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 Service 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 PTSD; 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.

5. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service 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//