

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 September 2024

DOCKET NUMBER: AR20230010443

APPLICANT REQUESTS:

- An upgrade of his general under honorable conditions discharge to honorable
- A correction to his discharge date from "19 January 2023" to "20 January 2023."

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

- DD Form 149 (Application for Correction of Military Record)
- Veterans Affairs (VA) letter

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, his DD Form 214 (Certificate of Release or Discharge from Active Duty) states that he was discharged on 19 January 2023, but his expiration of term of service (ETS) was 20 January 2023. He wants his DD Form 214 to reflect his correct time in service. The applicant also indicated on his DD Form 149, item 19, that post traumatic stress disorder (PTSD) and other mental health conditions are related to his request; however, he did not provide medical documents in support of his claim.
3. The applicant provides a copy of his VA letter, dated 19 September 2023, which reflects he was awarded a service-connected disability of 70 percent for depressive disorder, single episode, severe with anxious distress (claimed as PTSD).
4. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 17 September 2019 for a term of three (3) years.

b. On 16 November 2021, the applicant received a General Officer Memorandum of Reprimand (GOMOR) for driving while intoxicated on 23 October 2021. This reprimand was imposed as an administrative measure in accordance with Army Regulation 600-37 and not as punishment under Article 15, Uniform Code of Military Justice. The applicant submitted a rebuttal on 15 February 2022.

c. Headquarters, 1st Armored Division and Fort Bliss memorandum, dated 22 April 2022, Subject: Filing Determination on Reprimand, reflects the Commanding General directed that the applicant's GOMOR be placed permanently in the Soldier's Army Military Human Resource Record (AMHRR). The applicant acknowledged the filing determination on 17 May 2022.

d. Headquarters, U.S. Army Physical Disability Agency (USAPDA) memorandum, dated 6 February 2023, Subject: Administrative Termination of Physical Evaluation Board Findings, reflects the USAPDA had administratively terminated the Integrated Disability Evaluation case for the applicant. All authorizations and the Physical Evaluation Board Proceedings are void. The USAPDA had also requested disenrollment in the applicant's case from the Integrated Disability in the Veterans Tracking Application.

e. The complete facts and circumstances surrounding his separation are not available for review. However, his DD Form 214 reflects he was discharged on 19 January 2023 under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), misconduct (serious offense), separation code JKQ, reentry code 3, and a character of service of general under honorable conditions. He served 3 years, 4 months, and 3 days of net active service this period. Item 18 (Remarks) also states, "member has not completed first full term of service." Furthermore, the applicant's service record in the Interact Personnel Electronic Records Management System (iPERMS) does not contain any documents that allude to a separation date of 20 January 2023.

5. AR 635-200 states, action will be taken to separate a member for misconduct such as commission of a serious offense. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

6. Hagel Memorandum, dated 3 September 2014, states liberal consideration will be given in petitions for changes in characterization of service-to-service treatment records entries which document one or more symptoms which meet the diagnostic criteria of PTSD or related conditions. Special consideration will be given to VA determinations which documents PTSD or PTSD related conditions connected to military service. In cases in which PTSD or PTSD related conditions may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential

mitigating factors in the misconduct that caused the under other than honorable conditions characterization of service.

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

8. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 19 January 2023 discharge characterized as under honorable conditions (general). On his DD form 293, he has indicated that PTSD and other mental health issues are related to his request.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the Regular Army on 17 September 2019 and was discharged on 19 January 2023 under the separation authority provided by paragraph 14-12c of AR 635-200, Active Duty Enlisted Administrative Separations (28 June 2021): Commission of a serious offense.

d. On 12 October 2021, the Army Physical Evaluation Board found the applicant's "Major depressive disorder and generalized anxiety disorder" his sole unfitting condition for continued military service. They applied the VA derived rating of 70%, and because the condition was not stable for final rating purposes, recommended he be placed on the TDRL.

e. The applicant received a General Officer Letter of Reprimand (GOMER) on 15 November 2021 for driving under the influence of alcohol:

"On 23 October 2021, you were stopped at the CSM Barreras Access Control point for a 100% ID check. The officer detected an odor of an unknown alcoholic beverage emanating from your person. You then failed a Standardized Field Sobriety Test. A breathalyzer test confirmed your blood alcohol content to be

0.120. This is in violation of the Uniform Code of Military Justice and Texas Penal Code.”

f. Neither the applicant’s separation packet nor documentation addressing the serious misconduct for which he was administratively separated was submitted with the application or uploaded into iPERMS. Because his October 2021 incident of driving under the influence of alcohol was addressed with the GOMOR, and more than a year passed between the GOMER and his January 2023 discharge, it is less likely than not that this incident was the serious misconduct for which he was separated.

g. The misconduct for which he was involuntarily separated made him ineligible for further processing in the Disability Evaluation System without written authorization from his general court martial convening authority (GCMCA). From paragraph 4-3f(2) of AR 635–40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017):

“Approval and suspension of an AR 635–200 separation action is not authorized when the Soldier is pending both an AR 635–200 and AR 635–40 action. The GCMCA must decide which action to pursue (as described in AR 635–200). Soldiers continue to be eligible for these administrative separation actions up until the day of their separation or retirement for disability even though their PEB findings have been previously completed and approved by USAPDA for the SECARMY. In no case will a Soldier, being processed for an administrative separation for fraudulent enlistment or misconduct be discharged through the DES process without the approval of the GCMCA.”

h. Paragraph 4-9a of AR 635–40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017) states “Disenrollment from DES, or termination of the case for any other reason, will occur no earlier than prescribed below:

“Enlisted Soldiers with an initiated or approved administrative separation for misconduct or fraudulent enlistment will be disenrolled when the MEB is completed, the Soldier’s GCMCA has reviewed the MEB, and the GCMCA has directed in writing to proceed with the administrative separation. If the separation action was initiated after the Soldier’s MEB was forwarded to the PEB, the last level of approved PEB findings prior to initiation of separation will be provided to the GCMCA for consideration in their decision.”

i. In his 12 January 2023 memorandum directing the applicant be separated with a general discharge certificate, the Commanding General of the 1<sup>st</sup> Armored Division and Fort Bliss went on to state:

“I further determine that other circumstances of the individual case do not warrant disability processing instead of further processing for administrative separation.

I have reviewed the medical examination and have determined the Soldier's medical condition(s) do not constitute matters in extenuation that relate to the basis for administrative separation or the overall characterization of service of the member as other than honorable.

I have reviewed the medical conditions identified in the medical board proceedings and have determined that the Soldier's condition(s) are not the direct or substantial contributing cause of the conduct that led to tile recommendation for administrative separation. I further determined that other circumstances of the individual case do not warrant disability processing instead of further processing for administrative separation."

j. His case was administratively terminated by the United States Army Physical Disability Agency on 6 February 2023.

k. Review of the applicant's records in JLV shows he has received several service-connected disability ratings, including a 70% disability rating for major depressive disorder.

l. It is the opinion of the ARBA medical advisor that without knowledge of the serious misconduct which led to the applicant's separation, a reversal of the GCMCA's decision is not warranted.

#### Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes: Major Depressive Disorder

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

(3) Does the condition or experience actually excuse or mitigate the discharge?  
Partially: As the condition is associated with self-medicating with alcohol and or drugs, it mitigates his episode of driving under the influence of alcohol. Without knowledge of the serious misconduct for which he was separated, mitigation of this serious misconduct cannot be recommended at this time.

#### 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 counsel's statement, 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 concurred with the advising official finding that without knowledge of the serious misconduct which led to the applicant's separation, a reversal of the GCMCA's decision is not warranted. The opine noted, that due to the applicant's misconduct and being involuntarily separated made him ineligible for further processing in the Disability Evaluation System without written authorization from his general court martial convening authority (GCMCA).

2. The Board determined there is insufficient evidence to support correction of the applicant's his discharge date from 19 January 2023 to 20 January 2023 on this DD Form 214. Furthermore, the Board found insufficient evidence of in-service mitigating factors to overcome the misconduct. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The applicant was discharged for misconduct and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. As such, the Board denied relief.

3. The Army has an interest in maintaining the integrity of its records for historical purposes. The information in those records must reflect the conditions and circumstances that existed at the time the records were created. In the absence of evidence that shows a material error or injustice, there is a reluctance to recommend that those records be changed.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	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.

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 three years after discovery of the alleged error or injustice. This provision of law also allows the Army Board for Correction of Military Records (ABCMR) to excuse an applicant's failure to timely file within the three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a states 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, of the version in effect at the time, 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, and convictions by civil authorities. It provided that 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 appropriate for a Soldier discharged under this chapter. However, the separation authority could direct an honorable discharge if merited by the Soldier's overall record.

3. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors, when taking action on applications from former service members administratively discharged under other than honorable conditions, and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed 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. The guidance further describes evidence sources and criteria, and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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. 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 based on 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. 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.

6. Title 38 (Veterans' Benefits), U.S. Code, § 1110 and 1131 (Basic entitlement), permit the Veterans Affairs to award compensation for disabilities that were incurred in or aggravated by active military service. (However, an award of a higher VA rating does not establish error or injustice on the part of the Army. The Army rates only conditions determined to be physically unfitting at the time of discharge which disqualify the Soldier from further military service. The VA does not have the authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. These two government agencies operate under different policies. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings).

//NOTHING FOLLOWS//