

IN THE CASE OF: ██████████

BOARD DATE: 24 April 2024

DOCKET NUMBER: AR20230010509

APPLICANT REQUESTS, in effect:

- the characterization of his service be upgraded to honorable
- the narrative reason for separation and the separation program designator (SPD) code be changed to a more favorable entry

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

- DD Form 149, Application for Correction of Military Record
- Applicant's Statement
- Post-traumatic stress disorder (PTSD) diagnosis

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:

a. While assigned to Fort Campbell, Kentucky he started to get in trouble between 1997 and January 1999. In the beginning, he did not adapt well, but he is not making excuses. Even when he was demoted, he dealt with the consequences of his actions. Fortunately, he had a first sergeant (1SG) that was a great leader and believed in second chances. His 1SG rekindled his drive and reminded him of why he decided to serve his country in the first place. He felt great pride when his 1SG was able to promote him before he retired.

b. Unfortunately, things got worse when the new 1SG arrived. He does not want to make any assumptions as to why the 1SG targeted him and made his life a living hell. However, he recalls one incident where his unit conducted a 45-day field training exercise. His job as a cook required him to prepare three meals a day. He worked very

early in the morning and into the evening. During this time the new 1SG had him in a foxhole doing guard duty all night, then he had to perform his duty as a cook in the morning. The applicant contends that between meals the 1SG had him filling sandbags until it was time to prepare for the next meal or it got late and then he would go to guard duty. He was also verbally abused by the 1SG. This treatment went on for 30 consecutive days. He further contends that he was sleep deprived, stressed out and did not feel mentally competent due to the treatment he received from the 1SG so when he was chosen to leave the field to get supplies, he told his supervisor that he could not return to the field.

c. As a result, he was taken to see the battalion commander and the 1SG requested he be court-martialed. When he was allowed to speak, he produced a journal of all the mistreatment with dates, times, conversations, and everything the 1SG put him through which included continuous verbal and mental abuse, various physical threats, and being sent on an overnight infantry exercise in the winter without proper gear or a sleeping bag. He was later informed that he was being demoted, given an Article 15, Uniform Code of Military Justice (UCMJ), and put out of the military.

3. The record shows the applicant enlisted in the Regular Army on 24 January 1997. The highest rank/grade he held was private/E-2.

4. His record contains a DA Form 2-1, Personnel Qualification Record, which shows the applicant had two periods of lost time:

- 15 December 1997 to 11 January 1998
- 20 January 1998 to 29 January 1998

5. On an unknown date, the applicant's commander notified the applicant that he had initiated actions to separate him from service under the provisions of Army Regulation (AR) 635-200, Personnel Separations-Enlisted Personnel, paragraph 14-12b, a pattern of misconduct which included being AWOL, failing to report for duty on divers occasions, and having a disregard for his chain of command on divers occasions. The applicant acknowledged receipt on 8 December 1998.

6. The applicant was advised by his attorney on 14 December 1998 of the basis for the contemplated actions to separate him and of the rights available to him. The applicant elected not submit a statement in his own behalf. He acknowledged that he could expect to encounter substantial prejudice in civilian life if he received a general discharge under honorable conditions. He further understood that if received a discharge/character of service which was less than honorable he could make application to the Army Discharge Review Board (ADRB) or the ABCMR for upgrading; however, he realized that an act of consideration by either board did not imply that his discharge would be upgraded.

7. On an unknown date, the applicant's commander formally recommended the applicant's separation from service, under the provisions of AR 635-200, Chapter 14-12b, pattern of misconduct.
8. On 5 January 1999, the separation authority approved the recommended discharge and directed the applicant's service be characterized as under honorable conditions, general.
9. The applicant was discharged on 20 January 1999. His DD Form 214, Certificate of Release or Discharge from Active Duty confirms he was discharged under the provisions of AR 635-200, paragraph 14-12b, by reason of misconduct with an SPD Code of JKA. He completed 1 year, 10 Months, and 19 days of net active service. His service was characterized as under honorable conditions (general).
10. The record is void of evidence showing the applicant applied to the ADRB for an upgrade of his discharge.
11. The applicant provides a letter from [REDACTED], a licensed clinical social worker (LCSW), undated. In this letter the LCSW states the applicant has been in her care for the last five years and he was diagnosed with PTSD. He developed PTSD in the service where he experienced extreme abuse by his 1SG. When he reported the abuse, he was discharged. The applicant developed extreme anxiety and depression afterwards. He has difficulty trusting or connecting with others. He is easily startled and struggles with anxiety in crowds or with any authority figure. He has difficulty in personal relationships and is easily angered and irritated. Because of these struggles, he has had difficulty with his partner and co-workers.
12. The Board should consider the applicant's statement and overall military service in accordance with the published equity, injustice, or clemency determination guidance.
13. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
14. MEDICAL REVIEW:
 - a. The applicant is applying to the ABCMR requesting his characterization of service be upgraded to honorable and the narrative reason for separation and the separation program designator (SPD) code be changed to a more favorable entry. He contends he was experiencing PTSD that mitigate 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 in the Regular Army on 24 January 1997; 2) The applicant's

commander notified the applicant that he had initiated actions to separate him for a pattern of misconduct which included being AWOL, failing to report for duty on divers occasions, and having a disregard for his chain of command on divers occasions. The applicant acknowledged receipt on 8 December 1998; 3) The applicant was discharged on 20 January 1999, Chapter 14-12b, by reason of misconduct with an SPD Code of JKA. He completed 1 year, 10 Months, and 19 days of net active service. His service was characterized as under honorable conditions (general).

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and available military service and medical records. The VA's Joint Legacy Viewer (JLV) were also examined. Addition medical documentation provided by the applicant was also reviewed.

d. The applicant noted PTSD as contributing and mitigating factor in the circumstances that resulted in his separation. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service. A review of JLV provided insufficient evidence the applicant has been diagnosed with a mental health condition or has been awarded any service-connected disability. The applicant did provide hardcopy medical documentation from a LCSW (undated). This provided evidence that he has been diagnosed with PTSD as the result of his experiences with his 1SG, and he was experiencing PTSD while on active service.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence to support the applicant had a 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 reports experiencing PTSD while on active service, which mitigates his misconduct. There is evidence the applicant has been diagnosed with PTSD as a result of his experiences on active service, and he was experiencing PTSD while on active service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reports experiencing PTSD while on active service, which mitigates his misconduct. There is evidence the applicant has been diagnosed with PTSD as a result of his experiences on active service, and he was experiencing PTSD 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 PTSD

while on active service. The applicant went AWOL, failed to report and was disrespectful. AWOL and failure to report are avoidant behaviors, and disrespectful behavior is erratic behavior. All of this behavior can be a natural sequelae of PTSD. Therefore, per Liberal Consideration, there is sufficient evidence the applicant was experiencing a mitigating mental health condition.

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 sufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. The opine noted there is evidence the applicant has been diagnosed with PTSD as a result of his experiences on active service, and he was experiencing PTSD while on active service.
2. However, the Board notwithstanding the advising official determined there is insufficient evidence of in-service mitigating factors to overcome the pattern of misconduct. The Board noted the applicant supporting documentation from his social worker not an medical professional citing the applicant's diagnosis. The Board determined the applicant provided no post service achievements or character letters of support attesting to his honorable conduct for the Board to weigh a clemency determination. The Board found based on the evidence of record showing, at the time of separation, documentation supports the narrative reason for separation properly identified on the DD Form 214. As such, the Board determined under liberal consideration changes to the applicant's narrative reason are not warranted. Furthermore, the Board determined there was insufficient evidence of an error or injustice which would warrant a change in the separation code.
3. The Board noted the applicant was discharged for misconduct. He was credited with 1 year, 10 Months, and 19 days of net active service this period 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. Therefore, relief was denied.

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.

5/6/2024

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CHAIRPERSON

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, 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. Army Regulation (AR) 635-200 Personnel Separations-Enlisted Personnel, 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. 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 such was merited by the Soldier's overall record.

3. AR 635-5-1, Separation Program Designator (SPD) Codes, prescribes the specific authorities (regulatory, statutory, or other directives), the reasons for the separation of members from active military service, and the separation program designators to be used for these stated reasons. The regulation shows that the separation program designator "JKA" as shown on the applicant's DD Form 214 specifies the narrative reason for discharge as "pattern of misconduct" and that the authority for discharge under this separation program designator is "AR 635-200, chapter 14-12".

4. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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.

5. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

6. AR 15-185, ABCMR, states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//