

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 May 2024

DOCKET NUMBER: AR20230010615

APPLICANT REQUESTS: upgrade of his general, under honorable conditions character of service.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214, Certificate of Release or Discharge from Active Duty, 17 June 2006

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, he wants an upgrade of his discharge. He marked PTSD (post-traumatic stress disorder) and Other Mental Health on his application.

3. Review of the applicant's service records shows:

a. He enlisted in the Regular Army on 12 April 2005 and held military occupational specialty 52D, Power Generation Equipment Repairer. He was assigned to a unit in Korea.

b. He was frequently counseled by his chain of command for various infractions, including:

- multiple instances of failing to be at his appointed place of duty
- missing formation
- consuming alcohol while on restriction
- substandard performance
- disobeying orders
- violating a no drinking order

c. On 7 November 2005, he accepted nonjudicial punishment under Article 15 for unlawfully striking a staff sergeant with his closed fist and failing to obey a lawful order by wrongfully being off installation during the prescribed hours of curfew. His punishment included forfeiture of pay, extra duty, and restriction. .

d. A Military Police Report shows on 12 November 2005, the applicant and another Soldier were identified as being downtown after curfew with odor of alcohol beverages. They were processed and released to their unit. Also, following this incident, the applicant was command- referred to Community Counseling Center

e. On 16 February 2006, a Counselor at the Community Counseling Center provided a memorandum, Subject: Rehabilitation Failure, to the applicant's commander regarding the applicant's enrollment in the Army Substance Abuse Program:

(1) Applicant was enrolled in the Community Counseling Center from 19 January 2006 to the present date as a command referral. He was assessed at the Army Substance Abuse Program on 17 January 2006 following an alcohol related incident. The result of that assessment was a diagnosis of 303.90 Alcohol Dependence. During this period, he failed to adequately participate in rehabilitation. It is recommended that this case be considered a rehabilitation failure based on the following information regarding this patient's activities while enrolled.

(a) Self reporting in group counseling sessions by [Applicant] that he had not maintained abstinence from alcohol during enrollment in the program, he continued to drink on regular basis, even after being assessed at TMC for alcohol cravings and was placed on Naltrexone.

(b) On 8 February 2006, applicant received counseling from his immediate supervisor for missing formation related to drinking alcohol the night before. This is evidence that he violated the provisions of his rehabilitation program at the Community Counseling Center and was also a violation of the written orders signed by his command that he not consume alcohol while enrolled.

(c) Applicant's participation in his own rehabilitation during the first few weeks of his program seemed minimal at best. He did not work and seemed only to attend group therapy sessions because it was required.

(2) If this case is considered a rehabilitation failure, the provisions of Army Regulation (AR) 600-85 (Army Substance Abuse Program) should be followed for rehabilitation failures.

f. On 10 May 2006, the applicant's commander notified him that he was initiating action to discharge him under the provisions of AR 635-200 (Active Duty Enlisted

Administrative Separations), chapter 9. The reasons for the proposed separation are: The applicant was enrolled into the Army Substance Abuse Program (ASAP) on 19 January 2006 and continued to consume alcoholic beverages while enrolled in the program. His ASAP Counselor has determined that you failed to adequately participate in the rehabilitative process on 16 February 2006. The immediate commander recommended a General, Under Honorable Conditions Discharge Certificate.

g. On 10 May 2006, the applicant acknowledged he had been notified of the action under the provisions of AR 635-200, chapter 9. He declined consulting with counsel and indicated he did not desire to submit any statements. He acknowledged that he understood he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions or an under other than honorable discharge is issued to him. He further understood that, as the result of issuance of a discharge under other than honorable conditions, he may be ineligible for many or all benefits as a veteran under both Federal and State laws and that he may expect to encounter substantial prejudice in civilian life.

h. The immediate commander initiated separation action against the applicant under chapter 10 of AR 635-200 for alcohol rehabilitation failure. The intermediate commander recommended approval.

i. On 26 May 2006, following a legal review, the separation authority approved the applicant's discharge under the provisions of chapter 9 of AR 635-200 and ordered his service be characterized as general, under honorable conditions.

j. On 17 June 2006, the applicant was discharged accordingly. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 9, due to alcohol abuse-rehabilitation failure, with a general, under honorable conditions characterization of service (Separation Code JPD, Reentry Code 4). He completed 1 year, 2 months, and 6 days of net active service this period.

4. There is no indication the applicant petitioned the Army Discharge Review Board within that board's 15-year statute of limitation.

5. 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.

#### 6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge to honorable. He contends he experienced mental health conditions including PTSD that mitigates his misconduct and discharge.

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 12 April 2005; 2) The applicant was counseled multiple times for various minor infractions during his enlistment; 3) In November 2005, the applicant accepted nonjudicial punishment for striking an NCO and wrongfully being off the installation during curfew. He was found a second time downtown after curfew under the influence of alcohol. The second incident resulted in the applicant being command referred to behavioral health due to his repeated alcohol related misconduct incidents; 4) In February 2006, the applicant was found to be a Rehabilitation Failure in regard to his enrollment in the Army Substance Abuse Program (ASAP); 5) On 17 June 2006, the applicant was discharged, Chapter 9, due to alcohol abuse-rehabilitation failure, with a general, under honorable conditions characterization of service.

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

c. The applicant asserts he was experiencing mental health problems including PTSD while on active service, which mitigates his misconduct and discharge. There is insufficient evidence the applicant ever reported or was diagnosed with a mental health condition while on active service. He was command-referred to ASAP and assessed on 17 January 2006. He was diagnosed with Alcohol Dependence and recommended for attendance to a substance abuse program, which included psychiatric medication to assist him with alcohol cravings. The applicant did not maintain abstinence despite being involved in the program, and he found to participate in treatment only minimally. In addition, he was again found to be engaged in misconduct associated with alcohol in February 2006. Therefore, he was evaluated by a behavioral health provider consistent with the policies and procedures at that time, and his behavior was determined to be consistent with a alcohol abuse rehabilitation failure.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with and/or treated for service-connected any mental health condition by the VA. He also does not receive any service-connected disability. He has been actively engaged with the VA for assistance with homelessness, polysubstance abuse, Major Depression with psychosis, substance induced mood disorder, and paranoid schizophrenia since 2018.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support 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 experienced mental health conditions including PTSD that mitigates his misconduct and discharge. There is evidence the applicant has been diagnosed by the VA in 2018 with Major Depression with psychosis, substance induced mood disorder, and paranoid schizophrenia.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD that mitigates his misconduct while on active service.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD while on active service. There is no available evidence the applicant has ever been diagnosed with PTSD. In 2018, the VA began to aid the applicant for his homelessness and polysubstance abuse. He also was diagnosed with other mental health conditions, but these conditions have not been determined to be service-connected and at times predominately related to his ongoing substance abuse. The applicant did engage multiple events of misconduct, while in active service. Some of these incidents were related to excessive alcohol consumption. The applicant was command-referred to ASAP and provided a full treatment program. However, he continued to abuse alcohol and engage in alcohol related misconduct. Therefore, he was appropriately, at the time of his active service, determined to meet criteria for an administrative separation for alcohol abuse rehabilitation failure. Therefore, there is insufficient evidence the applicant was experiencing a mitigating mental health condition at the time of active service to warrant a change to his discharge. However, per Liberal Consideration, the applicant's contention is sufficient for the board's consideration.

**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 applicant was enrolled in the Army Substance Abuse Program but failed to participate in his own rehabilitation and did not work and seemed only to attend group therapy sessions because it was required. His commander declared him an alcohol rehabilitation failure and he was discharged from active duty due to alcohol rehabilitation failure with a general 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 of in-service mitigating factors to overcome the reason for his separation. 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.



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 635-200, in effect at the time, set forth the basic authority for the administrative separation of enlisted personnel.

a. Chapter 9 contained the authority and outlined the procedures for discharging individuals because of alcohol or other drug abuse. A member who had been referred to the Army Substance Abuse Program for alcohol/drug abuse could be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there was a lack of potential for continued Army service and rehabilitation efforts are no longer practical. At the time of the applicant's separation an honorable or general discharge was authorized.

b. Paragraph 3-7a provides that 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.

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 on the basis of 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. Section 1556 of Title 10, United States Code, 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//