

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 28 May 2024

DOCKET NUMBER: AR20230010860

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions (UOTHC) and a personnel appearance before the Board via video/telephone.

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

DD Form 149 (Application for Correction of Military Record), 19 July 2023

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, during his reenlistment he experienced trauma, related to a witnessed event which occurred during his service, it resulted in lasting adverse effects on his mental health, physical health, and his wellbeing. He has experienced many years of homelessness due to his military discharge with difficulties dealing with daily living, abandonment, and mental health problems due to trauma of ranking officers' harassment and mistreatment. The applicant notes, other mental health, is related to his request.
3. The applicant enlisted in the Regular Army on 22 January 1985, for a 4-year period. He conducted an immediate reenlistment on 26 May 1988 for an additional 3-year period. He was awarded the military occupational specialty of 76C (Equipment Records and Parts Specialist) and the highest rank he attained was specialist four/E-4.
4. On a Urinalysis Custody and Report Record, with a release date of 6 April 1989, shows the applicant received a positive urinalysis result for Tetrahydrocannabinol (THC) and cocaine.
5. On 18 April 1989, the applicant received formal counseling for writing a dishonored check.

6. On 2 May 1989, the applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) for failing to go to his prescribed place of duty on or about 16 March 1989, on or about 17 March 1989, on or about 11 April 1989, and on or about 13 April 1989, and for making a false official statement with the intent to deceive on or about 11 April 1989 by saying he had gone to sick call. His punishment imposed was reduction to the grade of E-3, extra duty for 14 days, and restriction for 14 days.
7. On 15 May 1989, the applicant accepted NJP, under the provisions of Article 15, of the UCMJ for wrongfully using marijuana and cocaine, controlled substances, during the period 5 March 1989 and 5 April 1989. His punishment imposed was reduction to the grade of E-1, forfeiture of \$349.00 pay per month for two months, and extra duty and restriction for 45 days. His punishment to reduction to E-1 was vacated.
8. On 22 June 1989, the applicant's immediate commander notified the applicant of the intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12, Acts or Patterns of Misconduct. The commander noted the specific reason as the applicant's positive drug test for cocaine and referenced his NJP for failure to report. He recommended the applicant receive a UOTHC discharge.
9. The applicant consulted with counsel on 23 June 1989, and was advised of the basis for the contemplated action to separate him and of the rights available to him. He did not waive his rights to counsel, he waived consideration of his case by an administrative separation board and elected to not make a statement in his own behalf. Additionally, he understood he may encounter prejudice in civilian life if an UOTHC discharge was issued to him.
10. On the same date, the applicant's immediate commander formally recommended him for separation under the provisions of AR 635-200, paragraph 14-12.
11. On 30 June 1989 and on 5 July 1989, the applicant's intermediate commander's recommended approval of separation under AR 635-200, paragraph 14-12, for acts or patterns of misconduct with a characterization of service as UOTHC.
12. On 24 July 1989, the separation authority approved the recommended separation under the provisions of AR 635-200, paragraph 14-12b, for misconduct, and further directed issuance of a UOTHC discharge certificate.
13. The applicant was discharged on 3 August 1989, under the provisions of AR 635-200, Chapter 14, by reason of misconduct – pattern of misconduct, in the grade of E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his service was characterized as UOTHC with separation code JKM and reenlistment code

RE-3 & 3C. He was credited with 4 years, 6 months, and 12 days of net active service. He was awarded or authorized the following decorations, medals, badges, citations, and campaign ribbons:

- Army Achievement Medal
- Army Good Conduct Medal
- Noncommissioned Officer's Professional Development Ribbon
- Overseas Service Ribbon
- Driver and Mechanic Badge (Driver-Wheeled)
- Sharpshooter Marksmanship Qualification Badge (Rifle)

14. Regulatory guidance states when an individual is discharged under the provisions of AR 635-200, Chapter 14, for misconduct, an UOTHC characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

15. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

16. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his characterization of service from under other than honorable conditions (UOTHC). The applicant notes, other mental health, as related to his request.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- Applicant enlisted in the RA on 22 January 1985 and reenlisted on 26 May 1988.
- On a Urinalysis Custody and Report Record, with a release date of 6 April 1989, shows the applicant received a positive urinalysis result for Tetrahydrocannabinol (THC) and cocaine.
- On 18 April 1989, the applicant received formal counseling for writing a dishonored check.
- On 2 May 1989, the applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) for failing to go to his prescribed place of duty on or about 16 March 1989, on or about 17 March 1989, on or about 11 April 1989, and on or about 13 April 1989, and for making a false official statement with the intent to deceive on or about 11 April 1989 by saying he had gone to sick call.

- On 15 May 1989, the applicant accepted NJP, under the provisions of Article 15, of the UCMJ for wrongfully using marijuana and cocaine, controlled substances, during the period 5 March 1989 and 5 April 1989. His punishment imposed was reduction to the grade of E-1, forfeiture of \$349.00 pay per month for two months, and extra duty and restriction for 45 days. His punishment to reduction to E-1 was vacated.
- On 22 June 1989, the applicant's immediate commander notified the applicant of the intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12, Acts or Patterns of Misconduct. The commander noted the specific reason as the applicant's positive drug test for cocaine and referenced his NJP for failure to report. He recommended the applicant receive a UOTHC discharge.
- Applicant was discharged on 3 August 1989, under the provisions of AR 635-200, Chapter 14, by reason of misconduct – pattern of misconduct, in the grade of E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his service was characterized as UOTHC with separation code JKM and reenlistment code RE-3 & 3C.

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, his ABCMR Record of Proceedings (ROP), DD Form 214, and separation packet. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant states, during his reenlistment he experienced trauma, related to a witnessed event which occurred during his service, it resulted in lasting adverse effects on his mental health, physical health, and his wellbeing. He has experienced many years of homelessness due to his military discharge with difficulties dealing with daily living, abandonment, and mental health problems due to trauma of ranking officers' harassment and mistreatment.

e. Due to the period of service, no active-duty electronic medical records were available for review. The VA electronic medical record indicates the applicant is not service connected. Overall, the record indicates a history of severe polysubstance use disorder with feelings of shame and guilt related to a chronic medical diagnosis that surfaced five years post-military service. In addition, the applicant has experienced repeated episodes of homelessness. During the course of his extensive history of treatment via the VA, the applicant has repeatedly participated in mental health diagnostic screenings and fails to evidence symptoms consistent with a behavioral health condition. The applicant has been repeatedly admitted into inpatient care due to substance use disorder, including:

- On 21 December 2004, during this admission he was diagnosed with Adjustment Disorder, Cannabis Dependence, Cocaine Abuse, and Personality Disorder NOS. He was admitted for adjustment disorder with depressed mood after having found out about a chronic medical diagnosis along with preexisting chronic problems related to drug use. Upon discharge he was referred for substance abuse treatment and medical follow-up.
- On 12 February 2011, during this admission he was diagnosed with Cocaine Dependence and did not meet criteria for any other behavioral health condition. The applicant presented to the emergency room requesting cocaine detox and rehabilitation. He reported “smoking \$400-\$500 of crack cocaine weekly and using THC daily”.
- A discharge summary on 18 October 2011, indicates he was diagnosed with Cocaine Abuse and borderline personality cluster. Upon assessment he denied any PTSD related symptoms, anxiety, auditory and/or visual hallucinations, and manic symptomology except when using cocaine. He was stabilized but refused recommended follow-up treatment and left against medical advice.
- On 20 May 2014, he was screened and admitted into the Substance Abuse Residential Rehabilitation Treatment Program (SARRTP) and was diagnosed with Cocaine use disorder and THC use disorder. He successfully completed treatment on 10 June 2014 and was discharged to a substance abuse outpatient program and shelter housing, since he was experiencing homelessness.
- On 20 April 2017, he was admitted and diagnosed with Substance (cocaine) Induced Mood Disorder; Stimulant (cocaine) Use Disorder, severe; Stimulant (cocaine) withdrawal; and Cannabis Use Disorder. He was not participating in treatment but reported a period of abstaining from cocaine use following his previous admission.
- On 8 October 2019, he was once again admitted into the Substance Abuse Residential Rehabilitation Treatment Program (SARRTP) and was diagnosed with Stimulant (cocaine) Use Disorder, severe; Substance (cocaine) Induced Mood Disorder; Alcohol Use Disorder; and Cannabis Use Disorder. He was experiencing homelessness and was discharged on 29 October 2019 to the Compensated Work-Therapy/Transitional Residence (TR), which aims at reintegrating homeless veterans into steady employment and provides therapeutic residential services. He was discharged from the program on 21 November 2019 due to reported threats of violence towards a co-worker.
- Applicant was homeless until he was admitted to the Leavenworth VA Domiciliary on 22 March 2020. He was diagnosed with Cocaine Dependence; Cocaine-Induced Mood Disorder; Cannabis Dependence, Uncomplicated; Homelessness; and Adjustment Disorder. The psychiatric history notes the only diagnosis in his record is Adjustment Disorder.

f. The applicant obtained permanent housing on 24 November 2020, but by 22 December 2020, he was once again homeless and was admitted into the HUD-VASH

Program. He continued to struggle with episodes of homelessness. However, in August 2023, a note in the record indicates his substance use was in remission and the applicant was participating in the Substance Abuse Treatment Program (SATP) for veterans who want to pursue recovery from their substance use disorder. A March 2024 note indicates the applicant started Compensated Work Therapy, reports doing well in his apartment, and denied any current housing concerns. The applicant continues receiving multidisciplinary team support regarding his issues with maintaining housing, substance use, and medical needs.

g. 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 behavioral health condition during military service that mitigates his discharge.

h. 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 asserts a mitigating condition.

(2) Did the condition exist or experience occur during military service? No. There is no evidence of any BH condition during military service. The applicant reports witnessing a traumatic event during his reenlistment; however, he does not provide any details of the alleged incident.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant's VA medical record indicates the applicant engaged in polysubstance abuse that eventually resulted in a substance induced mood disorder. However, substance abuse in the absence of another behavioral health condition does not provide mitigation for misconduct. The only diagnosis in the record appears to be an Adjustment Disorder with depressed mood related to receiving a diagnosis of a chronic health condition. An Adjustment Disorder is a transient reaction to stress and does not provide mitigation in the absence of another mitigating BH condition. Applicant's Adjustment Disorder does not provide mitigation for any of the misconduct that led to his separation.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was/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 the medical review, the Board concurred with the advising official finding insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge. The opine found no evidence of any BH condition during military service.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the pattern of misconduct for wrongfully using marijuana and cocaine. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge. However, the Board during deliberation determined the applicant had a prior period of honorable service which is not currently reflected on his DD Form 214 and recommended that change be completed to more accurately show his period of honorable service by granting a partial relief to correct his record.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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|---|---|---|----------------------|
| : | : | : | GRANT FULL RELIEF |
| ■ | ■ | ■ | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| : | : | : | DENY APPLICATION |

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 3 August 1989 by adding the following entries in item 18 (Remarks)

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 850122 UNTIL 880525

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to an upgrade of his characterization of service from under other than honorable conditions (UOTHC).



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.

ADMINISTRATIVE NOTE(S): N/A

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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

3. AR 15-185 (ABCMR), the regulation governing this Board, states applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

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

a. 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 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 used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 (Separation for Misconduct) establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave.

(1) Paragraph 14-3 states a discharge under other than honorable conditions 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 Soldier's overall record.

(2) Section III (Acts or Patterns of Misconduct), paragraph 14-12c, states Soldiers are subject to discharge for Commission of a serious offense. Commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the MCM. Specific instances of serious offenses include abuse of illegal drugs or alcohol.

(3) A discharge under other than honorable conditions 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 Soldier's overall record. conduct violating the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

5. 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 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 post-traumatic stress disorder; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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.

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//