

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 22 May 2024

DOCKET NUMBER: AR20230011024

APPLICANT REQUESTS: an upgrade of his characterization of service from under honorable conditions (general) to honorable.

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), 12 November 1980
- Department of Veterans Affairs (VA) letter, 8 December 2022
- Ward Administration Times, 14 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, his character of service should read as honorable, and all discharge documentation should read the same.
3. The applicant enlisted in the Regular Army on 27 December 1977, for a period of 3 years.
4. His DA Form 2-1 (Personnel Qualification Record) shows he was awarded the military occupational specialty of 11B (Infantryman) and the highest rank he attained was specialist four/E-4.
5. On 9 July 1978, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ), for sleeping on post on or about 4 July 1978, for being drunk and disorderly, failing to go to his prescribed place of duty, and willfully disobeying a lawful order on or about 6 July 1978, and for failing to go to his prescribed place of duty on or about 7 July 1978. His

punishment consisted of reduction to private/E-1, forfeiture of \$130.00 pay per month for two months, restriction for 30 days, and extra duty for 45 days.

6. On 17 July 1978, he accepted NJP under the provisions of Article 15, UCMJ, for being disorderly in a public place, breaking said restriction, and violating a lawful general order by breaking curfew on or about 16 July 1978. His punishment imposed was forfeiture of \$92.00 for a month, restriction for 14 days and extra duty for 14 days.

7. On 24 July 1978, he accepted NJP under the provisions of Article 15, UCMJ, for absenting himself without authority on or about 21 July 1978 and remaining absent until on or about 23 July 1978. His punishment imposed was forfeiture of pay for a week, forfeiture of \$92.00 for a month, 14 days of restriction, and 14 days of extra duty.

8. On 3 August 1978, the applicant was referred for a psychiatric consultation for administrative separation under the provisions of Army Regulation (AR) 635-200, Chapter 13 (Separation for Unsuitability). The commander listed the factors for the referral as the applicant's unsuitability for military service due to requiring constant and continuous supervision at all times, the applicant continuously broke restriction and showed disrespect to all officers and noncommissioned officers in uniform.

9. Before a special court-martial adjudged on 13 November 1978.

a. The applicant pled guilty to and was found guilty of the following charge(s) and specification(s):

(1) two specifications of failing to go to his prescribed place of duty on or about 13 August 1978 and on or about 14 August 1978.

(2) one specification of behaving himself with disrespect towards his superior commissioned officer on or about 14 September 1978.

(3) four specifications of willfully disobeying a lawful order on or about 12 August 1978, 14 September 1978, and on or about 15 September 1978.

(4) one specification of violating a lawful general regulation on or about 14 August 1978.

(5) one specification of being disorderly on or about 14 September 1978.

(6) one specification of breaking restriction on or about 12 August 1978.

(7) two specifications of violating a lawful general regulation by purchasing items in excess of his authorized monthly limitations and monthly dollar limitations on or about 1 May 1978.

(8) four specifications of absenting himself without authority from on or about 29 August 1978 and remaining absent until on or about 14 September 1978, from on or about 15 September 1978 and remaining absent until on or about 18 September 1978, from on or about 30 September 1978 and remaining absent until on or about 5 October 1978, and on or about 16 October 1978 and remaining absent until on or about 19 October 1978.

b. He was sentenced to forfeiture of \$279.00 pay per month for three months, confinement at hard labor for three months, and discharge from the service with a bad conduct discharge.

c. The sentence was approved on 12 December 1978, except for the part of the sentence extending to a bad conduct discharge and the record of trial was forwarded to the Judge Advocate General for appellate review.

10. On 10 January 1979, the U.S. Army Retraining Brigade suspended the sentence of confinement at hard labor for three months.

11. On 24 January 1979, the U.S. Army Retraining Brigade approved the sentence for forfeiture of \$279.00 pay per month for three months.

12. The applicant accepted NJP, under the provisions of Article 15, UCMJ, on 3 December 1979, for behaving himself with disrespect towards his superior noncommissioned officer on or about 27 November 1979. His punishment imposed was reduction to E-1, forfeiture of \$50.00 for 1 month, and 7 days extra duty.

13. He accepted NJP, under the provisions of Article 15, UCMJ, on 4 August 1980, for stealing an AM/FM cassette recorder of a value of about \$350.00 the property of Specialist Four J.A. and violating a lawful general regulation by taking pass privileges without authority on or about 28 June 1976. His punishment imposed was reduction to E-3, forfeiture of seven days' pay for a month, 14 days restriction, and 14 days extra duty.

14. The applicant's commander notified him of the intent to initiate administrative separation action under the provisions of AR 635-200 (Personnel Separations - Enlisted Personnel), Chapter 13-4c, by reason of unsuitability - for apathy (lack of appropriate interest), defective attitudes, and inability to expend effort constructively. The applicant acknowledged receipt of notification on 15 September 1980.

15. On the same date, the applicant acknowledged he was advised by consulting counsel of the basis for the contemplated action to separate him for unsuitability under AR 635-200, Chapter 13, and its effects; of the rights available to him; and the effect of any action he took in waiving his rights.

a. He requested consideration, a personal appearance, and consulting counsel before a Board of officers.

b. He elected to not submit a statement in his own behalf. Additionally, he acknowledged understanding that he may expect to encounter substantial prejudice in civilian life if a under honorable conditions (general) discharge was issued to him. He further understood that, as the result of the 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.

16. On 15 September 1980, the applicant's immediate commander formally recommended his separation under the provisions of AR 635-200, Chapter 13. The commander noted the applicant had received a bad conduct special court-martial and seven NJPs since joining the Army. The applicant had spent 60 days in the Retraining Brigade and still had not shown interest in becoming a productive Soldier.

17. The applicant's intermediate commander recommended approval of the separation under the provisions of AR 635-200, Chapter 13. Additionally adding, the applicant's poor attitude and disrespect for military authority and failure to respond towards rehabilitative measures warranted his elimination from the service.

18. A Report of Proceedings by Investigating Officer/Board of Officers shows on 16 October 1980, the Board recommended the applicant be discharged from the service due to unsuitability and issued a General Discharge Certificate.

19. The available record is void of the separation authority's approval memorandum.

20. The applicant was discharged on 12 November 1980, under the provisions of AR 635-200, paragraph 13-4c, by reason of unsuitability, apathy, defective attitude or inability to expend effort constructively, in the grade of E-3. His DD Form 214 confirms his service was characterized as under honorable conditions (general), with separation code JMJ and reentry code RE-3B. He was credited with 2 years, 8 months, and 1 day of net active service, with 75 days lost time from:

- 21 July 1978 to 22 July 1978
- 29 August 1978 to 13 September 1978
- 15 September 1978 to 17 September 1978

- 30 September 1978 to 4 October 1978
- 16 October 1978 to 18 October 1978
- 20 October 1978 to 30 November 1978
- 21 October 1980 to 26 October 1980

21. The Army Discharge Review Board reviewed the applicant's discharge on or about 1 October 1982. After careful consideration, the Board determined the applicant was properly discharged and denied his request for a change in the type and nature of his discharge.

22. The applicant provides his Department of Veterans Affairs personal claim information, showing he had honorable service from 27 December 1977 to 12 November 1980 and he receives a service-connected rated disability of 10 percent. Additionally, he provides an in-patient ward document, dated 14 July 2023.

23. Soldiers may be separated under the provision of AR 635-200, Chapter 13, when it is determined that they are unqualified for further military service due to unsuitability.

24. 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.

25. MEDICAL REVIEW:

a. Background: The applicant is deceased as of 8 November 2023. The applicant was requesting an upgrade of his characterization of service from under honorable conditions (general) to honorable.

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 27 December 1977.
- On 9 July 1978, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ), for sleeping on post on or about 4 July 1978, for being drunk and disorderly, failing to go to his prescribed place of duty, and willfully disobeying a lawful order on or about 6 July 1978, and for failing to go to his prescribed place of duty on or about 7 July 1978.
- On 17 July 1978, he accepted NJP under the provisions of Article 15, UCMJ, for being disorderly in a public place, breaking said restriction, and violating a lawful general order by breaking curfew on or about 16 July 1978.

- On 24 July 1978, he accepted NJP under the provisions of Article 15, UCMJ, for absenting himself without authority on or about 21 July 1978 and remaining absent until on or about 23 July 1978.
- Before a special court-martial adjudged on 13 November 1978 the applicant pled guilty to and was found guilty of the following charge(s) and specification(s):
- two specifications of failing to go to his prescribed place of duty on or about 13 August 1978 and on or about 14 August 1978.
- one specification of behaving himself with disrespect towards his superior commissioned officer on or about 14 September 1978.
- four specifications of willfully disobeying a lawful order on or about 12 August 1978, 14 September 1978, and on or about 15 September 1978.
- one specification of violating a lawful general regulation on or about 14 August 1978.
- one specification of being disorderly on or about 14 September 1978.
- one specification of breaking restriction on or about 12 August 1978.
- two specifications of violating a lawful general regulation by purchasing items in excess of his authorized monthly limitations and monthly dollar limitations on or about 1 May 1978.
- four specifications of absenting himself without authority from on or about 29 August 1978 and remaining absent until on or about 14 September 1978, from on or about 15 September 1978 and remaining absent until on or about 18 September 1978, from on or about 30 September 1978 and remaining absent until on or about 5 October 1978, and on or about 16 October 1978 and remaining absent until on or about 19 October 1978.
- On 3 December 1979, the applicant accepted NJP under the provisions of Article 15, UCMJ, for behaving himself with disrespect towards his superior noncommissioned officer on or about 27 November 1979.
- On 4 August 1980, he accepted NJP under the provisions of Article 15, UCMJ, for stealing an AM/FM cassette recorder of a value of about \$350.00 the property of Specialist Four J.A. and violating a lawful general regulation by taking pass privileges without authority on or about 28 June 1976.
- On 15 September 1980, the applicant's immediate commander formally recommended his separation under the provisions of AR 635-200, Chapter 13. The commander noted the applicant had received a bad conduct special court-martial and seven NJPs since joining the Army. The applicant had spent 60 days in the Retraining Brigade and still had not shown interest in becoming a productive Soldier.
- Applicant was discharged on 12 November 1980, under the provisions of AR 635-200, paragraph 13-4c, by reason of unsuitability, apathy, defective attitude or inability to expend effort constructively, in the grade of E-3. His DD Form 214 confirms his service was characterized as under honorable conditions (general), with separation code JMJ and reentry code RE-3B.

- The Army Discharge Review Board reviewed the applicant's discharge on or about 1 October 1982. After careful consideration, the Board determined the applicant was properly discharged and denied his request for a change in the type and nature of his discharge.

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, DD Form 214, ABCMR Record of Proceedings (ROP), and documents from his service record and separation. 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 did not contend any issues or conditions as related to his request, he simply stated his character of service should read as honorable, and all discharge documentation should read the same. The applicant provides his Department of Veterans Affairs personal claim information, showing he had honorable service from 27 December 1977 to 12 November 1980.

e. Due to the time of service, no active-duty electronic medical records were available for review. The applicant did not submit hard copy documentation from his time in service. On 3 August 1978, the applicant was referred for a psychiatric consultation for administrative separation under the provisions of Army Regulation (AR) 635-200, Chapter 13 (Separation for Unsuitability). The commander listed the factors for the referral as the applicant's unsuitability for military service due to requiring constant and continuous supervision at all times, the applicant continuously broke restriction and showed disrespect to all officers and noncommissioned officers in uniform. The evaluation was not provided for review.

f. The VA electronic record available for review shows the applicant was 10% service connected for tinnitus but not for any BH condition. The applicant initiated behavioral health service via the VA on 2 January 2008, a Mental Health Admission note indicates the applicant was in a residential treatment facility for treatment of alcohol, cocaine, and heroin addiction. A psychiatry note dated 22 April 2008, documents the following history: "he began to drink and use cannabis at about 12 years old, which progressed to dependence and to include heroin and cocaine. He stopped using cannabis 30 years ago. His longest period of abstinence was while incarcerated for bank fraud starting in 1996 to about 2000. His most recent use of intoxicating substances (heroin, cocaine, alcohol) was about two months ago". The diagnostic impression was Depressive Disorder, NOS and opiate, alcohol, and cocaine dependence in early remission. The applicant received supportive behavioral health services until September 2010. The applicant presented to the VA, once again on 1 November 2016, after having relapsed. The applicant described multiple psychosocial stressors, including legal involvement due to domestic abuse and financial stress. The medical record further evidences

multiple medical hospitalizations in 2017, due to issues related to his substance use history including cirrhosis of the liver and lung cancer. During an admission for treatment of his alcohol abuse, from 27 July 2021 to 17 August 2021, the applicant was diagnosed with Alcohol Use Disorder, Severe. The applicant shared, "he used alcohol to ward off PTSD symptoms, including nightmares, flashbacks, and depressed/anxious moods". However, he was scared of the consequences of further damaging his liver and was motivated to get sober. The record documents the applicant's reported account regarding the trauma that triggered his symptoms of PTSD, as follows, "he served in Korea starting in 1977. He notes that, on his very first mission, he was made to retrieve a dead body of a man who had had his penis cut off and placed in his mouth. The patient states that fighting never stopped and that he witnessed various scenes of brutality. He has, at times, suffered from flashbacks, hypervigilance, and nightmares". The applicant's final discharge summary from an inpatient admission on 27 September 2023, indicates he was diagnosed with Alcohol Dependence, PTSD, and Major Depressive Disorder. The discharge summary indicated the applicant was homeless and had completed a PTSD specialized treatment program but required ongoing care due to homelessness, ongoing mental health and medical issues, and substance abuse.

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a behavioral health condition/diagnosis that partially mitigates his misconduct.

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 medical record documents traumatic experiences during the applicant's military service.

(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. The applicant's VA record indicates he was diagnosed with PTSD, Major Depressive Disorder, and Alcohol Dependence. The applicant's record indicates his alcohol use started prior to military service but appeared to have been aggravated by an experience in services that led to symptoms of PTSD. The applicant's substance abuse and alcohol dependency were reported as his efforts to cope with his symptoms of PTSD. Given the nexus between PTSD and avoidance as well as difficulty with authority his FTR's, being disorderly in a public place, breaking restriction, violating lawful general orders, and his disrespect towards his superior commissioned officers are mitigated by his diagnoses of PTSD and Major Depressive Disorder. However, his stealing an AM/FM cassette recorder of a value of about \$350.00 is not mitigated by any of his BH conditions since theft is not part of the natural sequelae of depression or PTSD and



neither condition impacts the capacity to distinguish right from wrong and act in accordance with the right.

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 the medical review, the Board considered the advising official finding sufficient evidence to support the applicant had a behavioral health condition/diagnosis that partially mitigates his misconduct. The opine noted the applicant' stealing an AM/FM cassette recorder of a value of about \$350.00 is not mitigated by any of his BH conditions since theft is not part of the natural sequelae of depression or PTSD and neither condition impacts the capacity to distinguish right from wrong and act in accordance with the right.

2. The Board found insufficient evidence of in-service mitigating factors to overcome the misconduct of stealing. The applicant provided insufficient evidence of post-service achievement or character letters of support for the Board to weigh a determination might have mitigated the discharge characterization. The Board determined the applicant's service record exhibits numerous instances of misconduct during his 2 years of enlistment. The applicant was discharged by reason of unsuitability, apathy, defective attitude or inability to expend effort constructively 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, the Board denied relief.

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. AR 635-200 sets forth the basic authority for the separation of enlisted personnel.
  - a. 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.
  - b. Chapter 13 in effect at the time established policy and provided procedures and guidance for eliminating enlisted personnel found to be unfit or unsuitable for further military service. It provided for the separation of individuals for unsuitability whose record evidenced apathy (lack of appropriate interest), defective attitudes, and an inability to expend effort constructively. When separation for unsuitability was warranted, an honorable or general discharge was issued as determined by the separation authority based upon the individual's entire record. Paragraph 13-5b provided for the separation of Soldiers for unsuitability.

(1) Sub-paragraph (1) applied to those Soldiers being separated for inaptitude.

(2) Sub-paragraph (2) applied to those Soldiers being separated for character and behavior disorders [later deemed personality disorders].

(3) Sub-paragraph (3) applied to those Soldiers being separated for apathy (lack of appropriate interest), defective attitudes, and inability to expend effort constructively.

c. 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.

d. 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.

3. 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/NR) 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//