

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 May 2024

DOCKET NUMBER: AR20230011031

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) discharge.

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

- DD Form 293 (Application for the Review of Discharge)
- Self-Authored Statement

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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:

a. He believes his discharge status does not accurately reflect his service record and the circumstances surrounding his separation from the military. He fulfilled his duties diligently and contributed positively to the unit and the overall mission. However, due to unforeseen personal circumstances that arose during his service, his performance was negatively impacted, resulting in a less than satisfactory discharge classification. He notes other mental health as related to his request.

b. Since his separation from the military, he has taken steps to address and overcome the issues that led to his subpar performance during that period. He firmly believes that discharge upgrade is warranted as his performance during the majority of his service was in line with the expectations and standards of the military. Since his departure from the military, he has excelled in every aspect of his personal and professional career. He is currently employed with the City of Orlando and has been for the past 15 years. His current position as construction supervisor affords him the opportunity to display his leadership skills while supervising a team of over ten individuals. His military service and training helped him build his character for which he is extremely grateful.

3. The applicant enlisted in the Regular Army on 21 July 1982.
4. The applicant was counseled on various occasions between 29 March 1983 and 30 August 1985 for behavior unbecoming a Soldier, severe attitude problem, needing to show a more positive attitude, and motivation toward improving himself (three) and his performance, not recommended for promotion due to responsibility or attitude, performance not up to standards, self-improvement, missing recall formation, late to formation, his physical condition, missed duty, absent from unit area (three) and missing movement to the field, disrespect, poor performance, bad attitude, taking more initiative, and when motivated he does a good job.
5. A Urinalysis Custody and Report Record, dated 13 June 1984, shows a positive Tetrahydrocannabinol (THC) result with the applicant's social security number.
6. The applicant accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) on:
 - 14 June 1984 for without authority, failing to go at the time prescribed to his appointed place of duty on or about 13 June 1984
 - 7 July 1984 for without authority, failing to go at the time prescribed to his appointed place of duty on or about 6 July 1984; his punishment included reduction to private /E-1
7. A Report of Mental Status Evaluation, dated 9 July 1984, shows the applicant had the mental capacity to understand and participate in the proceedings, was mentally responsible and met retention requirements.
8. The applicant's immediate commander notified him on 10 August 1984 of his recommendation that he be separated under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 13-2, for unsatisfactory performance. The applicant was advised of rights available to him. The applicant acknowledged receipt the same day.
9. The applicant consulted with legal counsel and was advised of the basis for the contemplated action to accomplish his separation under the provisions of AR 635-200, Chapter 13, for unsatisfactory performance, the rights available to him, and the effect of action taken by him in waiving his rights.
 - a. He understood that he may expect to encounter substantial prejudice in civilian life if a under honorable conditions, general discharge was issued to him.
 - b. He elected not to submit statements in his own behalf.

10. The applicant's immediate commander formally recommended his separation under the provisions of AR 635-200, paragraph 13. He recommended the separation because the seriousness of circumstances and continued disciplinary problems that would have an adverse impact on the command if he were retained and it was likely that he would continue to be a disruptive influence in the command as well as any other. His unsatisfactory performance was documented in Article 15's and counselings. On 26 September 1984, his chain waived rehabilitation requirements and recommended the applicant's under honorable conditions (General) discharge.

11. The separation authority approved the recommended separation for unsatisfactory performance. The rehabilitation requirement was waived. He directed that the applicant be furnished a General Discharge Certificate.

12. The applicant was discharged on 5 October 1984. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, Chapter 13, for unsatisfactory performance with Separation Code JHJ and Reenlistment Code 3. His service was characterized as under honorable conditions (General). He completed 2 years, 2 months, and 15 days of net active service. His awards include the Army Service Ribbon.

13. By regulation, Soldiers will be separated due to unsatisfactory performance when in the commander's judgment the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order, and morale. Service of Soldiers separated because of unsatisfactory performance under this regulation will be characterized as honorable or under honorable conditions.

14. On 31 October 2023, a staff member at the Army Review Boards Agency (ARBA), requested the applicant provide medical documents that support his mental health issue. As of 8 December 2023, no response was provided.

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

16. Based on the applicant's petition referring to other mental health, ARBA medical staff provided a medical review for the Board members. See the "MEDICAL REVIEW" section below.

17. MEDICAL REVIEW:

a. The applicant requests upgrade of his Under Honorable Conditions, General, discharge to Honorable. He contends his misconduct was related to Other Mental Health Issues.

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) DD Form 214 shows the applicant enlisted into the Regular Army from 21 June 1982; 2) As detailed in the ROP, that applicant was counseled for negative infractions on various occasions between 29 March 1983 and 30 August 1985; 3) A Urinalysis Custody and Report Record, dated 13 June 1984 shows a positive Tetrahydrocannabinol (THC) result with the applicant's social security number; 4) The applicant accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice on 14 June 1984 for without authority, failing to go at the time prescribed to his appointed place of duty on or about 13 June 1984, and again on 7 July 1984 for without authority, failing to go at the time prescribed to his appointed place of duty on or about 6 July 1984; 5). The applicant's immediate commander notified him on 10 August 1984 of his recommendation that he be separated under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 13-2, for unsatisfactory performance; 6) The applicant consulted with legal counsel and was advised of the basis for the contemplated action to accomplish his separation under the provisions of AR 635-200, Chapter 13;7) The separation authority approved the recommended separation for unsatisfactory performance. The rehabilitation requirement was waived. He directed that the applicant be furnished a General Discharge Certificate. The applicant was discharged on 5 October 1984.

c. The VA electronic medical record (JLV), ROP, and casefiles were reviewed. The military electronic medical record (AHLTA) was not reviewed as it was not in use during the applicant's period of service. Included in the applicant's casefile is a Report of Mental Status Evaluation, dated 9 July 1984, that shows the applicant had the mental capacity to understand and participate in the proceedings, was mentally responsible and met retention requirements. Also included in the casefile is a Report of Medical Examination, dated 9 July 1984, that shows the applicant was deemed medically qualified for administrative separation. No additional military BH records were provided for review. A review of JLV show the applicant 10 percent SC for Limited Flexion of the Knee; he is not SC for a BH condition but has a brief BH history with the VA. Records show the applicant's initial BH engagement with the VA occurred on 7 August 2023 whereby he presented with complaints of sleep problems, depressed mood, concentration difficulties, anxiousness, increased irritability, and worry secondary to psychosocial stressors. The applicant noted the symptoms having been present for several years. The encounter was sparse on information related to onset and precipitating event but showed the applicant was diagnosed with Adjustment Disorder with Depressed Mood and scheduled for outpatient treatment. Records show the applicant attended three additional treatment sessions between 7 August – 25 September 2023, during which time he expressed concerns regarding his mother's

health, difficulty communicating with others, and self-isolating. JLV appears void of any additional BH records for the applicant. No civilian BH records were provided for review.

d. The applicant request upgrade of his Under Honorable Conditions, General, discharge to Honorable and contends his misconduct was related to Other Mental Health Issues. A review of the records was void of any BH diagnosis or treatment history for the applicant during service. Post-service records show the applicant 10 SC for a physical disability. He does not have a BH SC condition but does have a brief VA BH treatment history for Adjustment Disorder with Anxiety and Depression secondary to psychosocial stressors to include his mother's failing health, problems communicating with others, and self-isolating behavior. Records do not associate the BH condition with military service. In absence of medical documentation showing the applicant had a BH condition during service, there is insufficient evidence to support his assertion and insufficient evidence to establish that his misconduct was related to or mitigated by Other Mental Health Issues.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends his misconduct was related to Other Mental Health Issues, and per liberal guidance his contention is sufficient to warrant the Board's consideration.

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 contends his misconduct was related to Other Mental Health Issues.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the records was void of any BH diagnosis or treatment history for the applicant during service. Post-service records show the applicant 10 SC for a physical disability. He does not have a BH SC condition but does have a brief VA BH treatment history for Adjustment Disorder with Anxiety and Depression secondary to psychosocial stressors to include his mother's failing health, problems communicating with others, and self-isolating behavior. Records do not associate the BH condition with military service. In absence of medical documentation showing the applicant had a BH condition during service, there is insufficient evidence to support his assertion and insufficient evidence to establish that his misconduct was related to or mitigated by Other Mental Health Issues.

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 Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for the seriousness of circumstances and continued disciplinary problems that would have an adverse impact on the command if he were retained; his unsatisfactory performance was documented in nonjudicial punishment and counselings. The Board reviewed and concurred with the medical advisor finding his record void of any behavioral health diagnosis or treatment history during service. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned by his commander during separation. The Board noted the applicant provided no documentation to support his request, including post-service achievements or letters of reference to support clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

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.

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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 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. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - 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. 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 13 provides for separation due to unsatisfactory performance when in the commander's judgment the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, is unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation will be characterized as honorable or under honorable conditions.
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 Discharge Review Boards (DRB) and Service 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 (PTSD); traumatic brain injury; sexual assault; or sexual harassment.

Boards are 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 misconduct that led to the discharge.

5. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018, 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 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.

//NOTHING FOLLOWS//