

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 May 2024

DOCKET NUMBER: AR20230011485

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show upgrade of his under honorable conditions (general) discharge, and award of the Army Commendation Medal (ARCOM). Additionally, he requests an 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)
- Service Documents
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Army Review Boards Agency (ARBA) Email

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 his ARCOM is not listed on his DD Form 214. He received a under honorable conditions (general) discharge because of the unspecified anxiety due to Germany closing a post and the loss of a fellow Soldier. This correction should be made due to the fact that had the post not closed and all the 27m's (Multiple Launch Missile System Repairer) were not moved to the post, they would have still had the opportunity for promotions and growth. Just after the post got flooded with new Soldiers, they lost a fellow Soldier who died in the applicant's arms after being struck by a stray bullet while they were out celebrating the birthday of one of the Soldier's. He even requested to move back into the barracks to avoid getting in further trouble after his first write up. He had no idea he could request an upgrade until he spoke with a Veterans Administration (VA) representative after applying for benefits.
3. The applicant enlisted in the Army National Guard (ARNG) on 19 (illegible) 1992. He entered active duty for training on 10 June 1993. He was honorably released from active-duty training on 16 December 1993 and transferred back to the ARNG. His

DD Form 214 shows he completed 6 months and 7 days net active service. His awards include the Army Service Ribbon.

4. The applicant provides a DA Form 4187 (Personnel Action) that shows he requested enlistment in the Regular Army on 8 February 1994. The applicant enlisted in the Regular Army on 29 June 1994 for 4 years. His military occupational specialty was 31U (Signal Support Systems Specialist) and later 27M.

5. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on:

- 8 February 1996, for without authority, failing to go at the time prescribed to his appointed place of duty on or about 18 January 1996 and on or about 22 January 1996; his punishment consisted of reduction to private first class/E-3 (suspended) and extra duty
- 11 June 1996, for without authority, failing to go at the time prescribed to his appointed place of duty on or about 6 June 1996; his punishment consisted of reduction to E-3

6. DA Form 3822-R (Report of Mental Status Evaluation), dated 1 August 1996, shows the applicant had the mental capacity to understand and participate in the proceedings, was mentally responsible, and met retention requirements. There was no psychiatric disease or defect which warranted disposition through medical channels. The applicant was psychiatrically cleared for any administrative (or judicial) action deemed appropriate by command.

7. His Report of Medical Examination, dated 6 August 1996, shows in item 71 (Notes) and his Report of Medical History shows in item 25 (Physician summary) the applicant attempted suicide due to frustration with the chain of command.

8. The applicant received counseling between September 1995 and 9 August 1996 for uttering a false statement (twice), and consideration under elimination under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 14, numerous failures to repair, indebtedness letters, leaving place of business and failure to follow established procedures.

9. The applicant accepted NJP under Article 15 of the UCMJ on 9 August 1996, for without authority, failing to go at the time prescribed to his appointed place of duty on or about 2 July 1996 and on or about 25 July 1996. His punishment consisted of reduction to private/E-1, forfeiture \$437.00 pay for two months (suspended), and extra duty.

10. The applicant's immediate commander notified him on 11 September 1996 he was initiating action to separate the applicant under the provisions of AR 635-200, Chapter

14-12b, for patterns of misconduct. His commander recommended he receive a under honorable conditions (general) discharge. The applicant acknowledged receipt on the same date.

11. The applicant consulted with legal counsel on 16 September 1996 and was advised of the basis for the proposed separation under the provisions of AR 635-200, Chapter 14 for misconduct, and the procedures and rights that were available to him.

a. He acknowledged that he may expect to encounter substantial prejudice in civilian life if discharged under honorable conditions (general).

b. He elected to submit statements in his own behalf and stated he would present them to his command by close of business 20 September 1996; however, the statement is not available for review.

12. The applicant's immediate commander formally recommended the applicant be separated prior to his expiration term of service. The commander's reasons for the recommendation were the applicant had committed several acts of misconduct. In view of the fact that this type of misconduct cannot be tolerated in today's Army, separation is warranted without a doubt. His chain of command recommended the applicant be discharged with a under honorable conditions (general) discharge.

13. The separation authority approved the recommended discharge action, under the provisions of AR 635-200, Chapter 14-12b, on 30 September 1996 and directed that the applicant be furnished a General Discharge Certificate.

14. The applicant was discharged on 9 October 1996. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 14-12b, for misconduct, with Separation Code JKA and Reentry Code 3. His service was characterized as under honorable conditions (general). He completed 2 years, 3 months, and 11 days of net active service this period. His awards include the National Defense Service Medal, Army Service Ribbon, Marksman Marksmanship Qualification Badge (rifle), and the U.S. Army Recruiter Badge (ARNG) Master.

15. AR 635-5 (Separation Documents), states, the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

16. In reference to awards, by regulation AR 600-8-22 (Military Awards), all personal decorations require a formal recommendation, approval through the chain of command, and announcement in orders.

17. The applicant provides:

- a. A copy of his enlistment documents and DD Form 214.
- b. ARBA email requesting the above documents.

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

19. 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) The applicant enlisted into the Regular Army on 29 June 1994; 2) He accepted NJP under Article 15 of the UCMJ on 8 February 1996, for without authority, failing to go at the time prescribed to his appointed place of duty on or about 18 January 1996 and on or about 22 January 1996, and on 11 June 1996, for without authority, failing to go at the time prescribed to his appointed place of duty on or about 6 June 1996; 3) The applicant received counseling between September 1995 and 9 August 1996 for uttering a false statement (twice), and consideration under elimination under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 14, numerous failures to repair, indebtedness letters, leaving place of business and failure to follow established procedures; 4) The applicant accepted NJP under Article 15 of the UCMJ on 9 August 1996, for without authority, failing to go at the time prescribed to his appointed place of duty on or about 2 July 1996 and on or about 25 July 1996; 5) The applicant's immediate commander notified him on 11 September 1996 he was initiating action to separate the applicant under the provisions of AR 635-200, Chapter 14-12b, for patterns of misconduct. His commander recommended he receive a under honorable conditions (general) discharge. The applicant acknowledged receipt on the same date and consulted with legal counsel on 16 September 1996 and was advised of the basis for the proposed separation under the provisions of AR 635-200, Chapter 14 for misconduct; 6) The separation authority approved the recommended discharge action, under the provisions of AR 635-200, Chapter 14-12b, on 30 September 1996 and directed that the applicant be furnished a General Discharge Certificate. The applicant was discharged, accordingly, on 9 October 1996.

c. The VA electronic medical record (JLV), ROP, and casefiles were reviewed. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Included in the applicant's casefile is a Report of Mental Status Examination, dated 1 August 1996, that shows the applicant was deemed not to have a psychiatric disease or defect, had the mental capacity to participate in proceedings, and was psychiatrically cleared for administrative separation. Also included in the casefile is a Report of Medical History and Report of Medical Examination, dated 6 August 1996, showing the applicant reported a history of depression and a suicide attempt due to frustration with the chain of command. The applicant was found medically cleared for administrative separation. No additional military BH-related documentation was provided for review.

d. A review of JLV shows the applicant 70 percent SC for Anxiety Disorder. VA C&P, dated 11 April 2022, shows the applicant reported anxiety related issues with onset during military service and noted a history of treatment during military service. The documented does not list a precipitating event for the anxiety but notes that since the applicant reported no BH history before service, onset of anxiety symptoms during service that has continued post-service, it is more likely than not the Anxiety Disorder was incurred in and related to military service.

e. Records show the applicant's initial BH-related encounter with the VA occurred in on 30 November 2021 whereby the applicant reported nightmares and flashbacks related to the death of a Soldier that was hit by a stray bullet while attending a night club. The applicant reports he was standing next to the Soldier, who was also a friend. The applicant reported experiencing symptoms of nightmares, flashbacks, and intrusive thoughts, immediately after the shooting, and that he attempted suicide approximately 2 months after the incident. The symptoms reportedly decreased over time but began to resurface approximately 2 years ago. No diagnosis was rendered during the session and the applicant was scheduled for an intake appointment. On 15 December 2021 he presented for intake and reported additional symptoms of yelling a lot, being easily frustrated, anger, and sleep problems. He also clarified flashbacks to mean intrusive recollection. He was diagnosed with Unspecified Trauma and Stress Related Disorder and scheduled for follow-up. Records show the applicant attended outpatient BH treatment for Unspecified Trauma and Stress Related Disorder through 7 April 2022 with good results, reporting continued symptom improvement. It should be noted that during the applicant's period of treatment from 14 December 2022, there is only a single encounter with diagnostic label of Anxiety Disorder listed on the Diagnosis Dashboard. However, the actual encounter documentation (10 March 2022), has contend related treatment of Unspecified Trauma and Stress Related Disorder and the diagnosis within the encounter reflects Unspecified Trauma and Stress Related Disorder. The applicant underwent his VA CAP Examination on 11 April 2022, whereby he was diagnosed with

Unspecified Anxiety Disorder. Records appear void of any encounters subsequent the C&P. No civilian BH-related records were provided for review.

f. The applicant requests upgrade of his Under Honorable Conditions, General, discharge to Honorable. He contends his misconduct was related to Other Mental Health Issues. A review of the records shows the applicant reported on his Report of Medical History and History of Medical Examination a history of depression and a suicide attempt during service. In-service records, however, were void of an actual BH diagnosis or treatment history. Post-service records show the applicant 70 percent SC for Unspecified Anxiety Disorder related to military service. Records also show the applicant diagnosed with Unspecified Trauma and Stress Related Disorder, secondary to witnessing his friend killed by a stray bullet at a night club. The applicant was reportedly standing next to his friend, who was also a Soldier at the time of the incident. JLV shows the applicant BH treatment history was focused on trauma symptoms related to the incident and therefore Unspecified Trauma and Stress Related Disorder is being considered as an additional potentially mitigating disorder. Given the above, the applicant's misconduct characterized by FTR and leaving his place of business is mitigated by his SC of Anxiety Disorder, given the nexus between Anxiety Disorder and avoidant behavior. The applicant's misconduct characterized by providing false statements and indebtedness is not mitigated as the misconduct is not natural sequela to either Unspecified Anxiety Disorder or Unspecified Trauma and Stress Related Disorder.

g. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence that the applicant had a condition or experience during his time in service that partially mitigated his misconduct.

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 is 70 percent SC for Anxiety Disorder.

(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. A review of the records shows the applicant reported on his Report of Medical History and History of Medical Examination a history of depression and a suicide attempt during service. In-service records, however, were void of an actual BH diagnosis or BH treatment history. Post-service records show the applicant 70 percent SC for Unspecified Anxiety Disorder related to military service. Records also show the applicant diagnosed with Unspecified Trauma and Stress Related Disorder, secondary to witnessing his friend killed by a stray bullet at a night club. The applicant was reportedly standing next to his friend, who was also a Soldier at the time of the incident.

JLV shows the applicant treatment history was primarily focused on trauma symptoms related to the incident and therefore Unspecified Trauma and Stress Related Disorder is being considered as an additional potentially mitigating disorder. Given the above, the applicant's misconduct characterized by FTR and leaving his place of business is mitigated by his SC of Anxiety Disorder, given the nexus between Anxiety Disorder and avoidant behavior. The applicant's misconduct characterized by providing false statements and indebtedness is not mitigated as the misconduct is not natural sequela to either Unspecified Anxiety Disorder or Unspecified Trauma and Stress Related Disorder.

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 that the applicant had a condition or experience during his time in service that partially mitigated his misconduct. The opine noted applicant reported on his Report of Medical History and History of Medical Examination a history of depression and a suicide attempt during service. In-service records, however, were void of an actual BH diagnosis or BH treatment history.
2. The Board notwithstanding the advising official finding partial mitigation, they determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of false statements and indebtedness. Careful consideration was given by the Board to the applicant's treatment history and focus on trauma symptoms related to the incident as an additional potentially mitigating disorder. With that, the Board noted under liberal consideration the applicant's misconduct is not a natural sequela to either unspecified anxiety disorder or unspecified trauma and stress related disorder. Furthermore, the applicant provided no post service accomplishments or character letters of support for the Board to weigh a clemency determination. The Board found the applicant was discharged for misconduct and was provided an under honorable conditions (General) characterization of service. The Board determined 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. Based on evidence in the applicant's record and the nature of his misconduct, the Board found upgrade of the applicant's general discharge is not warranted and denied relief.

3. Additionally, this board is not an investigative body. The Board determined despite the absence of the applicant's records, they agreed the burden of proof rest on the applicant, however, he did not provide any supporting documentation and his service record has insufficient evidence to support the applicant contentions of being awarded an Army Commendation Medal (ARCOM).

4. 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

:	:	:	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. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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 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 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 merited by the Soldier's overall record.

5. AR 600-8-22 (Military Awards) prescribes Department of the Army policy, criteria, and administrative instructions concerning individual and unit military awards. This regulation provides that the ARCOM may be awarded to any member of the Armed Forces of the United States who, while serving in any capacity with the Army after 6 December 1941, distinguishes himself or herself by heroism, meritorious achievement, or meritorious service. As with all personal decorations, formal recommendations, approval through the chain of command, and announcement in orders are required.

6. 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; 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.

7. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and 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//