

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2024

DOCKET NUMBER: AR20230011838

APPLICANT REQUESTS:

- upgrade of his under honorable conditions (general) discharge
- change of the narrative reason for his separation and corresponding Separation Program Designator (SPD) code to reflect he was separated due to disability
- restoration of his rank/grade to specialist (SPC)/E-4

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Summary of Benefits
- VA Problem List

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 he is requesting correction of his record because he suffers from post-traumatic stress disorder (PTSD) and other mental health conditions.
3. The applicant enlisted in the Regular Army on 13 August 1986 for a period of 3 years. Upon completion of initial entry training, he was awarded military occupational specialty 77F (Petroleum Supply Specialist) and assigned to a unit located at Hunter Army Airfield, GA. On 1 August 1988, he was advanced to SPC the highest rank he held.
4. A DA Form 3945 (Military Police (MP) Report) shows the applicant was arrested by civilian authorities and charged with Disorderly Conduct, Obstruction by Fleeing, and carrying a Concealed Weapon on 12 November 1988. He was transported to the [REDACTED] Police Department, processed and released to MPs who transported him to [REDACTED] for treatment. He was later released to his unit.

5. A DA Form 4833 (Commander's Report of Disciplinary or Administrative Action), shows the applicant was found guilty of carrying a Concealed Weapon and Disorderly Conduct in a Civil Court on 16 November 1988. The charge of Obstruction by Fleeing was dismissed.

6. On 28 February 1989, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for failing to obey a lawful order. His punishment consisted of reduction from SPC to private first class (PFC)/E-3 (suspended, to be automatically remitted if not vacated within 165 days); forfeiture of \$150.00 per month for two months (suspended, to be automatically remitted if not vacated within 165 days); extra duty for 14 days; and restriction for 14 days.

7. On 20 March 1989, the suspension of a portion of the punishment was vacated due to the applicant being drunk and disorderly and failing to obey a lawful order issued by an MP on 17 March 1989.

8. On 24 March 1989, the applicant accepted NJP under the provisions of Article 15, of the UCMJ for being drunk and disorderly and failing to obey a lawful order issued by an MP on 17 March 1989. His punishment consisted of reduction from PFC to private (PV2)/E-2, suspended, to be automatically remitted if not vacated before 22 June 1989; and extra duty for 45 days.

9. A DA Form 3945 shows the applicant was arrested by civilian authorities and charged with Simple Battery on a Police Officer (Felony), Disorderly Conduct, Criminal Trespassing, Obstruction by Fleeing, and Obstruction by Resisting on 18 June 1989. He was processed and transported to the Chatham County Jail.

10. On 19 July 1989, the applicant's immediate commander informed the Clinical Director of the Community Assistance Center that he was considering declaring the applicant a rehabilitation failure and initiating the process for eliminating him from the service. He cited the applicant's continued difficulty with alcohol abuse as the catalyst for this action. He requested the Director's recommendations and comments pertaining to past rehabilitation efforts, and potential for future progress in the Army Drug and Alcohol Prevention and Control Program (ADAPCP).

11. On 19 July 1989, the ADAPCP Clinical Director concurred with the immediate commander's recommendation. The applicant's potential for rehabilitation within the Army was seen as negligible. The Director recommended immediate separation processing under the provisions of Army Regulations 600-85 (Army Substance Abuse Program (ASAP)) and 635-200 (Personnel Separations – Enlisted Personnel), Chapter 9.

12. On 28 July 1989, the applicant's immediate commander informed him that he was initiating actions to separate him from the Army under the provisions of Army Regulation 635-200, Chapter 9, as a result of alcohol rehabilitation failure under the provisions of Army Regulation 600-85. He advised the applicant that he was recommending his service be categorized as under honorable conditions (general), but the final determination would be made by the separation authority.

13. The applicant's immediate commander formally recommended that he be separated under the provisions of Army Regulation 635-200, Chapter 9 based upon Alcohol Rehabilitation Failure with an under honorable conditions (general) discharge.

14. On 3 August 1989, the applicant acknowledged receipt of the notification and consulted with legal counsel. He acknowledged that counsel advised him of the basis for the contemplated action to accomplish his separation and its effects; of the rights available to him; and the effect of any action taken by him in waiving those rights. He elected to be represented by counsel, but not to submit statements in his own behalf.

15. On 16 August 1989, the separation authority approved the recommended separation action and directed the applicant's service be characterized as General, Under Honorable Conditions.

16. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 21 August 1989 under the provisions of Army Regulation 635-200, Chapter 9, with Separation Program Designator code "JPD" and Reentry Eligibility code "RE-4." The narrative reason for his separation was Alcohol Abuse - Rehabilitation Failure. His service was characterized as "Under Honorable Conditions (General)." He had time lost from 18 June 1989 to 27 June 1989 due to incarceration. He was credited with completion of 2 years, 11 months, and 29 days of net active service this period. He did not complete his first full term of service.

17. The applicant provides a letter, dated 22 July 2023, which shows he is receiving disability benefits for a combined service-connected evaluation. He also provides a VA Problem List which shows, in part, he was diagnosed with Bipolar II disorder, most recent episode hypomanic.

18. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

19. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) discharge and change of the narrative reason for his separation

and corresponding Separation Program Designator (SPD) code to reflect he was separated due to disability.

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:

- The applicant enlisted into the Regular Army on 13 August 1986.
- A DA Form 3945 (Military Police (MP) Report) shows the applicant was arrested by civilian authorities and charged with Disorderly Conduct, Obstruction by Fleeing, and carrying a Concealed Weapon on 12 November 1988.
- On 28 February 1989, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for failing to obey a lawful order. His punishment consisted of reduction from SPC to private first class (PFC)/E-3 (suspended, to be automatically remitted if not vacated within 165 days); forfeiture of \$150.00 per month for two months (suspended, to be automatically remitted if not vacated within 165 days); extra duty for 14 days; and restriction for 14 days.
- On 20 March 1989, the suspended portion of the punishment was vacated due to the applicant being drunk and disorderly and failing to obey a lawful order issued by an MP on 17 March 1989.
- On 24 March 1989, the applicant accepted NJP under the provisions of Article 15, of the UCMJ for being drunk and disorderly and failing to obey a lawful order issued by an MP on 17 March 1989. His punishment consisted of reduction from PFC to private (PV2)/E-2, suspended, to be automatically remitted if not vacated before 22 June 1989; and extra duty for 45 days.
- A DA Form 3945 shows the applicant was arrested by civilian authorities and charged with Simple Battery on a Police Officer (Felony), Disorderly Conduct, Criminal Trespassing, Obstruction by Fleeing, and Obstruction by Resisting on 18 June 1989. He was processed and transported to ██████████ County Jail.
- On 19 July 1989, the applicant's immediate commander informed the Clinical Director of the Community Assistance Center that he was considering declaring the applicant a rehabilitation failure and initiating the process for eliminating him from the service. He cited the applicant's continued difficulty with alcohol abuse as the catalyst for this action. He requested the Director's recommendations and comments pertaining to past rehabilitation efforts, and potential for future progress in the Army Drug and Alcohol Prevention and Control Program (ADAPCP).
- On 19 July 1989, the ADAPCP Clinical Director concurred with the immediate commander's recommendation. The applicant's potential for rehabilitation within the Army was seen as negligible. The Director recommended immediate separation processing under the provisions of Army Regulations 600-85 (Army Substance Abuse Program (ASAP)) and 635-200 (Personnel Separations – Enlisted Personnel), Chapter 9.

- On 28 July 1989, the applicant's immediate commander informed him that he was initiating actions to separate him from the Army under the provisions of Army Regulation 635-200, Chapter 9, as a result of alcohol rehabilitation failure under the provisions of Army Regulation 600-85. He advised the applicant that he was recommending his service be categorized as under honorable conditions (general), but the final determination would be made by the separation authority.
- Applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 21 August 1989 under the provisions of Army Regulation 635-200, Chapter 9, with Separation Program Designator code "JPD" and Reentry Eligibility code "RE-4." The narrative reason for his separation was Alcohol Abuse - Rehabilitation Failure. His service was characterized as "Under Honorable Conditions (General)." He had time lost from 18 June 1989 to 27 June 1989 due to incarceration. He was credited with completion of 2 years, 11 months, and 29 days of net active service this period. He did not complete his first full term of service.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states he is requesting correction of his record because he suffers from post-traumatic stress disorder (PTSD) and other mental health conditions. Due to the period of service, no active-duty electronic medical records were available for review. Hardcopy documentation shows the applicant was deemed an alcohol rehabilitation failure and was recommended for separation from military service.

d. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected for PTSD. However, a psychological evaluation for PTSD, dated 25 July 2003, indicates his traumatic stressors as being sexually abused by his older adoptive brother as a child and being shot twice post-military service, in 1993 and 1996 by people he did not know. The clinician opined the applicant did not have PTSD related to military service. The record further shows a hospital discharge summary dated 6 September 2003, indicating the following diagnoses: Bipolar Disorder (manic with psychotic features, Alcohol Dependence, and Intermittent Explosive Disorder. A discharge summary dated 8 August 2018, indicates the applicant was brought to the hospital by police due to driving while intoxicated. He was admitted into an alcohol use residential treatment program for 21 days and was diagnosed with Alcohol Use Disorder, severe, and Bipolar Disorder. The record evidences repeated hospitalizations with nine discharge summaries between September 2019 to November 2023; with his primary diagnosis as Alcohol Use Disorder.

e. Two Disability Benefits Questionnaires (DBQ) were reviewed. The applicant was assessed on 22 January 2019 and was diagnosed with PTSD, Bipolar Disorder, and Alcohol Use Disorder. The alleged stressor events were not combat related, the applicant reported having a "fight with a sergeant" who threw him to the floor, and he was "knocked unconscious". In addition, he reported being "jumped by 10 people" at a

party on base, where he was hit in the head and was rendered unconscious. Based on this information, the applicant participated in a TBI DBQ on 6 April 2019 and was diagnosed with mild TBI.

f. 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 during military service that mitigates his discharge. However, there is insufficient evidence to support a referral to the IDES process at this time. Although the applicant has been service connected for PTSD, VA examinations are based on different standards and parameters; they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating would not imply failure to meet Army retention standards at the time of service. A subsequent diagnosis of PTSD through the VA is not indicative of an injustice at the time of service. Furthermore, even an in-service diagnosis of PTSD is not automatically unfitting per AR 40-501 and would not automatically result in the medical separation processing. Based on the documentation available for review, there is no indication that an omission or error occurred that would warrant a referral to the IDES process.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts a mitigating condition, PTSD.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 100% service connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant is service connected for PTSD and, per the VA electronic record, he is also diagnosed with Bipolar Disorder and Alcohol Use Disorder. The applicant was discharged from military service because he was deemed an alcohol rehabilitation failure. Given the nexus between PTSD and the use of alcohol to cope with the symptoms of the condition, the applicant's misconduct is mitigated by his BH condition.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA Behavioral Health Advisor.

The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination.

2. The Board concurred with the conclusion of the medical advising official regarding his misconduct being mitigated by PTSD. Based on a preponderance of the evidence, the Board determined the applicant's character of service should be changed to honorable.

3. Regarding correction of his record to show he was discharged due to disability, the Board found insufficient evidence indicating the applicant had a medical condition that would have been a basis for referring him to the Disability Evaluation System. Based on a preponderance of the evidence, the Board determined the reason for his discharge is not in error or unjust.

4. Regarding restoration of his rank, the Board found his reduction in grade was warranted as punishment for his misconduct. The Board determined the rank the applicant held upon discharge was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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 reissuing his DD Form 214 to show his character of service as honorable.
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 any relief in excess of that described above.

12/19/2024

X [REDACTED]

CHAIRPERSON

[REDACTED]

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 three 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 three-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 regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR.

4. Army Regulation 600-85, in effect at the time, stated commanders were to make an effort to restore Soldiers to full functioning when they had become ineffective due to alcohol abuse. Rehabilitation was a proven and cost-effective way of retaining Soldiers with necessary skills and experience; however, the regulation required the separation of any Soldiers who lacked the potential for continued military service, or who had failed to participate in, or successfully complete rehabilitation. The rehabilitation program is based upon the severity of the individual's involvement with substance abuse and may provide individual, group, and/or Family counseling on a nonresidential (Level I) or partial inpatient/residential (Level II) basis. Program design allows for flexibility and offers a wide variety of rehabilitation modalities structured to meet both individual needs and Army requirements for effective duty performance.

5. Army Regulation 635-200, in effect at the time, set 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. Chapter 9 contained the authority and outlined the procedures for discharging Soldiers because of alcohol or other drug abuse. A member who had been referred to the ADAPCP for alcohol/drug abuse could be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there was a lack of potential for continued Army service and rehabilitation efforts were no longer practical. Nothing in this chapter prevented separation of a Soldier who had been referred to such a program under any other provisions of this regulation. Initiation of separation proceedings was required for Soldiers designated as alcohol/drug rehabilitation failures. The service of Soldiers discharged under this chapter would be characterized as honorable or under honorable conditions unless the Soldier was in an entry-level status.

6. Army Regulation 635-5-1 (SPD Codes) implements the specific authorities and reasons for separating Soldiers from active duty. It also prescribes when to enter SPD codes on the DD Form 214.

a. Paragraph 2-1 provides that SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of Department of Defense and the Military Services to assist in the collection and analysis of separation data. This

analysis may, in turn, influence changes in separation policy. SPD codes are not intended to stigmatize an individual in any manner.

b. Table 2-3 provides the SPDs and narrative reasons for separation that are applicable to enlisted personnel. It shows, in part, SPD JPC is the appropriate code to assign to an enlisted Soldier who is involuntarily separated under the provisions of Army Regulation 635-200, Chapter 9, as a result of Drug rehabilitation failure; and SPD JPD is the appropriate code to assign for Alcohol rehabilitation failure.

7. 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 PTSD; Traumatic Brain Injury (TBI); 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.

8. 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, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

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.

9. On 4 April 2024, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for eligibility for medical retirement or separation benefits. This guidance is being promulgated in light of *Doyon v. United States* and is consistent with that decision. Accordingly, the BCM/NR will apply liberal consideration to the eligible applicant's assertion that combat- or military sexual trauma -related PTSD or TBI potentially contributed to the circumstances resulting in their discharge or dismissal to determine whether any discharge relief is appropriate. After making that determination, the BCM/NR will then separately assess the individual's claim of medical unfitness for continued service due to that PTSD or TBI condition as a discreet issue, without applying liberal consideration to the unfitness claim or carryover of any of the findings made when applying liberal consideration.

//NOTHING FOLLOWS//