

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 May 2024

DOCKET NUMBER: AR20230011933

APPLICANT REQUESTS: in effect, an upgrade of his characterization of service to honorable.

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

- three letters in lieu of a DD Form 149 (Application for Correction of Military Record)
- letter from the Army Review Boards Agency (ARBA)

FACTS:

1. The applicant did not file within the three year time frame provided in Title 10, United States Code (USC), section 1552 (b); however, the Army Board for Correction of Military Records 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 letters the applicant provided in support of his request are unclear. The staff of the Board provided the applicant a DD Form 149 to complete and sign and requested that he clearly state what he wanted the Board to consider. The applicant did not respond.
3. The applicant's complete service records are not available for review. This case is being considered based on the letters he provided and his DD Form 214 (Report of Separation from Active Duty).
4. His DD Form 214 shows he enlisted in the Regular Army and entered active duty on 10 February 1975. He was discharged on 23 June 1976 for unfitness under the provisions of Army Regulation 635-200, paragraph 13-5a(1) with service characterized as under other than honorable conditions and the issuance of an Undesirable Discharge Certificate. He was assigned separation program designator (SPD) code JLB (frequent involvement of a discreditable nature with authorities). He completed 1 year, 4 months, and 5 days of total active service. He also accrued 9 days of lost time.

5. The applicant previously applied to the ABCMR to request an upgrade of his character of service from under other than honorable conditions to under honorable conditions (general).

a. The ARBA Senior Medical Advisor rendered a medical advisory opinion on 8 March 2018, which states:

(1) A review of VA medical record indicated the applicant had a diagnosis of paranoid schizophrenia and a history of serious mental illness, to include psychosis, delusions, and disorganizations.

(2) Based on a review of his available medical records, there was insufficient evidence to determine if a behavioral health condition existed during the time of separation.

(3) The applicant's military records were void of a basis for separation, to include any history of misconduct and reasons for being discharged. His military records were also void of any medical information during his period of service.

(4) This observation did not negate the applicant's diagnosis of schizophrenia and treatment from the VA; however, the overall record was void of pertinent information to support a change to the applicant's reason for separation.

b. On 11 March 2019, the Board recommended denial of the applicant's request for an upgrade of his discharge to general under honorable conditions (general), however, the Deputy Assistant Secretary of the Army (DASA) reviewed the findings, conclusions, and Board member recommendations and found there was sufficient evidence to grant relief. Therefore, under the authority of Title 10, United States Code, section 1552, the DASA direct that all Department of the Army records of the individual concerned be corrected by issuing a DD Form 214 to show a characterization of service of "General, under honorable conditions for the period of service ending on 23 June 1976.

c. The applicant initial DD Form 214 was voided.

d. On 4 June 2019, the applicant was issued a new DD Form 214 showing in:

- Character of Service – Under Honorable Conditions (General)
- Separation Authority – Army Regulation 635-200, paragraph 13-5a(1)
- Separation Code – "JLB"
- Reentry Code – 3, 3B
- Narrative Reason for Separation – "Unfitness"

6. The applicant's submissions were provided to the board in their entirety.

## 7. MEDICAL REVIEW:

a. Background: The applicant is not making a request to the Board. He sent handwritten disorganized incoherent letters indicative of a thought disorder that do not state any request. The staff of the Board provided the applicant a DD Form 149 to complete and sign and requested that he clearly state what he wanted the Board to consider. The applicant did not respond.

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's complete service records are not available for review. This case is being considered based on the letters he provided and his DD Form 214
- Applicant's DD Form 214 shows he enlisted in the Regular Army and entered active duty on 10 February 1975. He was discharged on 23 June 1976 for unfitness under the provisions of AR 635-200, paragraph 13-5a(1) with service characterized as under other than honorable conditions and the issuance of an Undesirable Discharge Certificate. He was assigned SPD code JLB (frequent involvement of a discreditable nature with authorities).
- Applicant previously applied to the ABCMR to request an upgrade of his character of service from under other than honorable conditions to under honorable conditions (general).
- A ARBA Senior Medical Advisor rendered a medical advisory opinion on 8 March 2018, which stated a review of VA medical record indicated the applicant had a diagnosis of paranoid schizophrenia and a history of serious mental illness, to include psychosis, delusions, and disorganizations. However, the overall record was void of pertinent information to support a change to reason for separation.
- On 11 March 2019, the Board recommended denial of the applicant's request for an upgrade of his discharge to general under honorable conditions (general), however, the DASA (RB) reviewed the findings, conclusions, and Board member recommendations and found there was sufficient evidence to grant relief. Therefore, under the authority of Title 10, U.S. Code, section 1552, the DASA directed that all Department of the Army records of the individual concerned be corrected by issuing a DD Form 214 to show a characterization of service of "General" for the period of service ending on 23 June 1976.

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

d. Due to the period of service, no active-duty electronic medical records were available for review. The VA electronic medical records available for review indicate the applicant is not service connected but he has an extensive history of receiving care via the VA dating back to May 2003 and is diagnosed with Chronic Paranoid Schizophrenia. The applicant has a history of multiple psychiatric hospitalizations due to psychotic symptoms, including long-term care in a state psychiatric hospital. The record indicates the applicant has been incarcerated, has an extensive history of homelessness, and a psychiatric summary documents over 22 years of substance abuse including use of crack cocaine, alcohol, and intravenous heroin use. It is unclear whether his substance abuse may have exacerbated his psychosis. During the course of a hospital discharge, in October 2009, the applicant reported he was discharged from military service due to marijuana and heroin possession. In September 2019, following his discharge upgrade, the applicant's treatment was transferred to the VA, and he continues to be treated for his disorder and resides in an assisted living facility for veterans, Greenview Manor.

e. Based on the information available, it is the opinion of the ARBA BH Advisor that there is insufficient evidence at this time to render a medical opinion regarding medical mitigation and/or medical disability. The applicant's recent interaction with the board (see paragraph 1 above) indicates a level of cognitive disorganization consistent with active psychosis. Due to his level of cognitive disorganization, the applicant has been unable to make a clear request to the Board and has not been able to articulate what issue(s) he wants the Board to consider. (In the applicant's previous request to the Board, he was able to formulate a coherent logical request). As such, this Agency Behavioral Health Advisor is unable to opine regarding mitigation based on a BH condition without the specific facts and circumstances that led to the applicant's discharge. f. Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Not applicable.

(2) Did the condition exist or experience occur during military service? Not applicable.

(3) Does the condition or experience actually excuse or mitigate the discharge? This advisor is unable to opine regarding medical mitigation without the specific facts and circumstances that led to his discharge.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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 applicant's separation packet is not available. Previously, the DASA (RB) directed

recharacterization of the applicant’s service from under other than honorable conditions to general, under honorable conditions. The applicant did not provide any new evidence that warrants reconsideration of the previous decision. Also, the Board reviewed and agreed with the medical reviewer’s finding insufficient evidence at this time to render a medical opinion regarding medical mitigation and/or medical disability. Nevertheless, the Board felt that despite the absence of mitigation, the applicant is in need of help and access to all service provided by the Department of Veterans Affairs, and due to his current health status, the Board determined as a matter of clemency, the discharge should be upgraded to fully honorable.

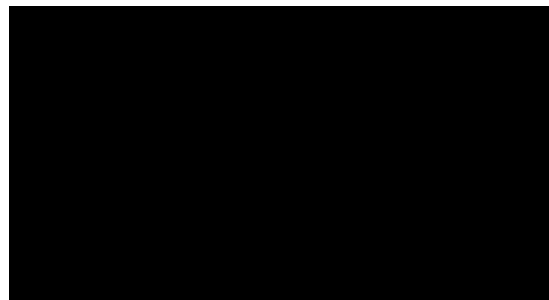
BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant a DD Form 214 for the period ending 23 June 1976 as follows: Character of Service: Honorable.



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. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 1-9e provided that a general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge. A characterization of under honorable conditions could be issued only when the reason for the Soldier's separation specifically allowed such characterization.

b. Paragraph 1-9f provided that a undesirable discharge was an administrative separation from the service under conditions other than honorable. It could be issued for unfitness, misconduct, homosexuality, or security reasons.

c. Chapter 13 established policy and provided procedures and guidance for eliminating enlisted personnel found to be unfit or unsuitable for further military service. Action would be taken to separate an individual for unfitness when it was clearly established that:

(1) despite attempts to rehabilitate or develop him as a satisfactory Soldier, further effort was unlikely to succeed;

(2) rehabilitation was impracticable, or he was not amenable to rehabilitation measures (as indicated by the medical and/or personal history record); or

(3) an unfit medical condition was not the direct or substantial contributing cause of his unfitness.

d. Discharges under the provisions of AR 635-200, chapter 13, the service member is advised by consulting counsel of the basis for the contemplated action to accomplish separation for unfitness under the provisions of AR 635-200, chapter 13, and its effects; of the rights available; and the effect of any action taken by waiving those rights. Service member could request or waive consideration of their case by a board of offers; personal appearance before a board of officers; and representation by counsel. Service member further understand that, as a result of issuance of an undesirable discharge

under conditions other than honorable, they may be ineligible for many or all benefits as a veteran under both Federal and State laws and expect to encounter substantial prejudice in civilian life.

3. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, prescribed the specific authorities (statutory or other directives), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. The appendix shows SPD code JLB represents frequent involvement of a discreditable nature with authorities.

4. AR 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

5. On 3 September 2014 in view of the foregoing information, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicants' service.

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 DRBs and BCM/NRs 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, 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, on 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 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 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. This guidance does not mandate

relief, but rather provides standards and principles to guide BCM/NRs 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. 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. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//