

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 May 2024

DOCKET NUMBER: AR20230012007

APPLICANT REQUESTS: reconsideration of his previous request for:

- correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to show in:
 - item 1 (Last Name – First Name – Middle Name) his first name as "Jimmie"
 - item 8 (Place of Birth) as Alexandria, LA
 - item 9 (Date of Birth (DOB)) as 1954
 - item 15c (Date of Entry) as 27 September 1972
 - item 30 (Remarks) Blood Group A positive
- an upgrade of his under conditions other than honorable discharge
- backpay for promises made of a \$15,000 bonus and college tuition
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Birth Certificate
- DD Form 214
- Department of Veterans Affairs (VA) Letter, 8 November 2019

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20190001205 on 12 June 2020.

2. The applicant states, in effect:

- a. This is a case of mistaken identity. It has been 43 years since he was discharged

and he was forced to live in the shadow of a man whose first name is similar to his.

b. He enlisted in the Regular Army on 27 September 1972 and signed up for Special Forces training in order to receive a \$15,000.00 bonus along with having his college tuition paid. However, he never received any of it.

c. He requests an upgrade of his discharge due to the Army marking him with a fraudulent identity.

d. From day one, he was a victim of racial discrimination and fraud. He has suffered tremendously with suicidal thoughts and mental stress, which causes him intense migraines.

e. He has been diagnosed as bi-polar and suicidal and he has been in and out of treatment.

f. According to his discharge, he entered service in February 1972; however, he was 17 years old and still in high school. He claims he entered the Army on 27 September 1972.

g. The applicant annotated post-traumatic stress disorder (PTSD) and other mental health as issues/conditions related to his request.

3. The applicant provides:

a. His birth certificate which shows his contested date of birth and place of birth.

b. A VA letter, dated 8 November 2019, that shows in part, the applicant's military service for the period 7 February 1972 to 7 June 1973 as dishonorable for VA purposes. The applicant and his dependents are not eligible for any VA benefits for this military service period.

4. A review of the applicant's record shows he was issued a DD Form 215, dated 27 April 2021 which amended his date of birth. Therefore, this issue will no longer be referenced.

5. The applicant's record contains a DD Form 398 (Statement of Personal History), dated 7 February 1972, which the applicant wrote his first name as "Jimmy" and his place of birth as Pineville, LA.

6. His DD Form 4 (Enlistment Contract – Armed Forces of the United States), dated 8 February 1972, shows he enlisted in the Regular Army on 8 February 1972 for a period of 3 years. He enlisted for Unit Station of Choice (Korea) and Basic Combat

Training at Fort Ord, CA. There is no evidence he enlisted for Special Forces, a bonus, or the Army College Fund.

7. He served in Korea from 10 July 1972 to 7 August 1973.

8. The applicant accepted nonjudicial punishment on/for:

a. On 23 August 1972, for conducting himself in a disorderly manner and communicating a threat taunting gate guards and threatening military police upon apprehension on 20 August 1972.

b. On 12 October 1972, for absenting himself from his place of duty on 29 September 1972. His punishment included reduction to private/E-2.

c. On 24 November 1972, for proceeding through the gate with the use of an illegal liberty pass on 24 November 1972.

d. On 7 March 1973, for violating a lawful general regulation, by not having in his possession an overnight pass on 19 February 1973.

9. On 25 January 1973, the applicant was found guilty by Special Court-Martial for failing to go to his appointed place of duty; violating a lawful general regulation; and for breaking restriction. He was confined at hard labor for 80 days and reduced to the grade of private/E-1.

10. A Report of Mental Status Evaluation shows the applicant was evaluated and psychiatrically cleared for any administrative action deemed necessary by his command.

11. On 4 June 1973, the applicant's immediate commander notified him of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Separations), Chapter 13, for unfitness. His commander's rationale for the proposed action was because of frequent incidents of a discreditable nature. He further stated:

a. Discharge for unsuitability is not deemed appropriate because [applicant's] behavior is not due to an inability to satisfactorily perform within the meaning of unsuitability. His records reflect that his highest rank has been private first class/E-3 and he has one special court-martial.

b. [Applicant] was sent to the brigade for the purpose of receiving correctional training and treatment necessary to return him to duty as a well-trained Soldier with an improved attitude and motivation. However, his actions since arrival preclude

accomplishment of the objective as evidenced by his receipt of seven adverse observation reports.

c. [Applicant] has demonstrated a disregard for military authority and indicates no desire for returning to duty. It is obvious that his primary objective is to be eliminated from the military service by any means. He has received extensive counseling by members of the leadership teams, the unit social worker, and members of the professional staff agencies but has not responded to their efforts. In his opinion, the [applicant] possesses the mental and physical ability necessary to be an effective Soldier, but his present attitude and his failure to react constructively to the rehabilitation program are clearly indicative that he should not be retained in the service.

12. On 4 June 1973, the applicant consulted with counsel who advised him of the basis for the contemplated action to separate him for unsatisfactory performance under AR 635-200, Chapter 13, paragraph 13-2a, and its effect; of the rights available to him; and the effect of any action taken by him in waiving his rights. He declined making a statement on his own behalf. He acknowledged he understood:

- he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him
- as the result of 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 he may expect to encounter substantial prejudice in civilian life
- he understood that he may up until the separation authority orders directs or approves his separation withdraw the waiver of any of the above rights and request that an board of officer, hear his case

13. On 7 June 1973, the applicant was discharged accordingly. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 13 with an under conditions other than honorable characterization of service. It also shows in:

- item 1: Jimmy
- Item 8: New Orleans, LA
- Item 15c: 7 February 1972
- Item 22a (Net Service This Period): 1 year, 1 month, and 27 days
- Item 24: National Defense Service Medal and the Expeditionary Medal (Korea)
- Item 30: Blood Group AB and 64 days lost

14. On 12 June 2020 in ABCMR Docket Number AR20190001205, the Board found partial relief was warranted.

a. The Board concurred with the correction described in Administrative Note(s) in the correction of the applicant's date of birth.

b. Regarding the spelling of his first name in his record, the Board noted the applicant consistently spelled his name as "Jimmy" during his period of military service. The Board determined the spelling of his first name on his DD Form 214 is not an error and should not be changed.

c. Regarding his request to correct the place of birth and blood group shown on his DD Form 214, the Board agreed that errors in these items would have little to no impact on the applicant nearly 50 years after he was discharged. The Board determined these items should not be changed.

d. The records do not indicate he enlisted for a bonus or the Army College Fund, and the Board determined there is no basis for correcting the record to show otherwise.

e. The applicant also requested that his character of service be changed. The Board carefully considered 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 behavioral health claim and the review and conclusions of the Agency psychiatrist. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the Agency psychiatrist regarding his misconduct not being mitigated by a behavioral health condition. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

15. On 27 April 2021, the applicant was issued a DD Form 215 (Correction to DD Form 214) which shows his updated and requested date of birth.

16. By regulation (AR 635-200), Chapter 13 provides that separation action be taken when in the commander's judgment the individual will not develop sufficiently to participate satisfactorily in further military training and/or become a satisfactory Soldier. Service of Soldiers separated because of unsatisfactory performance under this regulation is characterized as honorable or under honorable conditions.

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

18. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his request for an upgrade of his under other than honorable conditions (UOTHC) characterization of service. He contends he was experiencing mental health conditions including PTSD that mitigate his misconduct.

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 in the Regular Army on 8 February 1972; 2) On 25 January 1973, the applicant was found guilty by Special Court-Martial for failing to go to his appointed place of duty; violating a lawful general regulation; and for breaking restriction; 3) On 7 June 1973, the applicant was discharged, Chapter 13-unfitness. His characterization of service was UOTHC; 4) The Board reviewed and denied the applicant's request for an upgrade of his characterization of service on 12 June 2020.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

d. The applicant noted mental health conditions including PTSD as a contributing and mitigating factors in the circumstances that resulted in his separation. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service. He was provided a Mental Status Exam while on active service as part of his separation proceedings. He was not diagnosed with a mental health condition and was psychiatrically cleared for any administrative action deemed necessary by his command. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition or has been awarded any service-connected disability.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant had condition or experience that mitigates his misconduct.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant reports experiencing a mental health condition including PTSD while on active service, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reports experiencing a mental health condition including PTSD while on active service.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD while on active service. The applicant did engage in some misconduct which can be a sequela to some mental health conditions including PTSD, but this is not sufficient to establish a history of a condition during active service. However, the applicant contends he was experiencing a mental health condition that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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 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 frequent incidents of a discreditable nature, including failure to report and violating a lawful order. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board reviewed the medical opine showing insufficient evidence beyond self-report that the applicant was experiencing a mental health condition while on active duty that would mitigate his conduct. 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.

2. The applicant used the contested name and place of birth during his entire period of service. The Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned. Based on the service record and a preponderance of the evidence, the Board denied relief.

3. The Board found the date of entry to be correct after review of the applicant's service record; therefore, there was no basis for correction of the records to show the contested entry date. Additionally, the Board found no evidence to support or evidence to the contrary to amend the applicant's blood type. Furthermore, the blood type in the remarks of the DD Form 214 has little to no impact and therefore denied relief.

4. The Army has an interest in maintaining the integrity of its records for historical purposes. The information in those records must reflect the conditions and circumstances that existed at the time the records were created. In the absence of evidence that shows a material error or injustice, there is a reluctance to recommend that those records be changed.

5. The applicant is advised that a copy of this decisional document, along with his application and the supporting evidence he provided, will be filed in his official military records.

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.

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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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

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 of an individual whose military record is not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 13-2a provides that Commanders will separate a Soldier for unsatisfactory performance when it is clearly established that:

(1) In the commander's judgment, the Soldier will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier.

(2) The seriousness of the circumstances is such that the Soldier's retention will have an adverse impact on military discipline, good order, and morale.

(3) The Soldier will likely be a disruptive influence in duty assignments.

(4) The circumstances forming the basis for initiation of separation proceedings will likely continue or recur.

(5) The Soldier's ability to perform duties effectively is unlikely.

(6) The Soldier's potential for advancement or leadership is unlikely.

2. On 3 September 2014, 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 under other than honorable conditions, 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 applicant's service.

3. 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.

4. 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/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 based on 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.

5. Army Regulation 635-5 (Separation Documents), then in effect, prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It states the DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. It provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge. This regulation provided the following guidance for completing the DD Form 214:

- In item 1 (Last Name – First Name – Middle Name), enter the last name, first name, and full middle name or names, if any
- The entry in item 8 (Place of Birth) is self-explanatory
- In item 30 (Remarks), enter blood group from the Immunization Record (Standard For 601) or the Enlisted Qualification Record (DA Form 20). Example: "Blood Group O."

6. 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.

7. Army Regulation 15-185 (Army Board for Correction of Military Records), paragraph 2-11, shows applicant's do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//