

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 August 2024

DOCKET NUMBER: AR20230012110

APPLICANT REQUESTS: Upgrade of his under honorable conditions (general) discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Request for Assistance to Honorable H\_\_\_\_\_, with Agency response letter

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 was wrongfully discharged with false information and given unfair discharge codes, which ruined his life. He is now 57 years old, and it still affects him for things like insurance and jobs. They threw him in a mental institution at Fort Lewis, WA. His platoon sergeant was racist. It hurt him mentally for life. He was Airborne qualified and would have dedicated his life to serving his country.
3. On his DD Form 149, the applicant notes post-traumatic stress disorder (PTSD), other mental health issues, and sexual assault/harassment are related to his request.
4. On 17 August 1983, the applicant enlisted in the Regular Army. He reenlisted on 21 March 1986 for five years. The highest grade he attained was E-4.
5. The applicant received formal counseling on 14 February 1986, for indebttness and failing to secure his equipment.
6. On 11 September 1986, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for failing to maintain his Class A uniform, on or about 27 August 1986. His punishment included forfeiture of \$206.00 (suspended), reduction to E-3, and 14 days restriction and extra duty.

7. On 19 September 1986, the applicant was reported absent without leave (AWOL) and remained absent until he returned to military authorities on 23 September 1986.
8. On 23 September 1986, the applicant accepted NJP under Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty, on or about 12 September 1986, 13 September 1986, and 14 September 1986; and going AWOL from on or about 19 September 1986 until on or about 23 September 1986. His punishment included forfeiture of \$190.00, reduction to E-2, and 14 days restriction and extra duty.
9. On 1 October 1986, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.
10. On 1 October 1986, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
11. On 9 October 1986, the applicant accepted NJP under Article 15 of the UCMJ, for disobeying a lawful order from a noncommissioned officer, on or about 5 October 1986. His punishment included forfeiture of \$167.00 and reduction to E-1.
12. The applicant's commander notified the applicant on 9 October 1986, that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13, for unsatisfactory performance.
13. The applicant acknowledged he had been afforded the opportunity to consult with counsel; however, he declined the opportunity. He waived consideration of his case by a board of officers. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him. He declined to submit a statement in his own behalf.
14. On 10 October 1986, the applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 13. As the specific reasons, his commander noted the applicant displayed a pattern of misconduct through indebtedness, failing to go or going from his appointed place of duty, and selective obedience to orders given to him.
15. The separation authority approved the recommended separation action and directed the applicant's discharge with issuance of a DD Form 257A (General Discharge Certificate).

16. The applicant was discharged on 16 October 1986. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 13, for unsatisfactory performance. His service was characterized as under honorable conditions (general). He was assigned Separation Code JHJ and Reenlistment Code RE-3/RE-3C. He completed 3 years and 2 months of net active service this period.

17. The applicant's DD Form 214 does not show his continuous honorable active service period information that is required for members who honorably served their first term of enlistment [see Administrative Notes].

18. On 28 March 2024, the ABCMR staff requested that the applicant provide medical documents to support his other mental health issues. He was advised that he could contact the doctor that diagnosed him or his Veterans Affairs regional office for assistance. He did not respond.

19. In the processing of this case, a search of the Criminal Investigation Division database was requested for a Report of Investigation and/or Military Police Report pertaining to the applicant. The search revealed no records pertaining to the applicant.

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

21. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service. On his DD Form 149, the applicant notes Posttraumatic Stress Disorder (PTSD), Other Mental Health Issues, and Sexual Assault/Harassment as related to his request. Per his self-statement, he was discharged based on false information. He also asserted he was 'thrown in a mental institution' at Fort Lewis. 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 (RA) on 17 August 1983 and re-enlisted on 21 March 1986, 2) he was counseled on 14 February 1986 for indebtedness and failing to secure his equipment, 3) he received three Article 15s between 11 September 1986 and 09 October 1986 for the following: failing to maintain his Class A uniform, failing to go at the prescribed time to his place of duty on three occasions and going absent without leave (AWOL), and disobeying a lawful order from a noncommissioned officer, 4) the applicant's commander recommended separation with the reasons for separation noted as a pattern of misconduct through indebtedness, failing to go or going from his place of duty, and selective obedience to orders given to

him. The applicant was discharged on 16 October 1986 under the provisions of AR 635-200, Chapter 13, for unsatisfactory performance.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant underwent a Chapter 14 separation evaluation on 01 October 1986. On the Report of Medical Examination, item number 42, psychiatric, was documented as normal on clinical evaluation. He also underwent a mental status examination (MSE) on 01 October 1986. His MSE was within normal limits and it was documented that he had the mental capacity to understand and participate in proceedings and that he was mentally responsible. There were no other in-service medical records available for review.

d. VA medical records were available for review in JLV from 12 August 2014 through present day. Per review of JLV, the applicant is not service-connected through the VA for any conditions. He underwent a Compensation and Pension (C&P) evaluation on 25 April 2018 and was diagnosed with Adjustment Disorder, Unspecified, Alcohol Use Disorder, Severe, and Cannabis Use Disorder, Moderate. Regarding his diagnosis of Adjustment Disorder, the comments note that he was reporting sleep issues due to pain in his neck and arm and that he was recovering from spine surgery. Regarding alcohol use, it was noted that he stopped excessive drinking 2 months before his spinal surgery and at the time of the evaluation reported drinking 1-2 beers every other day. He reported using cannabis for relaxation, pain control, and sleep. It was documented that the applicant had suicidal ideation in-service and was responding to an ongoing conflict between him and a Sergeant, whom he felt may have had some racial prejudice. It was documented in the examination that the applicant reported he wanted to leave military service before his discharge date and that his files show that he was evaluated for suicidal ideation in-service with his MSE assessed to be 'normal.' It was documented that he was 'held for a few days of observation and released.' The provider opined that the applicant's expression of suicidal ideation may have served as a 'means of gaining help with his problems rather than because of fear of harming himself.'

e. Regarding BH treatment through the VA, the applicant appears to have initiated services on 21 December 2015 due to anxiety and depression secondary to marital issues. He was started on Vistaril for anxiety and Zoloft for depression and was diagnosed with Adjustment Disorder with Mixed Features. At the time of his intake, it was documented that he had been experiencing depression, anxiety, and insomnia for the previous six months and had a history of Alcohol Use Disorder (abstinent for 5 years

at the time of the visit). He continued with treatment about 1-2 times per month through May 2016. He reached out to a social worker on 27 February 2018 due to anticipated problems with housing. He re-engaged with BH on 29 September 2022 for depression due to concerns about finances and his ability to return to work following his back surgery. The applicant agreed to continue with psychiatry and individual psychotherapy. The applicant was started on Cymbalta for depression and anxiety (as well as to help with his pain) on 20 October 2022 and Wellbutrin (antidepressant) was added on 15 December 2022 due to continued problems with low energy and poor motivation. The applicant was referred for group therapy on 15 June 2023. On 21 June 2023, he was diagnosed with Major Depressive Disorder, Severe, with Psychotic Features; Cannabis Use Disorder. It was documented in the record that the applicant's perceptual distortions were associated with his cannabis use and resolved with abstinence. The applicant's diagnosis was updated to Mood Disorder, Unspecified on 06 July 2023 and he was started on Lamotrigine (mood stabilizer). He was diagnosed with Bipolar Disorder on 18 July 2023 and was referred for substance use disorder (SUD) treatment on 17 November 2023 due to increased alcohol use. The applicant has continued with mental health treatment through 24 January 2024. He has maintained active engagement with the VA homeless program to receive assistance managing his finances and housing concerns. The applicant's treating provider(s) did not associate his conditions with his military service.

f. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service. The applicant notes PTSD, Other Mental Health Issues, and Sexual Assault/Harassment as related to his request. There were limited in-service medical records available for review. The available in-service MSE was documented as 'normal.' He is not service connected through the VA for any BH conditions though it was documented at the time of his C&P examination that he endorsed suicidal ideation while in-service and was held for several days for observation. The C&P provider diagnosed the applicant with Adjustment Disorder, Unspecified, Alcohol Use Disorder, and Cannabis Use Disorder. Clinically, the applicant has been treated through the VA for Major Depressive Disorder, Bipolar Disorder in 2023, which were not associated with the applicant's service nor was the onset documented as having occurred during his time in the military. There is also no documentation providing additional information regarding the applicant's assertion of Military Sexual Trauma (MST) through the VA nor his service records and there is no documentation available that he has been diagnosed with PTSD.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant contends his misconduct was related to PTSD, Other Mental Health Issues, and Sexual Assault/Harassment.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unclear. In-service medical records were limited to a MSE though void of any BH diagnosis. While there is an indication through the applicant's self-report and VA C&P examination that the applicant was psychiatrically hospitalized in-service secondary to suicidal ideation, the provider noted that his mental status was documented to be 'normal.' The applicant is not service-connected for any conditions through the VA. At the time of his C&P examination he was diagnosed with Adjustment Disorder, Unspecified, Alcohol Use Disorder, and Cannabis Use Disorder, which are not mitigating conditions. Adjustment Disorders lasting less than 6 months do not constitute mitigating conditions and there is no indication in the record that the applicant had a chronic Adjustment Disorder while in-service. Although the applicant was later diagnosed with Major Depressive Disorder with Psychotic Features and Bipolar Disorder through the VA in 2023, his conditions were not associated with his service. There is no documentation available that the applicant has ever been diagnosed with PTSD.

However, he contends his misconduct was related to PTSD, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

Under Liberal Consideration, the applicant's self-assertion of MST alone is sufficient to establish that the applicant was a victim of MST. There is an association between MST, disobeying lawful orders, failure to report and avoidance behavior. Provided there was more information regarding when the MST occurred, a possible nexus could be established between MST and his offenses of disobeying a lawful order and failure to report. However, as there is no information in the applicant's records regarding when the MST occurred, a nexus cannot be established between this event and his misconduct. Furthermore, even if there was further evidence to establish an association, mitigation would only be partially supported as part of the reason identified for separation was indebtedness, which is not part of the natural sequelae associated with MST. As such, support for BH mitigation is unclear.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was/ 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 record and medical review, the Board concurred with the advising official finding no documentation providing additional information regarding the applicant's assertion of Military Sexual Trauma (MST) through the VA nor his service records and there is no documentation available that he has been diagnosed with PTSD. Additionally, the opine noted, there is no information in the applicant's records regarding when the MST occurred, a nexus cannot be established between this event and his misconduct.

2. The Board noted, the applicant provided no post service accomplishments or character letters of support for the Board to weigh a clemency determination. The Board agreed the applicant was discharged for unsatisfactory performance and was provided an under honorable conditions (General) characterization of service. The Board found 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. However, during deliberation, the Board determined the applicant had a prior period of honorable service which is not currently reflected on his DD Form 214 and recommended that change be completed to more accurately show his period of honorable service by granting a partial relief to correct the applicant's records.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	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 amending the applicant's DD Form 2124 for the period ending 16 October 1986 by adding the following entries in item 18 (Remarks):

- CONTINUOUS HONORABLE SERVICE FROM 830817 UNTIL 860320
- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE

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 an upgrade of the applicant's under honorable conditions (general) discharge.

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.

ADMINISTRATIVE NOTE(S): N/A

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. Title 10, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

3. Army Regulation 635-8 (Separation Processing and Documents) provides: for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable, enter Continuous Honorable Active Service From" (first day of service for which DD Form 214 was not issued) until (date before commencement of current enlistment). Then, enter the specific periods of reenlistment as prescribed above.

4. Army Regulation 635-200 sets forth the requirements for the administrative 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 13 provided for separation due to unsatisfactory performance when in the commander's judgment the individual would not become a satisfactory Soldier; retention would have an adverse impact on military discipline, good order and morale; the service member would be a disruptive influence in the future; the basis for separation would continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, was unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation would be characterized as honorable or under honorable conditions.

5. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR), on 3 September 2014, 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.

6. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The

memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the mental health condition was not diagnosed until years later. 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.

7. 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, 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//