

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 July 2024

DOCKET NUMBER: AR20230012249

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

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 indicates on his application that he suffers from other mental health issues. He states at the time of his discharge, he was a very young man and immature in his actions. This has negatively affected his life and he really wants to make a difference in this world. He realizes what caused his discharge was wrong and he deeply regrets doing it. He was not aware he could get his discharge upgraded until recently.
3. On 18 March 2024, the Army Review Boards Agency requested medical documents from the applicant that support his mental health issue. The applicant did not respond.
4. The applicant's service record contains the following documents:
 - a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the Regular Army, at the age of 18 years old, and entered active duty on 15 May 1991, at the age of 19 years old.
 - b. DA Forms 4856 (General Counseling Form) show he was counseled on:
 - (1) 25 February 1992, for having a delinquent video rental. He concurred with the counseling and signed the form.

(2) 28 February 1992, for having a delinquent video rental. He concurred with the counseling and signed the form.

(3) 6 March 1992, for failing the Army Physical Fitness Test (APFT). He concurred with the counseling and signed the form.

(4) 13 July 1992, for spousal abuse. He concurred with the counseling and signed the form.

(5) 16 July 1992, for failing to go to work on time. He concurred with the counseling and signed the form.

(6) 22 July 1992, for failing to go to his Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) appointment. He concurred with the counseling and signed the form.

(7) 20 August 1992, for having dishonorable checks. He concurred with the counseling and signed the form.

(8) 24 August 1992, for having dishonored checks. He concurred with the counseling and signed the form.

(9) 27 August 1992, for receiving notification of dishonored checks. He did not indicate concurrence or nonconcurrence of the counseling, but he signed the form.

(10) 3 September 1992, for failing to pass his APFT. He concurred with the counseling and signed the form.

(11) 3 September 1992, for receiving a second and third offense notification of dishonored checks. He concurred with the counseling and signed the form.

c. DA Form 4126-R (Bar to Reenlistment Certificate), 24 August 1992, states, he had received letters of indebtedness and notification of dishonored checks. In addition, he was an APFT failure on 6 March 1992, had received counseling for spousal abuse on 10 July 1992, failed to report to duty on 16 July 1992, and failed to attend his ADAPCP meeting on 25 July 1992. He had not responded to the counseling by his chain of command. His commander felt it would be in the best interest of the unit and the United States Army that he not be allowed further service in the United States Army. The applicant has been furnished a copy of his commander's recommendation, had been counseled and advised on the basis of the action, and did not desire to submit a statement in his own behalf. On 25 August 1992, the bar to reenlistment was approved. The applicant stated he would not appeal the bar to reenlistment.

d. Memorandum Certificate of Psychiatric Evaluation on the applicant, 2 September 1992, reflects, in pertinent part, he revealed vague suicidal ideation, which though he had no psychiatric disease, he may act on to better his situation. He had a long history of drug and alcohol abuse and related illegal activities. He had a chronic problem with lying, gambling, stealing, abusing relationship with others, and performing well below his potential. He was concerned he may serve jail time. He showed no remorse for his actions but expressed he was upset that he may not be able to leave Korea if he was ordered to serve time. He was diagnosed with alcohol dependence, history of cannabis dependence, life circumstance problem - administrative proceedings, and antisocial personality disorder. He demonstrated no psychiatric disorder or defect which warranted disposition through medical channels. He was mentally responsible for his behavior, able to appreciate any wrongfulness in his conduct, and to conform his conduct to the requirements of the Uniform Code of Military Justice (UCMJ) and civilian law. He had the mental capacity to understand and participate in board or other administrative proceedings.

e. DA Form 2823 (Sworn Statement), 3 September 1992, states in effect, the applicant knowingly wrote bad checks in excess of \$500 but at the time he was having problems in his marriage. He also had problems with drinking and gambling. He had made arrangements to make restitution and had been to two check writing classes. He realized he was wrong and that he had to take responsibility for his actions. The entire statement is available for the Board's review.

f. DA Form 2627 (Record of Proceedings Under Article 15, UCMJ), 16 September 1992 shows the applicant accepted nonjudicial punishment for wrongfully and unlawfully make and utter checks to the Noncommissioned Officer Club on several occasions. His punishment was reduction to the rank of private/E-1, forfeiture of \$396 per month for two months suspended, and extra duty and restriction for 30 days. He did not appeal his punishment.

g. SF Form 88 (Report of Medical Examination), 18 September 1992, does not show he suffered from mental health issues and he was qualified for separation from the Army. His SF Form 93 (Report of Medical History) shows he did not suffer from depression or excessive worry. It did not indicate he suffered from mental health issues.

h. Memorandum Separation under the Provisions of Chapter 14-12c, Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), 28 September 1992 informed the applicant his commander was initiating separation of him for wrongfully making and uttering 27 bad checks for a total of \$2,642.60. The commander was recommending he be discharged with an under honorable conditions (general) discharge. On the same day, he acknowledged receipt of the initiation of separation.

i. On 29 September 1992, the applicant was advised by his consulting counsel of the basis for the action to separate him for misconduct, the rights available to him and the effect of waiving his rights. Statements in his own behalf were not submitted.

j. His chain of command recommended approval of the initiation of separation and recommended he receive an under honorable conditions (general) discharge. On 29 September 1992, the appropriate approval authority approved his separation and issued him an under honorable conditions (general) discharge.

k. On 7 October 1992, he was discharged accordingly. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he had completed 1 years, 4 months, and 23 days of active-duty service. He was discharged for misconduct - commission of a serious offense and his character of service was under honorable conditions (general). His separation code was JKD and his reentry code was 3. He was awarded or authorized the

- National Defense Service Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Sharpshooter Marksmanship Qualification Badge (M16-Rifle)
- Sharpshooter Marksmanship Qualification Badge (Hand Grenade)

l. Letter from Texas Department of Criminal Justice, 30 April 1998, states the applicant had applied for participation in Project Rio, which assists inmates to become gainfully employed upon release. It was necessary to verify his military service and it was requested his DD Form 214 be mailed to Project Rio.

5. Based on the applicant's assertion he suffered from other mental health, the ARBA Medical Section provided a medical review for the Board's consideration.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service to honorable. He contends he experienced Other Mental Health Issues that mitigates his misconduct. 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 15 May 1991, 2) the applicant was counseled 11 times between 25 February 1992 and 03 September 1992 for having delinquent video rental(s), failing the Army Physical Fitness test (APFT), spousal abuse, failing to report to work on-time, failing to attend his Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) appointment, and having dishonorable checks, 3) the applicant was issued a bar to reenlistment on 25 August 1992 due to letters of indebtedness, notification of

dishonored checks, APFT failure, spousal abuse, failure to report, and failure to attend ADAPCP appointment, 4) a sworn statement by the applicant dated 3 September 1992 stated that he knowingly wrote bad checks but was having problems in his marriage, problems with drinking and gambling, 5) he received nonjudicial punishment (NJP) for wrongfully and unlawfully making and utter checks to the Noncommissioned Officer Club on several occasions, 6) his report of medical examination dated 18 September 1992 indicated that he did not suffer from any mental health issues and did not suffer from depression or excessive worry, 7) the applicant was discharged on 07 October 1992 under the provisions of AR 635-200, Chapter 14-12c. The reason for separation was cited by the applicant's Commander as making and uttering 27 bad checks for a total of \$2,642.60.

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. A summary of an in-service psychiatric examination written by his division psychiatrist that was provided to the applicant's Commander on 02 September 1992 was available for review. It was documented that the applicant had a history of writing bad checks, alcohol abuse, spouse abuse, and drug abuse and dealing (prior to service). The division psychiatrist documented the applicant was diagnosed with Alcohol Dependence, History of Cannabis Dependence, Life Circumstances or Problem, and Antisocial Personality Disorder. It was noted that the applicant reported suicidal ideation though did not endorse having plan or intent. The applicant was cleared for administrative action as deemed appropriate by his Command and did not require disposition through medical channels. An SF 600 dated 24 June 1992 documented that the applicant was enrolled into ADAPCP track II in accordance with AR 600-85 effective 19 June 1992. No further documentation regarding ADAPCP treatment was available for review. A Chapter 14 physical conducted on 17 September 1992 documented the applicant as stating, "I am in good health."

d. Review of JLV revealed the applicant is not diagnosed with any BH conditions through the VA and is not SC for any BH conditions. There are several VA outreach notes in the record while the applicant was incarcerated. A note dated 19 January 2024 documented the applicant was seeking VA assistance with homelessness following the applicant's release from jail.

e. The applicant is requesting an upgrade of his under honorable conditions (general) discharge to honorable. He contends his misconduct was related to Other Mental Health Issues. A review of the records showed the applicant was diagnosed with

Alcohol Dependence, History of Cannabis Dependence, Life Circumstances or Problem, and Antisocial Personality Disorder while in-service. Aside from one in-service psychiatric evaluation, no additional BH documentation was available for review. The documented in-service BH conditions fall under the purview of administrative separations and do not require disposition through medical channels. There is no other documentation available to indicate the applicant otherwise meets criteria for another BH condition that would otherwise support medical mitigation. As such, in absence of documentation supporting his assertion of Other Mental Health Issues there is insufficient evidence to support an upgrade based on BH medical mitigation.

Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

f. 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 Other Mental Health Issues.

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

(3) Does the condition experience actually excuse or mitigate the discharge? No. The applicant asserts his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration. Although the candidate was diagnosed with Alcohol Dependence, History of Cannabis Dependence and Antisocial Personality Disorder while in-service, these conditions fall under the purview of administrative separation and are not mitigating conditions. There is no evidence to the contrary to indicate the applicant had a separate BH condition that would otherwise offer support for BH medical mitigation. As such, there is insufficient evidence to support an upgrade based on BH medical mitigation.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of

the applicant’s petition, available military records and the medical review, the Board concurred with the advising official finding insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. The advising opine found no other documentation available to indicate the applicant otherwise meets criteria for another BH condition that would otherwise support medical mitigation.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of uttering 27 bad checks for a total of \$2,642.60. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. Liberal consideration was carefully considered regarding the applicant’s contentions that his misconduct was related to Other Mental Health Issues. The Board noted the applicant was diagnosed with Alcohol Dependence, History of Cannabis Dependence and Antisocial Personality Disorder while in-service, however, these conditions fall under the purview of administrative separation and are not mitigating conditions. Furthermore, the applicant was discharge for misconduct and was provided an under honorable conditions (General) characterization of service. The Board agreed that 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. Therefore, the Board denied relief.

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.



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. AR 635-200 (Active Duty Enlisted Administrative Separations) prescribed the policy for enlisted separations.

a. An honorable discharge is a separation with honor and entitles a Soldier to full Federal rights and benefits provided by law. The honorable characterization is appropriate when the quality of the Soldier'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 14 of the regulation dealt with separation for various types of misconduct. The issuance of a discharge under other than honorable conditions (UOTHC) was normally considered appropriate for separations under the provisions of chapter 14. In a case in which an UOTHC is authorized by regulation, a member may be awarded an honorable or general discharge, if during the current enlistment period of obligated service, he has been awarded a personal decoration or if warranted by the particular circumstances of a specific case. Paragraph 14-12c provided for the separation of a Soldier due to commission of a serious military or civil offense if the specific

circumstances of the offense warrant separation and a punitive discharge would be authorized for the same or a closely related offense under the Manual for Court-Martial.

3. AR 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities, reasons for separating Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows code JKQ is used for discharge for misconduct.

4. AR 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

5. 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.

6. On 25 August 2017 the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to 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 (TBI); 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 sexual assault or sexual harassment was unreported, or 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. The guidance further describes evidence sources and criteria and requires Boards to

consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

7. 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 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.

8. Title 10, U.S. Code, section 1556 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//