

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 June 2024

DOCKET NUMBER: AR20230012279

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions (UOTHC)
- narrative reason for separation be changed to Secretarial Authority with corresponding separation and reentry codes

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Attorney Brief/Letter
- Exhibits 6-15 (Service Documents)
- DD Form 214 (Certificate of Release or Discharge From active Duty)
- Medical Documents
- Veterans Consortium Letter/Agreement
- Licensed Clinical Psychologist SGK__ Letter
- Character Letters (four)

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:

a. His childhood was very difficult. He was abused by his stepfather. His high school counselor advised that he receive counseling, but his mom did not take it seriously. He was bullied and dropped out of school. He has been married twice and has children, grandkids, and great grandkids. During his time in the Army his brother died. He requested immediate discharge. He had mental problems and really didn't feel he could go on serving an organization that didn't care about him. He felt depressed and overwhelmed and burdened by his brother's death (suicide), financial and work stress,

and he began drinking more and using drugs. He received an honorable discharge and was informed his discharge was revoked and they wanted him to return to Germany.

b. He was treated for his mental illness around 2008-2009 He was diagnosed with bipolar disorder and depression. He was treated for major depressive disorder and an anxiety disorder in 2018. He was prescribed several antidepressants and a drug for his bipolar illness. The mistake he made was caused by his severe mental health and family issues. Despite his struggles he always worked hard, did his job to the best of his ability, and received positive review.

3. The attorney brief reiterates the above and that the applicant requested reassignment to Washington D.C and was denied, he returned to Germany. Because of his personal and financial problems, he requested immediate discharge. Since leaving the Army the applicant has been diagnosed with mental illness that was incurred during his military service. If the Board decides not to grant him an honorable discharge, it should at least recognize his long record of honest and faithful service by upgrading his discharge to under honorable conditions (general).

4. The applicant enlisted in the Regular Army on 1 August 1974.

5. He served in Germany from 15 December 1974 through 1 November 1976.

6. He was honorably discharged on 15 September 1976. His DD Form 214 (Report of Separation from Active Duty) shows he completed 2 years, 1 month, and 15 days of active service. He was awarded or authorized the National Defense Service Medal (NDSM).

7. The applicant reenlisted on 16 September 1976.

8. He served in Korea from 7 March 1979 through 9 February 1980 and Germany from 1 March 1982 through 5 October 1984.

9. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on 21 July 1982, for operating a vehicle while drunk and causing the vehicle to strike another vehicle on or about 17 May 1982. His punishment consisted of forfeiture of \$427.00 pay per month for 2 months, reduction to specialist/E-4 (suspended). The punishment was vacated on 25 October 1982.

10. The applicant was absent without leave (AWOL) on 5 October 1984 and dropped from the rolls as a deserter on 3 November 1984. He was apprehended by military authorities, returned to military control, and present for duty on 17 February 1988.

11. Court martial charges were preferred against the applicant on 2 March 1988. His DD Form 458 (Charge Sheet) shows he was charged with AWOL from on or about 5 October 1984 until 17 February 1988.

12. The applicant consulted with legal counsel on 2 March 1988 and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a UOTHC discharge and the procedures and rights that were available to him.

a. After consulting with legal counsel, he voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10, in for the good of the service, lieu of trial by court-martial. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws and he may expect to encounter substantial prejudice in civilian life because of a dishonorable discharge.

b. He elected not to submit statements in his own behalf.

13. The applicant's commander recommended approval of the discharge and that an UOTHC Discharge Certificate be issued. The applicant was pending trial for an offense punishable by a bad conduct or dishonorable discharge. The administrative burdens involved in the court martial and possible confinement are not considered warranted in view of the nature of the offense.

14. The separation authority approved the request for discharge on 8 April 1988 and directed the applicant be furnished a UOTHC Discharge Certificate and that he be reduced to the lowest grade.

15. The applicant was discharged on 5 May 1988. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 10, for the good of the service- in lieu of court martial with Separation Code KFS and Reenlistment Code 3-3B-3C. His service was characterized as UOTHC. He completed 8 years, 3 months, and 8 days of active service. He lost time from 5 October 1984 to 16 February 1988. He was awarded or authorized:

- Overseas Service Ribbon with numeral 1
- Army Service Ribbon
- Army Good Conduct Medal (second award)
- Noncommissioned Offer Professional Development Ribbon with numeral 2
- NDSM

16. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

17. AR 635-5 (Separation Documents), states, the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

18. The applicant provides:

a. Exhibits 6-15-includes service documents discussed above and show the applicant had debt problems and a bar to reenlistment. His legible evaluation reports show the applicant preformed his duties in an exceptional manner with thorough knowledge of his job. He is diligent and self-motivated. The applicant received certificates of achievement and, appreciation and various letters of appreciation during his service.

b. A copy of his DD Form 214 as discussed above.

c. Veterans Consortium letter/agreement show the applicant sought assistance from the Veterans Consortium.

d. The medical documents show a diagnosis of bipolar II disorder, and polysubstance dependence.

e. The Licensed Clinical Psychologist SGK__ letter, dated 4 May 2023, shows the applicant's personal statement that includes service stressors and traumas which directly contributed to the onset of mental health symptoms, abrupt uncharacteristic decline in military functioning, and subsequent AWOL and a diagnosis of bipolar II disorder, depressed with anxious distress, severe.

f. Character letters that attest to the applicant being a strong family values man with strong character and a trusted friend. He has always been transparent and honest and demonstrates wisdom in speck conduct. He mentors and encourages people. He has solid character and demonstrates wisdom and sincerity. He demonstrates pride in providing genuine customer service, and manages difficult situations without getting rattled. He was seen as a grandfather figure. His daughter states the applicant is more than her dad, he is her best friend. He volunteered whenever he was needed in his family and community and still does. He continues to give sound counsel and words of encouragement to younger adults. He enjoys spending time with his family, especially his grandchildren.

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

20. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. Additionally, he requests the narrative reason for separation be changed to Secretarial Authority with corresponding separation and reentry codes. The applicant notes other mental health as related to his request.

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 in the Regular Army Reserve on 1 August 1974.
- He served in Germany from 15 December 1974 through 1 November 1976.
- He was honorably discharged on 15 September 1976 and reenlisted on 16 September 1976.
- He served in Korea from 7 March 1979 through 9 February 1980 and Germany from 1 March 1982 through 5 October 1984.
- The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on 21 July 1982, for operating a vehicle while drunk and causing the vehicle to strike another vehicle on or about 17 May 1982. His punishment consisted of forfeiture of \$427.00 pay per month for two months, reduction to specialist/E-4 (suspended). The punishment was vacated on 25 October 1982.
- The applicant was absent without leave (AWOL) on 5 October 1984 and dropped from the rolls as a deserter on 3 November 1984. He was apprehended by military authorities, returned to military control, and present for duty on 17 February 1988.
- Court martial charges were preferred against the applicant on 2 March 1988. His DD Form 458 (Charge Sheet) shows he was charged with AWOL from on or about 5 October 1984 until 17 February 1988.
- The applicant was discharged on 5 May 1988. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 10, for the good of the service-in lieu of court martial with Separation Code KFS and Reenlistment Code 3-3B-3C. His service was characterized as UOTHC. He completed 8 years, 3 months, and 8 days of net active service this period. He lost time from 5 October 1984 to 16 February 1988. His awards include the: Overseas Service Ribbon with numeral 1, Army Service Ribbon, Army Good Conduct Medal (second award), Noncommissioned Offer Professional Development Ribbon with numeral 2, and the NDSM.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, "his childhood was very difficult. He was abused by his stepfather. His high school counselor advised that he receive counseling, but his mom did not take it seriously. He was bullied and dropped out of school. He has been married twice and has children, grandkids, and great grandkids. During his time in the Army his brother died. He requested immediate discharge. He had mental problems and really didn't feel he could go on serving an organization that didn't care about him. He felt depressed and overwhelmed and burdened by his brother's death (suicide), financial and work stress, and he began drinking more and using drugs. He received an honorable discharge and was informed his discharge was revoked and they wanted him to return to Germany. He was treated for his mental illness around 2008-2009. He was diagnosed with bipolar disorder and depression. He was treated for major depressive disorder and an anxiety disorder in 2018. He was prescribed several antidepressants and a drug for his bipolar illness. The mistake he made was caused by his severe mental health and family issues. Despite his struggles he always worked hard, did his job to the best of his ability, and received positive review."

d. Due to the period of service no active-duty electronic medical records were available for review, thus, there was insufficient evidence the applicant was diagnosed with a psychiatric condition while on active service. However, the service record shows after a successful six years of service, the applicant appeared to experience initial symptoms of Bipolar Disorder in 1982 given his difficulties with financial management, indebtedness, marital discord, and driving while intoxicated. All of the difficulties referenced were not previously evidenced, since the applicant's performance in his duties had been cited as stellar. The applicant's mental health appeared to further deteriorate when he was issued a bar to enlistment in 1983 and then experienced the death of his brother via suicide in 1984. The applicant states, on 5 October 1984, he was at the transfer point and a message was received revoking his discharge. The applicant reports feeling betrayed and, consistent with symptoms of Bipolar Disorder, impulsively opted to go AWOL.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected, likely due to the characterization of his discharge. However, the applicant submitted post-military service medical documentation substantiating his assertion of a BH condition. A psychological assessment dated 4 May 2023, references the applicant's "uncharacteristic decline in military performance" as one of the indicators of his Bipolar Disorder's impact on his level of functioning. The report references the applicant's participation in behavioral health services via the District of Columbia Community Service Agency from approximately 2007 to 2009, where he was diagnosed with Bipolar II Disorder and Polysubstance Dependence. In addition, a treatment summary dated 1 May 2018, indicates the applicant participated in 10 sessions at a

military family clinic and was diagnosed with Major Depressive Disorder and Generalized Anxiety Disorder.

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, Bipolar Disorder, during military service that mitigates his discharge.

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, Bipolar Disorder.

(2) Did the condition exist or experience occur during military service? Yes. The applicant provides medical documentation supporting his assertion that he developed symptoms of his Bipolar Disorder during military service and his symptoms impacted his behavior and decision-making.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Court martial charges were preferred against the applicant due to his AWOL. The applicant provides medical documentation that evidences he was diagnosed with Bipolar Disorder, post-military service. However, per his service record, the abrupt decline in his performance and the nature of difficulties he experienced are consistent with a person who is experiencing the beginning stages of Bipolar Disorder. Given the nexus between Bipolar Disorder and impulsivity, the applicant's instance of AWOL is mitigated by his BH condition.

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published Department of Defense 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 charged with being absent without leave, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board noted the applicant's contention of suffering from an undiagnosed bipolar disorder. The Board concurred with the medical reviewer's opinion that there is sufficient evidence to support the applicant had a behavioral health condition (Bipolar Disorder) during his military service that mitigated his discharge. The Board determined an under honorable conditions (General) discharge was warranted;

however, the corresponding codes accurately reflect his misconduct and voted to deny that portion of his request.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

█ █ █ GRANT PARTIAL RELIEF

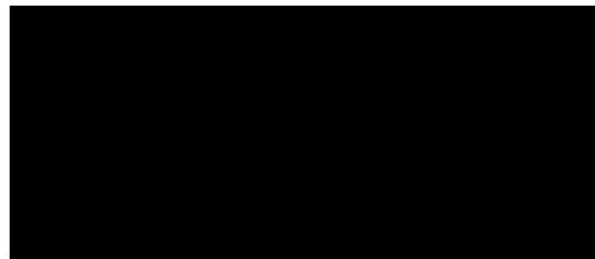
: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant 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 214, for the period ending 5 May 1988, to show an under honorable conditions (General) characterization of service.

2. The Board further determined that 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 upgrading his characterization of service to honorable and amending the corresponding code associated with his 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.

REFERENCES:

1. Title 10, USC, 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, 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 635-200 sets 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate. When a Soldier is to be discharged UOTHC, the separation authority will direct an immediate reduction to private E-1, in accordance with governing regulation.
4. AR 635-5 (Personnel Separations-Separation Documents) prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established the standardized policy for the preparation of the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. The general instructions stated all available records would be used as a basis for preparation of the DD Form 214. The information

entered thereon reflects the conditions as they existed at the time of separation. It states for:

a. Block 24 (Character of Service) characterization or description of service is determined by directives authorizing separation.

b. Block 25 (Separation Authority), enter the regulatory or other authority cited in the directives authorizing the separation.

c. Block 26 (Separation Code) Obtain correct entry from AR 635–5–1 (Separation Program Designator (SPD) Codes), which provides the corresponding separation program designator code for the regulatory authority and reason for separation.

d. Block 27 (Reenlistment Code) AR 601–210 (Active and Reserve Components Enlistment Program) determines RA and USAR reentry eligibility and provides regulatory guidance on the RE codes.

e. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in Army Regulation 635–5–1.

5. AR 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. It states that the separation code KFS is assigned to enlisted Soldiers separated under the provisions of Paragraph 10, of AR 635-200, in lieu of trial by court-martial.

6. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable – they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from their last period of service with a non-waivable disqualification

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 Service 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 Post-Traumatic Stress Disorder; 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 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. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and BCM/NRs on 25 July 2018, 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.

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//