

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 June 2024

DOCKET NUMBER: AR20230012381

APPLICANT REQUESTS: in effect, an 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)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 28 September 1984 (two)

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 his drug and alcohol use during his military service was prevalent, and his mental health status at the time of his discharge was unknown. He asks the Board for relief to apply for additional benefits not covered by his current discharge.
3. The applicant enlisted in the Regular Army on 27 November 1978.
4. Effective 12 June 1984, the applicant's unit reported him absent without leave (AWOL). His duty status changed to return to military control when he surrendered to military authorities on 9 July 1984.
5. On 11 July 1984, he accepted nonjudicial punishment under Article 15, of the Uniform Code of Military Justice, for absenting himself from his unit on or about 31 May 1984 and did remain so absent until on or about 1 June 1984. His punishment included reduction to specialist/E-4.

6. Effective 7 August 1984, the applicant's unit reported him confined by military authorities. His duty status changed to present for duty when he was released from confinement on 3 September 1984.
7. On 13 August 1984, the applicant underwent a complete mental status evaluation as part of his consideration for discharge due to his misconduct. His mental status evaluation noted he met the retention standards, was mentally responsible, had the mental capacity to understand and participate in the proceedings, and was psychiatrically cleared for any administrative action deemed appropriate by his command.
8. On 24 September 1984:
 - a. The applicant's commander notified the applicant of his intent to initiate action to separate him from service under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 13, for unsatisfactory performance. As reasons for the proposed separation the commander cited, the applicant's two periods of AWOL from 31 May 1984 to 1 June 1984 and from 12 June 1984 to 10 July 1984.
 - b. The applicant acknowledged receipt of his commander's notification. He consulted with counsel and was advised of the reason for separation and the rights available to him. He understood if he was issued a general discharge, he may encounter substantial prejudice in civilian life. He did not submit a statement in his own behalf.
 - c. The applicant's immediate commander recommended the applicant's separation from the service, under the provisions of Army Regulation 635-200, Chapter 13. As reasons for the proposed action, his immediate commander cited the applicant was a disgraced former noncommissioned officer who was not a leader and had a history of unsatisfactory performance.
9. On the same date, the separation authority approved the recommended discharge and directed the issuance of a General Discharge Certificate.
10. The applicant was discharged accordingly on 28 September 1984, under the provisions of Army Regulation 635-200, Chapter 13, for unsatisfactory performance, with an under honorable conditions (General) characterization of service in the grade of E-4. He received a separation code of "JHJ" and a reenlistment code of "RE-3" and "3B." His DD Form 214 contains the following entries:
 - a. He completed 5 years, 8 months, and 7 days of active service.

b. Block 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or authorized):

- Army Service Ribbon
- Overseas Service Ribbon
- Army Good Conduct Medal
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Grenade Bar
- Noncommissioned Officer Professional Development Ribbon

c. Block 18 (Remarks): "immediate reenlistment this period: "781127 - 821122".

d. Block 29 (Dates of Time Lost During this Period) the entries:

- 30 May 1984 thru 30 May 1984
- 12 June 1984 thru 8 July 1984
- 7 August 1984 thru 2 September 1984

11. Regulatory guidance in effect at the time provided the service of Soldier's separated because of unsatisfactory performance under the provisions of AR 635, Chapter 13 would be characterized as honorable or under honorable conditions.

12. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

13. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service. 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 27 November 1978 and achieved the rank of E-5, 2) he received nonjudicial punishment (NJP) on 11 July 1984 for being absent without leave (AWOL) from 31 May 1984 to 01 June 1984, 3) he was reported AWOL 12 June 1984 to 09 July 1984, 4) the applicant's unit reported him confined by military authorities on 07 August 1984 and was released on 03 September 1984, 5) a mental status examination conducted as part of consideration for separation on 13 August 1984 documented that he met retention standards, was mentally responsible, and was cleared for administrative action deemed appropriate by his commander, 6) the applicant was awarded several ribbons and medals during his service, most notably the Army Good Conduct Medal and Noncommissioned Officer Professional Development Ribbon, 7) on 28 September

1984, the applicant was discharged under the provisions of Army Regulation (AR) 635-200, Chapter 13, for unsatisfactory performance. The reasons for separation cited by the commander on the initial notification to separate cited the applicant's two periods of AWOL in 1984.

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. No civilian BH records were provided for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. A mental status examination conducted on 13 August 1984 as part of his chapter processing indicated the applicant was mentally responsible and cleared for any administrative action deemed appropriate by command. No other in-service military medical records were available for review. An in-service Report of Medical History completed on 05 September 1984 in conjunction with his Chapter 13 separation noted the applicant endorsed having had 'depression or excessive worry' and a head injury on item 11 of the form. The remarks section clarified that the history of a head injury occurred at age 12. Depression was noted to be 'associated with family illness and military,' though no formal diagnosis was rendered.

d. Review of JLV shows the applicant is service connected (SC) through the VA for the following conditions: three cold injury residuals, each 10% SC, flatfoot acquired (30%), and tinnitus (10%). The applicant is not SC through the VA for any BH conditions. Records were available for review in JLV from 12 July 1992 through 25 June 2024. The applicant has numerous BH records in JLV and will be summarized below. The applicant has the following BH conditions listed in his problem list: Tobacco Use Disorder, Cocaine dependence, uncomplicated, Cocaine abuse, uncomplicated, Alcohol dependence, Alcohol Abuse. Records indicate the applicant was primarily treated for alcohol and cocaine use through the VA beginning in 2008 through 2015. It was documented in 2013 that the applicant was diagnosed with depression with a rule out of Substance Induced Medical Condition. Review of JLV shows the applicant has also been diagnosed with Depression, Not Otherwise Specified (NOS), Major Depressive Disorder, Single Episode, Unspecified, and Unspecified Mood Disorder through the VA since 2022. Beginning in April 2022 the applicant's treatment was focused on depression, primarily for treatment of grief related to death(s) in the family. A mental health note dated 01 August 2022 documented that the applicant reported his depression started when he was in the military after his mother died. It was further documented that he was self-medicating with alcohol and drugs. The provider documented that the applicant has been sober from alcohol and drugs since 2014 and that his emotions returned after he stopped using substances.

e. The applicant is petitioning the Board requesting an upgrade of his under honorable conditions (general) discharge. The applicant contends that his misconduct was related to Other Mental Health Issues. A review of the applicant's in-service records is void of any BH diagnosis and indicates that he was psychiatrically cleared for administrative separation. While it was noted on his separation physical that the applicant endorsed experiencing depression due to family illness and the military, there are no in-service records available diagnosing the applicant with depression. The applicant has been engaged in BH treatment through the VA since 2008, with treatment initially focused on treatment of alcohol and substance use disorders and more recently the treatment of depression.

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 contends his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration. A review of records was void of any BH diagnosis for the applicant in-service. Although he has been treated for alcohol and substance use disorders along with depression through the VA since his discharge, he is not service-connected for any BH conditions. In the absence of documentation supporting his assertion there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues and 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 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 separated for unsatisfactory performance with the commander citing being absent without leave on two occasions. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant provided no

documentation to support his request, including post-service achievements or letters of reference to support clemency. The Board concurred with the medical reviewer's opinion finding that no records the applicant suffered from a behavioral health diagnosis in service; although he is being treated for one now.

2. Prior to closing the discussion, the Board noted and concurred with the analyst of record's administrative notes below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : 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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214, for the period ending 28 September 1984, is missing important entries that may affect his eligibility for post-

service benefits. As a result, amend the DD Form 214 by adding the following entries in block 18 (Remarks):

- CONTINUOUS HONORABLE ACTIVE SERVICE: 781127 - 821122
- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE

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, 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. 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.
 - b. 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.
 - c. 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.
4. Army Regulation 635-5 (Personnel Separation Documents), in effect at the time, did not provide for an additional entry for continuous honorable active service, when a Soldier who previously reenlisted without being issued a DD Form 214 was discharged with any characterization of service except honorable. However, an interim change, published on 2 October 1989 does provide for such an entry. A revision to this regulation was published on 15 September 2000 to provide for an additional mandatory

entry, "Soldier (has) (has not) completed first full term of service," when a soldier reenlisted before the end of their initial contracted period of service. If a soldier completed or exceeded their initial enlistment when comparing their terms of enlistment to the net service in block 12c of the DD Form 214, enter "has."

5. 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 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.

6. 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 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.

//NOTHING FOLLOWS//