

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 23 July 2024

DOCKET NUMBER: AR20230012436

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions characterization of service to under honorable conditions (General).

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Form 21-4138 (Statement in Support of Claim)

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 at the time of his discharge he was suffering from a diagnosed mental illness, including insomnia, brought about by physical trauma following dental treatments.
3. The applicant provides a VA Form 21-4138 that recounts how he underwent extensive dental surgery over an extended period of time that caused and exacerbated mental illnesses which eventually caused his behavior to degenerate. As a result, he was discharged in lieu of court-martial for his behavior. The continual stress of the pain from oral surgeries, reprimands for missing appointments, remain within training standards, and a death in the family was too much for him to handle. After being treated for psychiatric conditions at Fort Gordon and Fort Jackson, he believes he should have received a general discharge due to medical reasons. Additionally, he still suffers from the effects of addiction recovery, after self-medicating for bipolar disorder.
4. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 20 June 2006.

b. Two DA Forms 4187 (Personnel Action) show his duty status changed from present for duty to absent without leave (AWOL), effective 10 September 2007, and from AWOL to drop from rolls (DFR), effective 10 October 2007.

c. DD Form 616 (Report of Return of Absentee) shows the applicant was apprehended by civilian authorities in Seneca, South Carolina and returned to military control on 28 May 2008.

d. On 10 October 2007, court-martial charges were preferred against the applicant for violation of Article 85 (Desertion) of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with absenting himself in desertion, without authority and with intent to remain away from there permanently, on or about 10 September 2007 until on or about an undisclosed dated.

e. The applicant's service record is void of his request for voluntary discharge in lieu of court-martial and complete separation documents that led to his discharge.

f. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged from active duty on 25 July 2008 under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10, with a narrative reason for separation of "in lieu of trial by court-martial" and an under other than honorable conditions characterization of service, Separation Code KFS and Reentry Code 4. He completed 1 year, 4 months, and 18 days of active service, and he had lost time from 10 September 2007 to 27 May 2008 (260 days).

6. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

7. By regulation, AR 635-200, in effect at the time, states an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or in lieu of trial by court-martial.

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

9. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (General). 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 20 June 2006.
- Two DA Forms 4187 (Personnel Action) show his duty status changed from present for duty to absent without leave (AWOL), effective 10 September 2007, and from AWOL to drop from rolls (DFR), effective 10 October 2007.
- DD Form 616 (Report of Return of Absentee) shows the applicant was apprehended by civilian authorities in Seneca, South Carolina and returned to military control on 28 May 2008.
- On 10 October 2007, court-martial charges were preferred against the applicant for violation of Article 85 (Desertion) of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with absenting himself in desertion, without authority and with intent to remain away from there permanently, on or about 10 September 2007 until on or about an undisclosed date.
- The applicant was discharged on 25 July 2008. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 10, in lieu of trial by court martial with Separation Code KFS and Reenlistment Code 4. His service was characterized as UOTHC.

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, "at the time of his discharge he was suffering from an undiagnosed mental illness, including insomnia, brought about by physical trauma following dental treatments." The applicant provides a VA Form 21-4138 that recounts how he underwent extensive dental surgery over an extended period of time that caused and exacerbated mental illnesses which eventually caused his behavior to degenerate. As a result, he was discharged in lieu of court-martial for his behavior. The continual stress of the pain from oral surgeries, reprimands for missing appointments, remain within training standards, and a death in the family was too much for him to handle. After being treated for psychiatric conditions at Fort Gordon and Fort Jackson, he believes he should have received a general discharge due to medical reasons. Additionally, he still suffers from the effects of addiction recovery, after self-medicating his bipolar disorder.

d. The active-duty electronic medical record available for review indicates on 3 January 2007, the applicant self-referred for behavioral health services due to stress and depression. The applicant reported he had "been in a holding status since having 16 teeth removed on 1 November 2006... his future in the Army was uncertain since he might be deemed non-deployable due to his dental health". In the session, he expressed a desire to continue training and move on to his first duty assignment, however, the uncertainty of his situation was causing him stress. The applicant reported disrupted sleep, with a prior history of prescription medication to aid with sleep, decreased appetite since having his teeth removed and when he was hungry his ability

to eat was limited due to having no teeth. He stated that prior to his teeth being removed he would eat 3 meals a day but since then he had lost 25 pounds. During the session, the applicant denied any prior history of mental health services but disclosed a family history of Bipolar Disorder with both his mother and his sister diagnosed with the disorder. He further endorsed depression "for as long as I can remember", sleep disturbances, loss of interest in previously enjoyed activities, lack of motivation, fatigue, and decreased concentration. During this encounter, he was diagnosed with Adjustment Disorder, scheduled for an in-depth intake appointment, and recommended for stress management group. He was seen the following week for an intake session and diagnosed with Insomnia.

e. The applicant was seen on 16 April 2007, for a follow-up psychiatry appointment due to symptoms of anxiety and insomnia. The note from that appointment states he "was sleeping well on Ambien except for difficulty waking up" in the morning. He "continues to struggle with uncertainty of future in military. May get med board for dental issues. Inactive status while getting dental work".

f. On 27 June 2007, the applicant was once again seen by psychiatry and the note indicates "as a follow-up for anxiety, possible bipolar disorder". The applicant reported symptoms consistent with Bipolar Disorder including "days where he can't sleep and is hyperactive". A follow-up psychiatry appointment on 8 August 2007, states the applicant "was being treated for Bipolar Disorder and severe Insomnia and was taking Prozac and Ambien". During this appointment, the applicant was diagnosed with Bipolar Disorder and Insomnia.

g. On 20 August 2007, he was seen by Community Mental Health after returning from being AWOL since 11 August 2007. He indicated he returned because he did not want to get a dishonorable discharge. He reported feeling depressed, anxious, tired and restless; he was unable to sleep for over a day and a half. He reported transient thoughts of self-harm, as well as thoughts of hurting someone because "he annoys me". During that appointment, the applicant reported seeing the family doctor on or about 16 August 2007 (while on AWOL status), because he "ran out of medication", and reported that his family doctor diagnosed him with Bipolar Disorder and prescribed him Seroquel for sleep and a mood stabilizer. The applicant reported he attempted to seek help prior to going AWOL, but no one would help him, and he got frustrated and angry. He further indicated going AWOL once he learned his mother was scheduled for "open-heart surgery". The applicant was evaluated by psychiatry on 24 August 2007 and diagnosed with Major Depression, recurrent. He was once again seen by psychiatry on 07 September 2007, to review his medication regimen. The medical provider notes having contacted the applicant's "CO to talk about his pay issues and possible re-class, but CO never called me back". After his appointment, the applicant then returned in acute distress because he "got yelled at by his unit for walking on the grass and then had to clean a wall with paint scraper. While scraping the wall, cadre was teasing him and reports he threatened one of the cadre with the scraper. He was then yelled at for threatening cadre and ran away from the unit". The applicant reported fleeting homicidal

ideation, as well as frustration and wanting to go AWOL. Consistent with symptoms of Bipolar Disorder, that often include impaired decision-making and impulsivity, the applicant opted to go AWOL on 10 September 2007.

h. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and has not participated in behavioral health services via the VA, likely due to the characterization of his discharge.

i. 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, during military service that mitigates his discharge.

j. 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 active-duty electronic medical record shows the applicant was diagnosed with Adjustment Disorder, Insomnia, Bipolar Disorder, and Major Depression during military service and his symptoms likely 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 active-duty electronic medical record indicates the applicant was diagnosed with Bipolar Disorder. Given the nexus between Bipolar Disorder and impulsivity as well as impaired decision-making, 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 relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The evidence shows the applicant was charged with commission of offenses (desertion/AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's determination finding the applicant has been diagnosed with a behavioral health condition that mitigates his misconduct. Based on this finding, the Board determined that given his AWOL/desertion was terminated by apprehension, his

service clearly does not rise to the level required for an honorable discharge; however, a general, under honorable characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board further determined that such upgrade did not change the underlying reason for his separation and thus the narrative reason for separation and corresponding codes should not change.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant a DD Form 214 for the period ending 25 July 2008 as follows:

- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. 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.

3. Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a Soldier who committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not being coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. An honorable discharge is a separation with honor. 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.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

4. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences. The guidance further describes evidence sources and criteria and requires boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

5. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

6. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory

opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//