

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 June 2024

DOCKET NUMBER: AR20230012450

APPLICANT REQUESTS: an upgrade of his characterization of service from under honorable conditions (general) discharge to honorable and a personal appearance before the Board.

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 states on his application that he suffers from other mental health issues. He states he believes his discharge should be upgraded because he was a good Soldier and earned his Army Good Conduct Medal, and made the rank of specialist (SPC)/E-4, which he kept. The last six months of his service, his mental health was deteriorating. His drinking escalated and he received a driving under the influence (DUI). He has had a rough time at life since the military, with hospital stays for mental illness and substance abuse. Four years ago, he started going to the Department of Veterans Affairs for medical issues and his life is improving.
3. The applicant's service record contains the following documents:
  - a. DD Forms 4 (Enlistment/Reenlistment Document Armed Forces of the United States) show the applicant enlisted in the Regular Army and entered active duty on 17 June 1994 and reenlisted in the Regular Army on 26 June 1996.
  - b. Memorandum of Reprimand, dated 16 June 1991, reflects the applicant received a reprimand for receiving a DUI on 7 June 1997. On 8 July 1997, the applicant acknowledged receipt of the memorandum of reprimand and elected not to make a statement.

c. The applicant's chain of command recommended filing of the reprimand in his official military personnel file (OMPF). On 8 August 1997, the issuing authority directed the reprimand be filed in his OMPF.

d. The applicant's separation packet is not available for the Board's consideration. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged, in the rank of SPC/E4 on 29 October 1997. He had completed 3 years, 4 months, and 13 days of active duty service. He had continuous honorable service from 17 June 1994 through 25 June 1996. He was discharged for misconduct and his character of service was under honorable conditions (general). He was awarded or authorized the:

- Army Good Conduct Medal
- National Defense Service Medal
- Army Service Ribbon
- Marksman Marksmanship Badge (Rifle)

e. The applicant's service record is void of, and the applicant did not provide, documentation showing his mental health diagnosis.

#### 4. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his characterization of service from under honorable conditions (general) discharge to honorable. He contends he experienced mental health conditions that mitigates his discharge. 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 17 June 1994; 2) Memorandum of Reprimand, dated 16 June 1991, reflects the applicant received a reprimand for receiving a DUI on 7 June 1997; 3) The applicant's separation packet is not available for the Board's consideration. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged, in the rank of SPC/E4 on 29 October 1997. He had completed 3 years, 4 months, and 13 days of active-duty service. He had continuous honorable service from 17 June 1994 through 25 June 1996. He was discharged for misconduct, and his character of service was under honorable conditions (general).

b. The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documents were provided for review.

c. The applicant asserts he was experiencing mental health conditions while on active service, which mitigates his discharge. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service.

d. A review of JLV provided evidence the applicant began to engage with the VA in 2019. He has been actively engaged in behavioral health and substance abuse treatment. In 2023, the applicant was diagnosed with service-connected Major Depressive Disorder and awarded service-connected disability for this mental health condition (70%).

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant has been diagnosed with a service-connected mental health condition. However, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of mental health condition or experience at this time.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A. There is sufficient evidence to support the applicant has been diagnosed with a service-connected Major Depressive Disorder in 2023. However, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of mental health condition or experience at this time.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the discharge? N/A.

#### BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's mental health claim and the review and conclusions of the ARBA Behavioral Health Advisor. The applicant provided no evidence of post-service achievements or letters of

reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding there being insufficient information available regarding the misconduct that led to his discharge to determine if that misconduct was mitigated by a mental health condition. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

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.

11/1/2024

X

CHAIRPERSON

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. 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 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//