

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 July 2024

DOCKET NUMBER: AR20230012814

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) discharge.

APPLICANT'S SUPPORTING DOCUMENT 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-he was under undue stress as a result of his service, dealing with personal and family issues, without a support system in place to help assist with his issues. He completed two previous terms and would like that to be taken into consideration. He annotated post-traumatic stress disorder (PTSD) as an issue/condition related to his request.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 30 January 1984.
 - b. He re-enlisted in the Regular Army twice on 25 August 1987 and 2 January 1991.
 - c. Separation orders, dated 24 September 1992, show the applicant was discharged from the Regular Army in accordance with Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12c, with an effective date of 24 September 1992.
 - d. On 24 September 1992, he was discharged under the provisions of Chapter 14-12c of Army Regulation 635-200. He completed 8 years, 7 months, and 25 days of active service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows in:

- block 24 (Character of Service): Under Honorable Conditions (General)
- block 25 (Separation Authority): AR 635-200, Paragraph 14-12c
- block 26 (Separation Code): JKK
- block 28 (Narrative Reason for Separation): Misconduct – Abuse of Illegal Drugs

5. The applicant's service record is void of the facts and circumstances surrounding his discharge.

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:

a. 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.

b. For block 24 (Character of Service) the correct entry is vital as it affects a soldiers' eligibility for post-service benefits. Characterization or description of service is determined by directives authorizing separation. The entry must be one of the following: honorable, under honorable conditions (General), under other than honorable conditions, bad conduct, dishonorable, or uncharacterized.

8. Also by regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as commission of a serious offense, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

9. 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.

10. 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 Posttraumatic Stress Disorder (PTSD) and 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 30 January 1984 and re-enlisted twice on 25 August 1987 and 02 January 1991, 2) the applicant was discharged on 24 September 1992 under the provisions of Army Regulation (AR) 635-200, paragraph 14-12c, misconduct-abuse of illegal drugs, 3) the applicants service record is void of the specific circumstances surrounding his discharge.

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. Review of the applicant's DD 214 demonstrates that he was a watercraft operator and was awarded several ribbons, medals and awards most notably to include the Good Conduct Medal (2nd award), Army Achievement Medal, Southeast Asia Service Medal with 3 stars, Kuwait Liberation Medal. His DD 214 also shows he served in Southwest Asia from 1990-1991 (please note the exact dates are not legible to this Advisor). There were no in-service medical or behavioral health records available for review.

d. Per review of JLV, the applicant is service connected (SC) through the VA for Tinnitus (10%) and impaired hearing (20%). He is not SC for any BH conditions. He has been treated for depression and anxiety through the VA. In his VA record, it was documented that the applicant reported experiencing several traumatic from his time in Saudi Arabia and while he was stationed in the Philippines. Specifically, it was documented in a mental health note dated 11 December 2023 that the applicant saw his Major get killed by a sniper. It was also documented that he reported when stationed in Japan the tugboat he was on slid back when it was supposed to stop, cutting through the engine room behind it and killing all four men in the engine room. There is also documentation that he reported being involved in 'natural calamities' during a typhoon when stationed in the Philippines. The provider documented that the applicant denied experiencing any intrusive memories regarding those events. A mental health note dated 31 October 2023 documented that the applicant attributed his anxiety, depression, irritability, lack of motivation, poor sleep, low energy and poor concentration to his time in the military with exacerbation by his physical health problems. A mental health note dated 30 May 2024 indicated the applicant was referred to mental health for evaluation and treatment of PTSD symptoms. Upon evaluation, the applicant was diagnosed with Anxiety Disorder, Unspecified with a rule out of PTSD. Regarding substance use, a mental health note dated 23 July 2015 documented that the applicant reported a long history of substance use. It was documented that he first used marijuana at age 12, crack cocaine at age 29 or 30, LSD in the early 80s with the last time being in 1984, mushrooms in the 1980s, and started drinking alcohol at age 16 or

17. It was documented in a mental health note in December 2023 that he had been sober from alcohol and illicit substances for years. Per a mental health note dated 11 December 2023, the applicant reported that he was demoted in the military due to cannabis use and domestic conflicts. Regarding the domestic conflicts, it was documented that the applicant's spouse was cheating and the applicant 'beat the man up.'

e. 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 PTSD and 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 PTSD and 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? Unclear. The applicant contends his misconduct was related to PTSD and Other mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration. The specific facts and circumstances that led to the applicant's discharge are not available though it is noted on his DD 214 that his reason for separation was due to misconduct-abuse of illegal drugs. A review of records was void of any in-service BH diagnosis or treatment history for the applicant. The applicant has been treated for anxiety and depression through the VA and he was recently referred for an evaluation for PTSD which documented he was diagnosed with Anxiety Disorder, Unspecified with a rule out of PTSD; however, the applicant is not service connected for these conditions and has not been diagnosed with PTSD through the VA as of this writing. The VA provider conducting the evaluation did not document whether the onset of anxiety was during his service though it is documented that the applicant reported to the provider he was exposed to several traumatic events while in-service and that his depression and anxiety started while in the military.

A review of the applicant's service record demonstrates that he earned several awards and ribbons during service and had two re-enlistments, with the last occurring on January 1991, and was separated due to misconduct in 1992. Thus, his record is indicative that there may have been a change in his behavior though this advisor is unable to fully understand the association given the lack of information regarding the circumstances of his discharge. Per liberal guidance, a change in behavior is considered possible evidence of a mental health condition and may provide the basis of

support for medical mitigation. While it is acknowledged that anxiety and depressive disorders are frequently co-morbid with substance use disorders and would otherwise provide support for BH mitigation based on abuse of illegal substances, there is insufficient evidence at this time to establish his misconduct was related to or mitigated by PTSD or Other Mental Health Issues.

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 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 opine noted there is insufficient evidence to establish his misconduct was related to or mitigated by PTSD or Other Mental Health Issues.
2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of repeated illegal drug usage. The Board noted, the applicant provided no post service accomplishments or character letters of support for the Board to weigh a clemency determination. The applicant was discharged 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.
3. However, the Board determined the applicant had a prior period of honorable service which is not currently reflected on his DD Form 214 and recommended that change be completed to more accurately show his period of honorable service by granting partial relief to correct his records .

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 a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amend the DD Form 214 for the period ending 24 September 1992 by adding the following entries in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 19840130 UNTIL 19910101

2. The Board further determined 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 to an upgrade of his under honorable conditions (General) discharge.

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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.
2. Army Regulation 635-5 (Separation Documents) states:
 - a. 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.
 - b. For block 24 (Character of Service) the correct entry is vital as it affects a soldiers' eligibility for post-service benefits. Characterization or description of service is determined by directives authorizing separation. The entry must be one of the following: honorable, under honorable conditions (general), under other than honorable conditions, bad conduct, dishonorable, or uncharacterized.
3. AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.
4. 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 post-traumatic stress disorder (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.

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 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.

6. 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 based on 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.

7. 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//