

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 July 2024

DOCKET NUMBER: AR20230012899

APPLICANT REQUESTS:

- an upgrade of his general, under honorable conditions discharge to honorable
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Rating Decision, 26 May 2022

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 is seeking an upgrade of his general, under honorable conditions discharge. He believes it was improper because the wrong law was applied, and the commander described his behavior inaccurately. The correction should be made based on the fact that he suffered from undiagnosed post-traumatic stress disorder (PTSD) that changed his behavior and caused him to act out of the norm. He has been receiving treatment for his PTSD from the VA and if he would have received treatment in the military, he could have also received a better discharge.
3. The applicant provides a VA Rating Decision dated 26 May 2022 which shows he is service connected for major depressive disorder (also claimed as anxiety condition and PTSD personal trauma) with an evaluation of 70% effective 21 May 2021.
4. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 24 March 1994.

b. His Enlisted Record Brief shows he served in Hawaii from 22 July 1997 through his discharge date.

c. The service record includes the applicant's medical examinations, dated 21 May 1998, for the purpose of administrative separation which indicated he was generally in good health. The applicant was marked qualified for separation.

- Standard Form (SF) 88 (Report of Medical Examination)
- SF 93 (Report of Medical History)

d. A DA Form 3822-R (Report of Mental Status Evaluation) dated 26 May 1998, shows the applicant displayed no evidence of a psychiatric condition which would prevent him from participating in any legal or administrative action. There was no evidence of any emotional or mental condition of sufficient severity to warrant disposition through medical channels. The applicant was cleared for administrative action.

e. On 16 June 1998, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14 for a pattern of misconduct. The reasons for the commander's proposed action were for having written over 50 bad checks between 6 September 1997 and 31 March 1998 on an account which was either closed or overdrawn. He defaulted on two loans and despite being provided with money management classes by Army Community Services, he failed to properly manage his finances. The applicant acknowledged receipt of the notification of separation action on the same day.

f. On 17 June 1998, after consulting with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a general discharge is issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he is ineligible to apply for enlistment for a period of 2 years after discharge
- he requested an appearance before an administrative separation board

g. On 17 June 1998, the immediate commander-initiated separation action against the applicant for patterns of misconduct. He recommended that his period of service be characterized as general, under honorable conditions. The intermediate commander recommended approval.

h. On 17 July 1998, the applicant reconsidered his request for an administrative separation board and waived his right further noting he agreed with the decision of the separation packet.

i. On 21 July 1998, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter 14, paragraph 14-12b for a pattern of misconduct. He would be issued a general, under honorable conditions discharge.

j. On 31 July 1998, the applicant accepted nonjudicial punishment for one specification of failure to obey a lawful order and one specification of dishonorably failing to pay a debt. His punishment included reduction to private first class, E-3.

k. On 14 August 1998, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 4 years, 4 months, and 21 days of active service with no lost time. He was assigned separation code JKA and the narrative reason for separation listed as "Misconduct," with a reentry code of 3. It also shows he was awarded or authorized:

- Army Achievement Medal
- National Defense Service Medal
- Army Service Ribbon
- Expert Marksmanship Qualification Badge with Rifle Bar
- Driver and Mechanic Badge with Driver-W Bar

5. A review of the applicant's service record confirms an administrative entry was omitted from his DD Form 214. The entry will be added to his DD Form 214 as an administrative correction and will not be considered by the Board.

6. On 13 December 2007, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

7. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

8. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as a pattern of 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.

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 general, under honorable conditions discharge. He contends he experienced mental health conditions including PTSD 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 24 March 1994; 2) On 16 June 1998, the applicant's immediate commander notified the applicant of his intent to separate him for a pattern of misconduct. The reasons for the commander's proposed action were for having written over 50 bad checks between 6 September 1997 and 31 March 1998 on an account which was either closed or overdrawn. He defaulted on two loans and despite being provided with money management classes by Army Community Services, he failed to properly manage his finances; 3) The applicant was discharged on 14 August 1998, Chapter 14-12b, for a pattern of misconduct. His service was characterized as general, under honorable conditions.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) and additional VA documentation provided by the applicant were also examined.

c. The applicant asserts he was experiencing mental health conditions including PTSD while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with any mental health condition including PTSD while on active service. The applicant underwent a mental status evaluation as part of his separation proceedings on 26 May 1998. He was not diagnosed with a psychiatric condition, and he was psychiatrically cleared for administrative action.

d. A review of JLV provided evidence the applicant began to engage with the VA for mental health treatment in 2021. The applicant underwent a Compensation and Pension Evaluation on 22 March 2022. He was not diagnosed with PTSD due to not being exposed to a potentially traumatic event during his military service. The applicant reported feeling symptoms of depression related to events that occurred during his military service. These symptoms of depression were reported to have begun in 2013. The applicant was found to meet criteria for service-connected Major Depressive Disorder (70%). In December 2023, the applicant began psychotherapy for his symptoms of depression. The provider stated the applicant was diagnosed with service-

connected PTSD, which is inconsistent with the applicant's VA documentation. The provider also stated the applicant's trauma was related to his active service, but they did not elaborate on the nature of the symptoms or how it related to his military service.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor there is insufficient evidence to support the applicant has been diagnosed with service-connected PTSD. He has been diagnosed with service-connected Major Depression. However, there is insufficient evidence the applicant's misconduct is mitigatable by his mental health conditions or an experience while on active service.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant reported experiencing mental health conditions including PTSD while on active service. He has been diagnosed with service-connected Major Depression in 2022.

(2) Did the condition exist or experience occur during military service? Yes. The applicant reported experiencing mental health conditions including PTSD while on active service. He has been diagnosed with service-connected Major Depression in 2022

(3) Does the condition experience actually excuse or mitigate the discharge? No. There is insufficient evidence the applicant was experiencing PTSD while on active service. However, he has been diagnosed with service-connected Major Depression. Lastly, there is no nexus between his reported PTSD and his service-connected Major Depression and the applicant's financial misconduct in that: 1) this type of misconduct is not a part of the natural history or sequelae of the applicant's reported PTSD and service-connected Major Depression; 2) the applicant's reported PTSD and service-connected Major Depression does not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. 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 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 the medical review, the Board concurred with the advising official finding insufficient evidence to support the applicant has been diagnosed with service-connected PTSD. The opine noted there is no nexus between his reported PTSD and his service-connected Major Depression and the applicant's financial misconduct.

2. The Board found insufficient evidence of in-service mitigating factors to overcome the misconduct of uttering 50 bad checks between 6 September 1997 and 31 March 1998 on an account which was either closed or overdrawn. The applicant provided no post service achievements or character letters of support for the Board to weight a clemency determination. The Board agreed the applicant's misconduct is mitigatable by his mental health conditions or an experience while on active service. The applicant was discharged for misconduct and was provided an under honorable (general) conditions 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, during deliberation, 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 a partial relief to correct the applicant's records.

4.. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 amending the applicant's DD form 214 for the period ending 14 August 1998 by adding the following statement in item 18 (Remarks): CONTINUOUS HONORABLE ACTIVE SERVICE from 19940324 to 19961222."

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 the applicant's general, under honorable conditions discharge to honorable.



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): N/A

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

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

c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct, such as a pattern of 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//