

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 October 2024

DOCKET NUMBER: AR20230013048

APPLICANT REQUESTS: His under honorable conditions (general) discharge be upgraded to an honorable discharge

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 an honorable discharge is warranted, due to a service related injury resulting in a mental and behavioral change. Had the duty related hazard not occurred, his discharge would have been honorable.
3. On the applicant's DD Form 149, he indicates post-traumatic stress disorder (PTSD), as contributing and mitigating factors in the circumstances that resulted in his separation. However, the applicant has not provided any evidence to support the contentions.
4. The applicant enlisted in the Regular Army on 29 December 1993 for 3 years. He completed training with award of the military occupational specialty 13B (Cannon Crewmember). The highest grade he held was E-3.
5. Between 10 May 1994 and 18 September 1995, the applicant was formally counseled on 10 occasions for various infractions including but not limited alcohol related offenses, including driving under the influence (DUI) of alcohol without a license, underage drinking, violation of standing policies and regulations, violation of pass privileges, disrespect toward senior noncommissioned officers, and missing formations.
6. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice on the following dates for the indicated offenses:

- 24 August 1994, for assault on a fellow Soldier and underage drinking, his punishment included 14 day restriction and forfeiture of \$194.00
- 21 February 1995 for illegal use of marijuana, his punishment was reduction to E-2, forfeiture of \$ 225.00, and 14 days restriction

7. The applicant's command was notified that the applicant had been arrested by civil authorities on the charges of DUI with blood alcohol of 0.15, speeding and driving without a license. He was to be arraigned on 31 July 1995.

8. A DA Form 3822-R (Report of Mental Status Evaluation), dated 30 August 1995, shows the applicant had no abnormalities in behavior, level of orientation, mood, thinking process, thought content, or memory. He was determined to be mentally capable to understand and participate in the proceedings deemed appropriate by command.

9. The applicant's immediate commander notified the applicant, on 13 September 1995, of his intent to initiate actions to separate him under Army Regulation 635-200 (Personnel Separations – Enlisted), Chapter 14, paragraph 14- 12b for a pattern of misconduct. His commander noted the specific reasons as:

- the applicant's habitual alcohol related infractions
- his civilian arrest for DUI, resisting arrest and disorderly conduct
- two NJPs
- wrongful use of marijuana

10. The applicant consulted with legal counsel on 14 September 1995. He was advised of the basis for the contemplated discharge, the possible effects of an under honorable conditions discharge, and the procedures and rights that were available to him. He elected not to submit a statement in his own behalf.

11. The applicant's immediate commander formally recommended his separation from service under the provisions of Army Regulation 635-200, Chapter 14, (paragraph 14-12B) for misconduct.

12. The appropriate authority approved the discharge recommendation on 21 September 1995 and directed the applicant be reduced to the lowest enlisted grade, waived the requirements of a rehabilitative transfer, he be issued a General Discharge Certificate, and not transferred to the Individual Ready Reserve.

13. The applicant was discharged on 28 September 1995 in the pay grade of E-1. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-

200, Chapter 14, for misconduct and his service characterization was under honorable conditions. He was credited with 1 year and 9 months of net active service.

14. In determining whether to grant relief the Boards for Correction of Military/Navy Records (BCM/NR) can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

15. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) discharge to an honorable. The applicant selected PTSD and Sexual Assault/Harassment 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 into the Regular Army on 29 December 1993.
- Between 10 May 1994 and 18 September 1995, the applicant was formally counseled on 10 occasions for various infractions including but not limited alcohol related offenses, including driving under the influence (DUI) of alcohol, driving without a license, underage drinking, violation of standing policies and regulations, violation of pass privileges, disrespect toward senior noncommissioned officers, and missing formations.
- The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice on the following dates for the indicated offenses:
  - 24 August 1994, for assault on a fellow Soldier and underage drinking.
  - 21 February 1995 for illegal use of marijuana.
- The applicant's command was notified that the applicant had been arrested by civil authorities on the charges of DUI with blood alcohol of 0.15, speeding, and driving without a license. He was to be arraigned on 31 July 1995.
- The applicant's immediate commander notified the applicant, on 13 September 1995, of his intent to initiate actions to separate him under Army Regulation 635-200 (Personnel Separations – Enlisted), Chapter 14, paragraph 14- 12b for a pattern of misconduct. His commander noted the specific reasons as:
  - the applicant's habitual alcohol related infractions
  - his civilian arrest for DUI, resisting arrest, and disorderly conduct
  - two NJPs
  - wrongful use of marijuana
- The applicant was discharged on 28 September 1995 in the pay grade of E-1. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 14, for misconduct and his service characterization

was under honorable conditions (general). He was credited with 1 year and 9 months of net active service.

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, "an honorable discharge is warranted, due to a service-related injury resulting in a mental and behavioral change. Had the duty related hazard not occurred, his discharge would have been honorable."

d. Due to the period of service no active-duty electronic medical records were available for review. However, the applicant submitted a mental status evaluation for the purpose of separation, dated 30 August 1995, which indicates the applicant met retention standards, was mentally responsible, and had the mental capacity to understand and participate in board proceedings. The applicant was cleared for any administrative action deemed appropriate by the command.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected for PTSD and other health conditions. The applicant initially presented for VA services in November 2016 via the Front Door Clinic. He reported needing assistance connecting with mental health services since he had been released from prison in April 2016 after serving a 15-year sentence for armed robbery related to his crack cocaine use. The applicant reported substance abuse treatment while incarcerated as well as following his release from prison. He described having difficulty transitioning following his release. The applicant reported long-standing behavioral health issues since age 13, as well as experiencing sexual trauma while in boot camp and while imprisoned. He participated in an in-depth mental health evaluation on 13 December 2016 and was diagnosed with Alcohol Use Disorder, Cocaine Use Disorder, and PTSD secondary to MST. The VA electronic medical record shows seven inpatient psychiatric hospitalizations due to suicidal ideation in relation to substance abuse. The applicant was hospitalized on:

- Admission Date: 3 July 2018 to Discharge Date: 7 July 2018. Upon discharge he was diagnosed with Alcohol Use Disorder, Cocaine Use Disorder, Tobacco Use Disorder, and Post Traumatic Stress Disorder (PTSD).
- Admission Date: 9 November 2018 to Discharge Date: 21 November 2018. He was hospitalized due to suicidal ideation and polysubstance abuse, including: heroin, cocaine, ecstasy, alcohol, and methamphetamines. Upon discharge he was diagnosed with PTSD.
- Admission Date: 30 December 2023 to Discharge Date: 8 January 2024. Due to suicidal ideation and substance use relapse. Upon discharge he was diagnosed with Alcohol Use Disorder, Cocaine Use Disorder, Unspecified Mood Disorder, Post-traumatic stress disorder (PTSD), Cluster B Personality Disorder, and

Unspecified Insomnia. This remained the diagnostic impression for his remaining hospitalizations.

- Admission Date: 3 May 2024 to Discharge Date: 13 May 2024.
- Admission Date: 14 May 2024 to Discharge Date: 21 June 2024.
- Admission Date: 25 June 2024 to Discharge Date: 28 June 2024.
- Admission Date: 1 July 2024 to Discharge Date: 15 July 2024.

f. Upon his most recent hospital discharge, he was admitted into Domiciliary Care for Homeless Veterans, where he currently resides, and records show intermittent participation in specialty PTSD treatment. He is diagnosed with Chronic Post-traumatic Stress Disorder (PTSD), Stimulant Use Disorder, Alcohol Use Disorder, Homelessness, Mood Disorder, and Cluster B Personality Disorder.

g. 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 an experience of MST that mitigates his misconduct.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts experiencing MST and selected PTSD on his application as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 100% service connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. The applicant was discharged due to assault on a fellow Soldier; underage drinking; civilian arrest for DUI, resisting arrest, and disorderly conduct; habitual alcohol related infractions; and wrongful use of marijuana. Given the association between PTSD and the use of substances to cope with the symptoms of the condition, the applicant's various substance related misconducts are mitigated by his BH condition. However, the applicant's assault of a fellow Soldier is not mitigated by his BH condition since PTSD does not impact the capacity to distinguish right from wrong and act in accordance with the right. Given his experience of MST would appear to far outweigh his unmitigated misconduct, this advisor would recommend granting the applicant's requested relief.

### BOARD DISCUSSION:

1. 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 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 medical opine finding sufficient evidence to support the applicant had an experience of MST that mitigates his misconduct. The opine noted the association between PTSD and the use of substances to cope with the symptoms of the condition, the applicant's various substance related misconducts are mitigated by his behavioral health condition.

2. The Board determined there is sufficient evidence of in-service mitigating factors to overcome the misconduct. The Board agreed the applicant's assault on his fellow Soldier is not mitigated by his behavioral health condition since medical reports indicate PTSD does not impact the capacity to distinguish right from wrong and act in accordance with the right. However, given the applicant's experience of MST, the Board determined his condition far outweigh his unmitigated misconduct. Based on this, the Board granted relief to upgrade the applicant's characterization of service to honorable.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

■	■	■	GRANT FULL RELIEF
:	:	:	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 re-issuing the applicant's DD Form 214 for the period ending 28 September 1995, to show his characterization of service as 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.

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 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the Army Board for Correction of Military Records (ABCMR). Paragraph 2-9 states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
3. Title 10, USC, section 1556 provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.

4. 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. 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.

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

c. Chapter 14 (Separation for Misconduct) establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave.

d. Paragraph 14-12b (A pattern of misconduct) states a Soldier may be discharged for pattern of misconduct consisting of one of the following:

(1) Discreditable involvement with civil or military authorities.

(2) Discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

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 (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 a 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. 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.

The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, 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 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 grounds.

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, 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.

//NOTHING FOLLOWS//