

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2024

DOCKET NUMBER: AR20230013306

APPLICANT REQUESTS:

- upgrade of his under honorable conditions (general) discharge
- change of the narrative reason for separation and corresponding separation program designator (SPD) code to reflect "secretarial authority"
- change of his Reentry Eligibility (RE) code from "RE-3" to "RE-1"

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel brief with 9 Exhibits (20 pages)

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, U.S. Code (USC), 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. In Exhibit 2, the applicant states he was separated from the Army due to a terrible and life changing divorce in addition to family medical issues that he had a difficult time handling. Now, he realizes he is extremely fortunate that the marriage did not work out; he is better off without his ex-wife.

a. The lapse in judgment that caused him to leave the Army was a one-time occurrence. While in the Army, he was a well-rounded Soldier who was eager to learn and strived to be the best. Due to this drive, he was given the opportunity to become a designated marksman after a grueling company level selection process. This included high physical training scores, qualifying expert with the M-4 carbine rifle, and passing all class work and testing. He was adapting to military life very well until the divorce and family issues occurred.

b. He works as a critical care flight paramedic and a deputy with the local Sheriff's Department Special Weapons And Tactics (SWAT) Team, with 14 years combined

experience. He has held the professional titles of supervisor, field training officer, Tactical/Medical Team Leader, and Sniper. He wants nothing more than to be able to serve his nation as an Army National Guard (ARNG) Soldier. To serve this nation once again would be of highest honors and would be both fulfilling and rewarding.

c. The applicant indicates on his DD Form 149 that mental health conditions are related to his request.

3. Counsel provides a legal brief and 9 exhibits that are available in their entirety for the Board's consideration. Counsel provides a synopsis of the applicant's military service and disciplinary history. Counsel emphasizes the impact that the applicant's strenuous divorce and family medical issues had on his behavior and contends they were the catalysts for his misconduct. The problems he experienced throughout his service in the Army no longer affect the performance of his duties.

a. The applicant seeks to enlist in [REDACTED] ARNG ([REDACTED] ARNG), but the ARNG denied an accession waiver in December 2021. The applicant's status requires a waiver to enlist and as of 4 April 2022, the ARNG Chief Surgeon supports the applicant's accession waiver upon receipt of additional documents.

b. Counsel further contends that the applicant was the victim of a material injustice when the decision was made to separate him with a general, under honorable conditions discharge and an RE code of RE-3 that denied him enlistment eligibility in the [REDACTED] ARNG. Traditionally, a general discharge is reserved for a Soldier's service that was satisfactory but not sufficiently meritorious to warrant an honorable discharge. Here, the applicant committed zero misconduct during service; rather, he suffered from a medical issue which precluded him from completing his contract. Prior to separation, the applicant never received any negative counseling or nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice. As such, the applicant's discharge should be upgraded.

c. After his discharge, the applicant went on to work as a critical care flight paramedic and a deputy with the local Sheriff's Department Special Weapons and Tactics Team with fourteen years of experience in the field. He has also completed the corresponding training and certificates associated with his duties.

d. Counsel provides the following exhibits:

- Exhibit 1 - DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period from 18 November 2005 to 26 October 2006
- Exhibit 2 - Self-authored statement
- Exhibit 3 - Resume of his skills, work experience, education, and certifications

- Exhibit 4 - letter from the National Guard Bureau, which in part, shows the ARNG Chief Surgeon supports reconsideration of the applicant's application upon receipt of additional military and civilian medical records
- Exhibit 5 - letter from [REDACTED] a former Soldier who is currently a sergeant in a city police department, who speaks highly of the applicant's skills as a medic
- Exhibit 6 - letter from Dr. [REDACTED] the applicant's medical director, who provides favorable comments about the applicant's medical skills and professionalism
- Exhibit 7 - letter from [REDACTED] the applicant's uncle who is also a retired service member, who praises the applicant's passion in the critical care field as a paramedic and as part of the county SWAT Team
- Exhibit 8 - letter from [REDACTED] who renders favorable comments about the applicant's experience, knowledge, and visible passion to excel
- Exhibit 9 - letter of commendation from his Team Leader, [REDACTED] thanking him for his dedication to the County Special Response Team

4. On 5 August 2005, the applicant underwent a pre-enlistment medical examination, was found to be qualified for service. On 30 August 2005, he enlisted in the U.S. Army Reserve (USAR) Delayed Enlistment Program (DEP).

5. On 9 November 2005, the applicant was discharged from the DEP and enlisted in the Regular Army for a period of 3 years and 16 weeks in the rank/grade of private (PV2)/E-2. Upon completion of training, he was awarded military occupational specialty 11B (Infantryman) and assigned to a unit at Fort Drum, NY.

6. The specific facts and circumstances surrounding the applicant's separation processing is not available for review.

7. The applicant's Enlisted Record Brief shows he was reduced to private (PV1)/E-1 on 7 September 2006.

8. Orders and the applicant's DD Form 214 show he was discharged in the rank of PV1 on 26 October 2006, under the provisions of Army Regulation 635-200 (Personnel Separations - Active Duty Enlisted Administrative Separations), paragraph 5-17, by reason of Condition - Not a Disability, with SPD code "JFV" and RE code "3." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 11 months and 9 days of net active service this period.

9. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided, in part, that commanders were to separate Soldiers under the provisions of paragraph 5-17 on the basis of physical or mental conditions not amounting to disability as prescribed by Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) and excluding conditions appropriate for separation processing under paragraph 5-11 (Separation of personnel

who did not meet procurement medical fitness standards) or 5-13 (Separation because of personality disorder) that potentially interfered with assignment to or performance of duty.

10. 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 guidance.

11. MEDICAL REVIEW:

a. The applicant requests upgrade of his General, Under Honorable Conditions to Honorable. He contends his misconduct was related to Other Mental Health Issue.

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 on 9 November 2005
- The specific facts and circumstances surrounding the applicant's separation processing is not available for review.
- Orders and the applicant's DD Form 214 show he was discharged in the rank of PV1 on 26 October 2006, under the provisions of Army Regulation 635-200 (Personnel Separations - Active Duty Enlisted Administrative Separations), paragraph 5-17, by reason of Condition - Not a Disability, with SPD code "JFV" and RE code "3".

c. The military electronic medical record (AHLTA), VA electronic medical record (JLV), ROP, and casefiles were reviewed. Lack of citation or discussion in this section should not be interpreted as lack of consideration. On 16 August 2006 the applicant presented to the BH clinic as a walk-in after being discharged from a psychiatric inpatient stay for suicidal ideation. During the walk-in interview the applicant endorsed informing the inpatient staff that he was no longer suicidal so that he could be released and kill himself. He reported a history of depression for multiple years and experiencing multiple stressors over the past year to include the death of a grandfather, learning his other grandfather had a heart condition, learning his father was gay, and the going through divorce. He reportedly made minimal gains while hospitalized but was released to unit watch after denying SI. However, during the current encounter he reported his SI had gotten stronger and he did not believe anything would help. The provider spoke with the applicant's command who expressed their belief that the applicant was malingering to avoid deployment and that BH was being despicable by "awarding shelter to cowards." The provider spoke with the applicant's grandmother who endorsed the applicant with a history of BH treatment between ages 6 and 12 years old for Depression, PTSD, ADHD, and Tourette's. She noted the applicant had difficulty communicating and concentrating while home during his period of AWOL, and that he expressed fear of his fellow Soldiers who threatened to break his neck if he didn't

deploy with them. The applicant also endorsed a history of auditory and visual hallucinations. He was diagnosed with Depression and psychiatrically re-admitted.

d. On 24 August 2006 the applicant presented for a post-hospitalization safety check and expressed "some" suicidal and homicidal ideation by denied any intent or plan. He was scheduled for an outpatient intake appointment. Encounter document dated 28 August 2006 reflects the applicant's BH problem list was amended to include Personality Disorder. The document was sparse on detail and referenced the full encounter note was kept in Mental Health Clinic Chart. On 30 August 2006 the applicant was seen by psychiatry for medication evaluation, was diagnosed with Adjustment Disorder with Depressed Mood, trialed on psychotropic medication, and scheduled for continued outpatient treatment. Encounter document dated 6 September 2006 reflects the applicant remained engaged in individual and group treatment. The applicant's final BH engagement documented in AHLTA reflects that on 15 September 2006 applicant reported his mood was "alright" overall, that he was taking medication as prescribed, but continued to have panic-like attacks.

e. A review of JLV was void of any treatment history for the applicant and he does not have a SC disability. No Civilian BH records were provided for review.

f. The applicant requests upgrade of his General, Under Honorable Condition discharge to Honorable and contends his misconduct was related to Other Mental Issues. A review of the records shows the applicant diagnosed with Adjustment Disorder with Depressed Mood, Depression, and Personality during service. The applicant did not provide evidence of any post-service BH diagnoses or treatment history. While the applicant has in-service BH conditions that offer potential mitigation, the specific facts and circumstances surrounding the applicant's separation processing is not available for review, and therefore a fully informed opine cannot be rendered.

g. Conversely, if the applicant was separated specifically for AWOL, the misconduct would be mitigated given the nexus between Depression and avoidance/isolation. Finally, the applicant is also diagnosed with Adjustment Disorder with Depressed Mood which is a diagnosis usually associated with administrative separation under provisions of Chapter 5-17 of AR 635-200. However, Chapter 5-17 covers other conditions, and as stated above, without the specific facts surrounding the separation, a fully informed opine cannot be rendered.

h. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence that the applicant had a condition or experience during his time in service, however, it is unclear if the condition mitigated his misconduct.

i. Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant the applicant has in-service diagnoses of Depression and Adjustment Disorder with Depression.

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unclear. The applicant requests upgrade of his General, Under Honorable Condition discharge to Honorable and contends his misconduct was related to Other Mental Issues. A review of the records shows the applicant diagnosed with Adjustment Disorder with Depressed Mood, Depression, and Personality during service. The applicant did not provide evidence of any post-service BH diagnoses or treatment history. While the applicant has in-service BH conditions that offer potential mitigation, the specific facts and circumstances surrounding the applicant's separation processing is not available for review, and therefore a fully informed opine cannot be rendered. Conversely, if the applicant was separated specifically for AWOL, the misconduct would be mitigated given the nexus between Depression and avoidance/isolation. Finally, the applicant is also diagnosed with Adjustment Disorder with Depressed Mood which is a diagnosis usually associated with administrative separation under provisions of Chapter 5-17 of AR 635-200. However, Chapter 5-17 covers other conditions, and as stated above, without the specific facts surrounding the separation, a fully informed opine cannot be rendered.

BOARD DISCUSSION:

1. 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, and the reason for his separation. The Board considered the applicant's mental health claim and the review and conclusions of the Army Review Boards Agency Behavioral Health Advisor.

2. The Board noted the applicant's post-service achievements and found those accomplishments support a favorable clemency determination. The Board concurred with the conclusion of the medical advising official regarding the likelihood that any misconduct that led to a character of service that is less than honorable was mitigated by a behavioral health condition. Based on a preponderance of the evidence, the Board determined the applicant's character of service should be changed to honorable and the reason for his discharge should be changed to Secretarial authority with the associated codes.

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 reissuing his DD Form 214 to show the following entries:

- Item 24 – Honorable
- Item 25 – AR 635-200
- Item 26 – JFF
- Item 27 – 1
- Item 28 – Secretarial authority

12/19/2024

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, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by 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.

3. 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 regulation provides 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. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing.

4. Army Regulation 40-501 (Standards of Medical Fitness), in effect at the time, provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Chapter 3 (Medical Fitness Standards for Retention and Separation, Including Retirement) shows in:

a. Paragraph 3-35 (Personality, psychosexual, or factitious disorders; disorders of impulse control not elsewhere classified; control not elsewhere classified; substance use psychoactive disorders), these conditions may render an individual administratively unfit rather than unfit because of physical disability. Interference with performance of effective duty in association with these conditions will be dealt with through appropriate administrative channels; and

b. Paragraph 3-36 (Adjustment disorders), situational maladjustments due to acute or chronic situational stress do not render an individual unfit because of physical disability but may be the basis for administrative separation if recurrent and causing interference with military duty.

5. Army Regulation 635-200, in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 1, paragraph 1-16, provides that commanders will ensure that adequate counseling and rehabilitative measures are taken before initiating separation proceedings for personality disorder. The number and frequency of formal counseling sessions are discretionary.

b. Paragraph 5–3 (Secretarial plenary authority) provides that:

(1) Separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums.

(2) Secretarial separation authority is normally exercised on a case-by-case basis but may be used for a specific class or category of Soldiers. When used in the latter circumstance, it is announced by special Headquarter, Department of the Army directive that may, if appropriate, delegate blanket separation authority to field commanders for the class category of Soldiers concerned.

c. Chapter 5, paragraph 5-13, provides that Soldiers may be separated for personality disorder not amounting to disability that interferes with assignment or with performance of duty, when so disposed as indicated below.

(1) The condition is a deeply ingrained maladaptive pattern of behavior of long duration that interferes with the Soldier's ability to perform duty. (Exceptions: combat exhaustion and other acute situational maladjustments.)

(2) The diagnosis of personality disorder must have been established by a psychiatrist or doctoral level clinical psychologist with necessary and appropriate professional credentials who is privileged to conduct mental health evaluations for the DOD components. It is described in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM–IV).

(3) Separation because of personality disorder is authorized only if the diagnosis concludes that the disorder is so severe that the Soldier's ability to function effectively in the military environment is significantly impaired.

(4) Separation processing may not be initiated under this paragraph until the Soldier has been counseled formally concerning deficiencies and has been afforded ample opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

(5) When it has been determined that separation under this paragraph is appropriate, the unit commander will take the actions specified in the notification procedure.

(6) The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier was in an entry-level status. An uncharacterized discharge is neither favorable nor unfavorable; in the case of Soldiers issued this characterization of service, an insufficient amount of time would have passed to evaluate the Soldier's conduct and performance.

d. Paragraph 5-17 states commanders may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability and excluding conditions appropriate for separation processing under paragraph 5-11 or 5-13 that potentially interfere with assignment to or performance of duty. Such conditions may include, but are not limited to:

- chronic airsickness
- chronic seasickness
- enuresis
- sleepwalking
- dyslexia
- severe nightmares
- claustrophobia
- other disorders manifesting disturbances of perception, thinking, emotional control or behavior sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired

6. Army Regulation 635-5-1 (SPD Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. It states that the separation code "JFV" is an appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 5, by reason of Condition - Not a disability. Additionally, the SPD/RE Code Cross Reference Table established that RE code "3" was the proper reentry code to assign to Soldiers separated under this authority and for this reason.

7. 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 (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including Post-Traumatic Stress Disorder; 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 to those conditions or experiences.

8. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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, 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//