

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 July 2024

DOCKET NUMBER: AR20230013743

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 19 December 1983, to show:

- an upgrade of his Under Honorable Conditions (General) discharge to Honorable
- a change in the narrative reason (Item 28) and corresponding separation program designator (SPD) code (Item 26) to reflect that he was medically discharged due to physical disability

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- documents from his Service Treatment Records (13 pages)
- DD Form 4 series (Enlistment/Reenlistment Document - Armed Forces of the United States)
- DA Form 2-1 (Personnel Qualification Record - Part II)
- DD Form 214

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. The applicant states he was doing well in the Army until his brother was killed in an automobile accident, and he went into a state of depression. He could no longer perform his military duties. An Army psychiatrist determined he was no longer fit to serve and prescribed him medication that caused him to hallucinate. Following his discharge, he went into the state disability program in Florida. He fought to overcome his depression and took himself off disability, but to this day, he still cannot keep a job because of the trauma he experienced. He believes his discharge should be upgraded because he did not have any dishonorable misconduct. He did his best until his brother's death and his mental health crisis, with which he still struggles.

3. The applicant's complete military service record is not available for review. This case is being considered based upon documents provided by the applicant.
4. On 13 January 1983, the applicant underwent a medical examination and was found medically qualified for enlistment into the Army and to attend Airborne training.
5. On 17 January 1983, the applicant enlisted in the Regular Army in the rank/grade of private (PV1)/E-1 for a period of 3 years. Upon completion of initial entry training, he was awarded military occupational specialty 94B (Food Service Specialist). The highest rank he attained was private (PV2)/E-2.
6. Upon completion of basic Airborne training, he was assigned to a unit at Fort Bragg, NC.
7. The applicant's DA Form 2-1, Item 35 (Records of Assignments) shows his unit reported him as absent without leave (AWOL) on 7 September 1983 and from 3 October to 30 October 1983.
8. A Standard Form (SF) 558 (Emergency Care and Treatment (Medical Record)) shows the applicant sought medical treatment at the Emergency Room of Womack Army Community Hospital, Fort Bragg, NC for nervousness and episodes of passing out on 5 November 1983.
9. An SF 600 (Health Record - Chronological Record of Medical Care) shows the applicant was seen at a Troop Medical Clinic on 7 November 1983 based upon a referral from the Emergency Room for nervousness and anxiety. The form notes, the applicant displayed no suicidal or homicidal ideations at the time and a follow-up appointment was scheduled.
10. The applicant's available record is void of the specific facts and circumstances surrounding his separation. However, his DD Form 214 confirms he was discharged in the rank/grade of PV2/E-2 on 19 December 1983 under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 13. His service was characterized as "Under Honorable Conditions (General)." He was issued SPD Code "JHJ" and Reenlistment Codes "3 and 3B." The narrative reason for his separation was "Unsatisfactory Performance." He was credited with 10 months and 5 days of net active service, with time lost due to AWOL from 3 October to 30 October 1983. The applicant authenticated this document with his signature.
11. During the applicant's era of service, and per the provisions of Army Regulation 635-200, Chapter 13, commanders could initiate separation action against Soldiers when, in the commanders' judgment:

- they would not develop sufficiently to participate satisfactorily in training and/or become satisfactory Soldiers;
- the seriousness of the circumstances was such that the Soldier's retention would have an adverse impact on the military discipline, good order, and morale; and
- it was likely the Soldier would continue to be disruptive influences in present and future assignments
- it was likely that the circumstances forming the basis for initiation of separation procedures would continue or recur
- the ability of the Soldier to perform duties effectively in the future, including potential for advancement or leadership was unlikely

12. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

13. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service and a change in the narrative reason for separation to reflect that he was medically discharged due to physical disability. He contends he experienced mental health conditions that mitigate 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's complete military service record is not available for review. This case is being considered based upon documents provided by the applicant. The applicant enlisted in the Regular Army on 17 January 1983; 2) The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing; 3) The applicant was discharged on 19 December 1983, Chapter 13. His service was characterized as "Under Honorable Conditions (General)." The narrative reason for his separation was "Unsatisfactory Performance." He was credited with 10 months and 5 days of net active service, with time lost due to AWOL from 3 October to 30 October 1983.

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

c. The applicant asserts he experienced mental health conditions that mitigate his discharge while on active service. He provided evidence that he sought emergency medical care and follow-up care in early November 1983 for nervousness and anxiety.

d. A review of JLV provided sufficient evidence the applicant has been diagnosed with service-connected Dysthymic Disorder in August 2023 (100%SC). He has not been actively engaged in treatment at this time.

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 in 2023 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 opine on possible mitigation as the result of a mental health condition or experience. In addition, there is insufficient evidence the applicant was found to not meet medical retention standards as the result of a psychiatric condition, and therefore, his case does not warrant a referral to IDES, at this time. However, the applicant contends he experienced a mental health condition while on active service, which mitigates his discharge. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? N/A. There is insufficient evidence to support the applicant had a condition or experience that mitigates his discharge. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of a mental health condition or experience. However, the applicant contends he experienced mental health conditions while on active service, which mitigates his discharge. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

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

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

#### BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. Discharge upgrade: Deny. The applicant's available record is void of the specific facts and circumstances surrounding his separation. However, his DD Form 214 confirms he was discharged on 19 December 1983 under the provisions of AR 635-200, Chapter 13, for Unsatisfactory Performance with his service characterized as general, under honorable conditions. He was assigned Separation Code "JHJ." He completed 10

months and 5 days of net active service, with time lost due to AWOL from 3 to 30 October 1983. The Board found no error or injustice in his available separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's determination finding insufficient evidence to support the applicant had a condition or experience that mitigates his discharge. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation were not in error or unjust.

b. Narrative Reason for Separation: Deny. The Board found insufficient probative evidence the applicant had any service incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to her discharge from the USAR. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of her office, grade, rank, or rating prior to his voluntary separations. Therefore, the Board determined, based on available evidence, the reason for his separation is neither in error nor unjust.

c. Separation Code: Deny. The Board noted that enlisted Soldiers separated under the provisions of chapter 13 of AR 635-200 in effect at the time of the applicant's separation, are assigned Separation Code JHJ which is properly annotated on his DD Form 214. The Board found no error or injustice.

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.

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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, USC, 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. 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.

4. Army Regulation 635-200, in effect at the time, prescribed policies and procedures for enlisted administrative separations.

a. Paragraph 3-7a (Honorable Discharge) stated an honorable discharge was separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when the Soldier's subsequent honest and faithful service over a greater period outweighed the disqualifying entries found in his/her record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Under chapter 13:

(1) Commanders could initiate separation action against Soldiers when, in the commanders' judgment:

- they would not develop sufficiently to participate satisfactorily in training and/or become satisfactory Soldiers;
- the seriousness of the circumstances was such that the Soldier's retention would have an adverse impact on the military discipline, good order, and morale; and
- it was likely the Soldier would continue to be disruptive influences in present and future assignments
- it was likely that the circumstances forming the basis for initiation of separation procedures would continue or recur
- the ability of the Soldier to perform duties effectively in the future, including potential for advancement or leadership was unlikely

(2) Prior to the initiation of separation action, the regulation stipulated that commanders ensure Soldiers had received adequate counseling and rehabilitation. The regulation pointed out that military service was a calling different from any civilian occupation, and as such, commanders were not to consider separation solely due to

unsatisfactory performance unless the leadership had made efforts to rehabilitate the Soldiers.

(3) The regulation permitted separation authorities to furnish Soldiers separated under this provision with either an honorable or a general discharge under honorable conditions.

5. 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 "JKK" is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 14, Paragraph 14-12c, by reason of Misconduct. Additionally, the SPD/RE Code Cross Reference Table established that RE code "4" was the proper reentry code to assign to Soldiers separated under this authority and for this reason.

6. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC 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.

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 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 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.

8. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NR regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NR 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.

//NOTHING FOLLOWS//