

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 July 2024

DOCKET NUMBER: AR20230013750

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) characterization of service and a personal appearance before the Board.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record), 20 September 2023

FACTS:

1. The applicant did not file within the 3-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 worked hard and did his time. An honorable discharge would reflect the good changes he has made in his life. He notes post-traumatic stress disorder (PTSD) as a condition related to his request.

3. The applicant enlisted in the Regular Army on 13 April 1982, for a period of 4 years and subsequently extended for an additional 8 months. He was awarded the military occupational specialty 63H (Track Vehicle Repairer) and the highest rank he attained was specialist fourth class/E-4.

4. He was formally counseled on approximately 14 occasions between 30 March 1984 and 13 November 1984. Areas of emphasis covered in the counseling include, but are not limited to:

- missing formations
- multiple failures to report
- receiving a negative letter from the Army Education Center
- good job performance
- having unsecured equipment
- not being in proper uniform
- not properly dispatching vehicles
- failure to take appropriate action

- denied pass
- indebtedness

5. On 9 April 1985, the applicant accepted non-judicial punishment (NJP), under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), for failing to go at the time prescribed to his appointed place of duty, on or about 29 March 1985. His punishment consisted of reduction to the grade of E-2, forfeiture of \$150.00 pay, and extra duty for 14 days.

6. The applicant's commander notified him on 17 April 1985, of his intent to initiate administrative separation action under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 13, by reason of unsatisfactory performance, further stating the reasons for the proposed action was due to the applicant's three NJPs, his being late to or absent from his appointed places of duty, his subpar duty performance, appearance, and living area, and the commander was doubtful he would ever develop into a productive soldier due to the applicant not exhibiting leadership qualities.

7. The applicant was advised by consulting counsel of the basis for the contemplated action to separate him for unsatisfactory performance under AR 635-200, Chapter 13, and its effects; of the rights available to him; and the effect of any action he took in waiving his rights. He acknowledged understanding that he may expect to encounter substantial prejudice in civilian life if an under honorable conditions (general) discharge was issued to him. He elected to submit a statement in his own behalf, however, his record is void of this statement.

8. On 17 April 1985, the applicant's immediate commander formally recommended his separation under the provisions of AR 635-200, Chapter 13. Further stating, in effect, he needed constant supervision and was a disruptive element within the command.

9. The separation authority approved the recommendation for discharge under the provisions of AR 635-200, Chapter 13, on 16 May 1985, further directing the applicant be furnished a general discharge certificate.

10. The applicant was discharged on 11 June 1985, under the provisions of AR 635-200, Chapter 13, by reason of unsatisfactory performance. His DD Form 214 confirms his service was characterized as under honorable conditions (general), with separation code JHJ and reenlistment code RE-3, 3C. He was credited with 3 years, 1 month, and 29 days of net active service. He was authorized or awarded the following:

- Army Good Conduct Medal
- Army Service Ribbon
- Sharpshooter Marksmanship Qualification Badge with Rifle bar (M16)

11. Soldiers may be separated under the provision of AR 635-200, Chapter 13 when it is determined that they are unqualified for further military service because of unsatisfactory performance.

12. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

13. 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 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 13 April 1982; 2) The applicant was formally counseled on approximately 14 occasions between 30 March 1984 and 13 November 1984 for various minor incidents of misconduct; 3) On 9 April 1985, the applicant accepted non-judicial punishment (NJP) for failing to go at the time prescribed to his appointed place of duty, on 29 March 198; 4) The applicant was discharged on 11 June 1985, Chapter 13, by reason of unsatisfactory performance. His DD Form 214 confirms his service was characterized as under honorable conditions (general).

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical records were provided for review.

c. The applicant asserts he was experiencing PTSD while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health disorder while on active service.

d. A review of JLV was void provided evidence the applicant has been treated for substance abuse by the VA and resultant depressive symptoms. However, he has not been diagnosed with a service-connected mental health condition, and he does not receive any service-connected disability.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced PTSD which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct while on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD, while he was on active service. The applicant did engaged in multiple minor misconduct events, which could be avoidant/erratic behavior and a natural sequelae to PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the pattern of misconduct leading to the applicant's separation and the findings of the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:


Mbr 1 Mbr 2 Mbr 3

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|---|---|---|----------------------|
| : | : | : | 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.

1/6/2025


XCHAIRPERSON


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, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.
3. AR 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 may, in its discretion, hold a hearing. 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.
4. AR 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 13 of this regulation provides for separation due to unsatisfactory performance when, in the commander's judgment, the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, is unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation will be characterized as honorable or under honorable conditions.

b. 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.

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

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 (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. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

6. 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. 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//