

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 July 2024

DOCKET NUMBER: AR20230013805

APPLICANT REQUESTS: an upgrade of his general, under honorable conditions discharge to honorable.

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 he is requesting an upgrade of his general, under honorable conditions discharge to honorable. He believes his "Don't Ask Don't Tell" rights were violated with the type of discharge he was given. Circumstances arose during his service leading to the disclosure of his sexual orientation within his unit and he believes it led to the end of his service. No one wanted anything to do with him. He became an alcoholic; it ruined him and broke his heart. The applicant marked other mental health as a condition related to his request on the DD Form 149.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 30 June 1980.
 - b. On 6 August 1982, he accepted nonjudicial punishment (NJP) for absenting himself from his place of duty and for failure to obey a lawful order on or about 1 August 1982. His punishment included reduction to private first class, E-3 (suspended for 90 days).
 - c. On 18 November 1982, he accepted NJP for failure to go to his appointed place of duty. His punishment included reduction to private first class, E-3 (suspended for 90 days).

d. A Synopsis of Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) Rehabilitation Activities memorandum lists the following:

- 16 November 1982 – positive urinalysis for tetrahydrocannabinol (THC)
- 17 November 1982 – command directed for alcohol abuse
- 18 November 1982 – enrolled in Track II, completed 12 hours of Track I
- January 1983 – misuse of alcohol while on a field problem
- potential for successful rehabilitation in a military setting was determined poor

e. On 2 February 1983, the suspension of punishment of reduction to the grade of private first class was vacated for failure to get out of bed due to drinking on the night of 17 January 1983.

f. On 14 February 1982 [Sic], 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 9, for failed rehabilitation efforts of his alcohol problems and no signs of improvement. He acknowledged receipt of the notification of separation on the same day.

g. The service record includes the applicant's medical examination dated 18 February 1983, for the purpose of 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)

h. On 18 February 1983, the applicant underwent a mental evaluation. The DA Form 3822-R (Report of Mental Status Evaluation) shows he was mentally responsible and had the mental capacity to understand and to participate in any proceedings.

i. The available service record is void of the election of rights.

j. The immediate commander-initiated separation action against the applicant for rehabilitation failure.

k. On 22 March 1983, he accepted nonjudicial punishment assault on another Soldier by throwing a glass at him. His punishment included reduction to private/E-2 (suspended for 30 days).

l. On 31 March 1983, the separation authority approved the discharge under the provisions of AR 635-200, Chapter 9, for drug and alcohol abuse. He would be issued a general, under honorable conditions discharge.

m. On 19 April 1983, he was discharged from active duty with general, under honorable conditions characterization of service. His DD Form 214 (Certificate of Release of Discharge from Active Duty) shows he completed 2 years, 9 months, and 20 days of active service with no lost time. He was assigned separation code JPD (JKL) and the narrative reason for separation listed as Alcohol Abuse – Rehabilitation Failure with reenlistment code RE-3. It also shows he was awarded or authorized:

- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- Army Service Ribbon
- Overseas Service Ribbon

4. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

5. By regulation (635-200), a Soldier who has been referred to ADAPCP for alcohol/drug abuse may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there is a lack of potential for continued Army service and rehabilitation efforts are no longer practical.

6. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his general, under honorable conditions characterization of service. He contends he experienced Other Mental Health Issues that mitigates his misconduct. Specifically, he purports that he was ostracized due to his sexual orientation which led to him abusing alcohol. 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) he enlisted in the Regular Army on 30 June 1980, 2) he had two instances of nonjudicial punishment (NJP) in 1982 for absenting himself from his place of duty and failure to obey a lawful order and failure to go to his appointed place of duty and one NJP in 1983 for assaulting another Soldier by throwing a glass at him, 3) a synopsis of his participation in the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) in 1982 indicated he tested positive for THC, he was command directed for alcohol abuse, enrolled in Track II and completed 12 hours of Track 1, misused alcohol while in the field, and the potential for rehabilitation in a military setting was determined to be poor, 4) On 18 February 1983 he underwent a Mental Status Examination (MSE) which documented that he was mentally responsible and had the capacity to understand and participate in any proceedings, 5) on 31 March 1983, the applicant was separated under the provisions of army Regulation (AR) 635-200, Chapter 9, for drug and alcohol abuse.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration. The VA's Joint Legacy Viewer (JLV) was also examined. There were numerous VA behavioral health (BH) records available for review. A summary of the relevant information is provided below. A DA Form 3822 Mental Status Examination and ADAPCP summary was provided from his in-service BH care. No other military BH records were available for review.

c. Per review of JLV, the applicant is not service connected (SC) through the VA for any BH conditions. The applicant appears to have initiated care through the VA for BH purposes in June 2021 due to an anticipated loss of housing and requesting housing assistance. VA records were available for review from 11 April 2016 through 22 May 2024. He was admitted for alcohol detoxification due to Alcohol Use Disorder (AUD) on 14 June 2021. Review of the records indicate the applicant was subsequently admitted for alcohol detoxification on several occasions between 2021-2024. A note dated 01 June 2021 documented that the applicant reported he started drinking alcohol at age 14 and has not had any sustained lifetime sobriety aside from when he was incarcerated. Furthermore, it is documented throughout his medical record that the applicant experiences and was treated for anxiety though it was associated with his situational circumstances and not his military service. It is documented in the medical record that the applicant reported part of the reason he drinks is due to lack of acceptance due to his sexual orientation, which included within the military.

d. On 15 May 2024, it was documented that the applicant requested assistance in completing a statement in support of his claim for SC for PTSD. It is unclear the traumatic event that the applicant is asserting though documented that the applicant reported being isolated and discriminated against for his sexual orientation while in the military. There are no additional details and no indication that a compensation and pension (C&P) exam has been completed at this time. The applicant has not been diagnosed with PTSD through the VA.

e. The applicant completed an in-service Mental Status Examination on 18 February 1983 which indicated he was cleared to participate in administrative proceedings. The applicant was also enrolled in the ADAPCP program while in-service and it was recommended that he be separated due to lack of potential for rehabilitation. No other military BH records were available for review.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence that the applicant had a BH condition or experience that mitigated his conduct. However, the applicant asserts mitigation due to Other Mental Health Issues at the time of his discharge. This assertion alone merits

consideration by the board. The applicant was discharged under AR 635-200, Chapter 9, by reason of alcohol abuse rehabilitation failure, which appears to be a fair and equitable discharge. Alcohol Use Disorders fall under the purview of administrative separations and do not require disposition through medical channels. There is evidence in the VA records that the applicant continued to meet criteria for AUD post-discharge and required several inpatient admissions for detoxification. Furthermore, it was documented in his VA medical record that the applicant self-reported he started drinking alcohol at age 14, prior to his enlistment in the Army. There is no documentation available to indicate that the applicant had Other Mental Health Issues in-service that contributed to his behavior. As such, medical mitigation is not supported.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he experienced Other Mental Health issues which mitigate his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reports the Other Mental Health issues occurred during military service.

(3) Does the condition experience actually excuse or mitigate the discharge? No. There is no evidence based on the available records that the applicant had a BH condition while in service which mitigates his Chapter 9 separation as an alcohol rehabilitation failure.

BOARD DISCUSSION:

1. 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 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 medical review, the Board concurred with the advising official finding insufficient evidence that the applicant had a BH condition or experience that mitigated his conduct. The opine noted the absence of documentation to indicate that the applicant had Other Mental Health Issues in-service that contributed to his behavior.

2. The Board found insufficient evidence of in-service mitigating factors to overcome the misconduct of positive urinalysis and misuse of alcohol while on a field. The

applicant provided no post service achievements or character letters of support for the Board to weigh for consideration. The applicant was discharged for alcohol abuse rehabilitation failure and was provided an under honorable conditions (General) 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. As such, the Board denied relief.

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.

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 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 9 contains the authority and outlines the procedures for discharging Soldiers because of alcohol or other drug abuse. A member who has been referred to the Army Drug and Alcohol Prevention and Control Program (ADAPCP) for alcohol/drug abuse may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there is a lack of potential for continued Army service and rehabilitation efforts are no longer practical. Nothing in this chapter prevents separation of a Soldier who has been referred to such a program under any other provisions of this regulation. Initiation of separation proceedings is required for Soldiers designated as alcohol/drug rehabilitation failures.
3. 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.
4. 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.

5. 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.

6. 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//