

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 September 2024

DOCKET NUMBER: AR20230013882

APPLICANT REQUESTS: in effect, an upgrade of his bad conduct discharge to under honorable conditions (General).

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 5 May 1983
- Department of Veterans Affairs (VA) Service Certification

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 was told that his characterization of service would automatically be changed to a general discharge after 6 months. He made bad decisions while stationed in Germany due to his mental health issues related to major depression and anxiety, he now regrets. He has been diagnosed with schizophrenia and believes he went undiagnosed during his youth, which likely negatively impacted his conduct and train of thought during his military service.
3. The applicant provides a letter from the VA dated 3 November 2023 which certifies the applicant was discharged from the U.S. Army under other than honorable conditions for his service period from 22 July 1980 through 5 May 1983.
4. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 22 July 1980.

b. His DA Form 2-1 (Personnel Qualification Record) shows he served in Germany from 3 January 1981 to 11 November 1981.

c. The applicant accepted nonjudicial punishment for the following:

- 4 December 1980 – for one specification of being absent without leave (AWOL) from on or about 10 November 1980 to on or about 3 December 1980
- 26 January 1981 – for one specification of AWOL from on or about 4 December 1980 to on or about 30 December 1980

d. On 12 November 1981 he was convicted by a special court-martial for the below listed offense. His sentence included forfeiture of \$350 pay per month for 3 months, reduction to private (PVT)/E-1, confinement for 3 months, and a bad conduct discharge.

- on or about 30 July 1981, unlawfully steal ten field jackets, two flashlights, and some tools, of a total value of about \$300, all of which was the property of the United States Government
- on or about 30 July 1981 unlawfully steal United States currency, the property of Specialist Four K__ C__, a member of the United States Army, of a value of \$50
- on or about 30 July 1981, unlawfully steal one Rhapsody AM-FM cassette electronic clock radio of a value of about \$120, the property of Private E2 S__ T__, a member of the United States Army
- on or about 24 July 1981, unlawfully enter room 314, of building 368, the property of the United States Government, with intent to commit a criminal offense, to wit: to steal Government property therein
- on or about 30 July 1981, unlawfully receive one shoulder bag piece of luggage of a value of about \$50, the property of Sergeant J__ P__, which property that he, the accused, then well knew had been stolen

e. On 9 February 1982, the convening authority approved so much of the sentence as provides for the forfeiture of \$350 pay per month for 3 months; reduction to the grade of E-1; 3 months confinement; and except for the bad conduct discharge, ordered it executed. The record of trial was forwarded to the Judge Advocate General of the Army for appellate review.

f. Special Court-Martial Order Number 47 dated 2 May 1983, after Article 71(c) was complied with and the sentence was affirmed, ordered the bad conduct discharge executed.

g. On 5 May 1983, he was discharged from active duty with a bad conduct characterization of service. His DD Form 214 (Certificate of Release or Discharge from

Active Duty) shows he completed 2 years, 7 months, and 8 days of active service with approximately 63 days of lost time. He was assigned separation code JJD and the narrative reason for separation listed as "As a Result of Court-Martial, Other," with reentry code 4. It also shows he was awarded or authorized the Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16).

5. By regulation, a member will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

6. 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 determination guidance.

7. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his bad conduct discharge to general, under honorable conditions. He contends an undiagnosed mental health condition mitigates his discharge.

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 22 July 1980.
- Applicant accepted nonjudicial punishment for the following:
- 4 December 1980 – for one specification of being absent without leave (AWOL) from on or about 10 November 1980 to on or about 3 December 1980
- 26 January 1981 – for one specification of AWOL from on or about 4 December 1980 to on or about 30 December 1980
- His DA Form 2-1 (Personnel Qualification Record) shows he served in Germany from 3 January 1981 to 11 November 1981.
- On 12 November 1981 he was convicted by a special court-martial for the below listed offenses. His sentence included forfeiture of \$350 pay per month for three months, reduction to private (E-1), confinement for 3 months, and a bad conduct discharge.
- on or about 30 July 1981, unlawfully steal ten field jackets, two flashlights, and some tools, of a total value of about \$300, all of which was the property of the United States Government
- on or about 30 July 1981 unlawfully steal United States currency, the property of Specialist Four K__ C__, a member of the United States Army, of a value of \$50
- on or about 30 July 1981, unlawfully steal one Rhapsody AM-FM cassette electronic clock radio of a value of about \$120, the property of Private E2 S__ T__, a member of the United States Army

- on or about 24 July 1981, unlawfully enter room 314, of building 368, the property of the United States Government, with intent to commit a criminal offense, to wit: to steal Government property therein
- on or about 30 July 1981, unlawfully receive one shoulder bag piece of luggage of a value of about \$50, the property of Sergeant J__ P__, which property that he, the accused, then well knew had been stolen
- Special Court-Martial Order Number 47 dated 2 May 1983, after Article 71(c) was complied with and the sentence was affirmed, ordered the bad conduct discharge executed.
- Applicant was discharged on 5 May 1983, with a bad conduct characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was assigned separation code JJD and the narrative reason for separation listed as "As a Result of Court-Martial, Other," with reentry code 4.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, "he was told that his characterization of service would automatically be changed to a general discharge after six months. He made bad decisions while stationed in Germany due to his mental health issues related to major depression and anxiety, he now regrets. He has been diagnosed with schizophrenia and believes he went undiagnosed during his youth, which likely negatively impacted his conduct and train of thought during his military service." Due to the period of service no active-duty electronic medical records were available for review and the applicant did not provide any hardcopy medical documentation.

d. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. The applicant initially sought services via the VA in 2014, related to issues with homelessness. An initial assessment via the VA Homeless Program, dated 21 November 2014, indicates the applicant was seeking assistance with housing, he was provided with referral options and was seen for three encounters until December 2014. The applicant once again sought assistance and participated in an initial assessment via the VA Homeless Program on 3 June 2016, at that time he reported being homeless since his release from prison in 2013. The applicant self-reported having been diagnosed with a list of mental health disorders but provided no medical documentation substantiating his assertion and a mental status evaluation indicated no psychosis and appropriate mood, affect, thought content, and speech. He was seen for one additional encounter. The applicant once again sought assistance and participated in an initial assessment via the VA Homeless Program on 27 October 2023, he was placed on a list for transitional housing and received supportive services until March 2024. Overall, the applicant has participated in supportive social work, case management, and peer support services related to issues of homelessness and financial stressors. The record does not evidence any behavioral health diagnosis or

treatment with the focus of the support provided listed as Other Specified Housing or Economic Circumstances.

e. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts OMH as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service or after discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated for any mental health condition. And while the applicant self-asserted a list of mental health disorders during an intake assessment with the VA, he did not provide any medical documentation substantiating any BH diagnosis. Per repeated VA mental health assessments, related to supportive service via the VA homeless program, the applicant has only met diagnostic criteria for Other Specified Housing or Economic Circumstances. Overall, the applicant was discharged due to repeated acts of theft which are not part of the natural history or sequelae of any behavioral health condition.

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for conviction by court-martial for stealing and unlawfully entering a room. The Board found no error or injustice in the separation proceedings. The Board noted the applicant's contention of other mental health conditions; however, reviewed and concurred with the medical advisor's review finding insufficient evidence to support the applicant had a behavioral health condition

during service that mitigated his misconduct. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. The applicant was given a bad conduct discharge pursuant to an approved sentence of a court-martial. The appellate review was completed and the affirmed sentence was ordered duly executed. All requirements of law and regulation were met with respect to the conduct of the court-martial and the appellate review process and the rights of the applicant were fully protected.

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, 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. Paragraph 3-7a (Honorable discharge) states 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 the acceptable conduct and performance of duty for Army personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b (General discharge) states 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. Paragraph 3-7c (Under Other Than Honorable Conditions) states a discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, homosexuality, security reasons, or for the good of the service.

d. Paragraph 3-11 (DD Form 259A (Bad Conduct Discharge Certificate) states a member will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed and the affirmed sentence ordered duly executed.

3. Title 10, U.S. Code, section 1552, provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

4. 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.

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 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.

6. 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.

7. 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//