

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 August 2024

DOCKET NUMBER: AR20230014136

APPLICANT REQUESTS: an upgrade of his under other honorable conditions discharge.

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, in effect, he wants his discharge upgraded. He checked "Other Mental Health" on his application.
3. A review of the applicant's service records shows:
  - a. He enlisted in the Regular Army on 16 November 1982.
  - b. He received nonjudicial punishment under Article 15 of the Uniform Code of Military Justice on/for:
    - 23 September 1983, wrongfully using marijuana; his punishment included reduction from E-2 to E-1
    - 3 November 1983, disobeying a lawful order and being disorderly in the command
    - 10 October 1984, being disrespectful in language by saying to his superior noncommissioned officer "F\*\*\* you ass\*\*\*\*, I quit;" his punishment included reduction from E-3 to E-2 (suspended until 30 October 1984)
    - 14 February 1984, failing to go to his appointed place of duty (gate guard) and willfully disobeying a lawful order; his punishment included reduction from E-4 to E-3

- 1 August 1985, wrongfully using marijuana, his punishment included reduction from E-3 to E-1

c. On 26 June 1985, his commander initiated a Bar to Reenlistment Certificate against him citing his multiple NJP. The commander stated [Applicant] has a history of misconduct requiring non-judicial punishment. He had a locally imposed bar to reenlistment which was lifted on 7 March 1984. Since that time, he has received two additional Article 15s. Since his arrival in this unit on 7 May 1985 his performance has been extremely poor. His attitude is very apathetic towards military activities and corrective counselling. Based on his history of misconduct and his negative attitude; recommend that he be barred from reenlistment.

d. The applicant was furnished with a copy of this bar, but he elected not to submit a statement. The approving authority approved his bar, and later reviewed and kept it in place.

e. On 20 September 1985, the applicant was convicted by a summary court-martial of one specification of being absent without leave from 28 August to 18 September 1985. The court sentenced him to confinement for 30 days. The convening authority approved the sentence.

f. The applicant was confined at the Fort Riley Confinement Facility from 20 September to 11 October 1985.

g. On 10 October 1985, the applicant underwent a mental status evaluation that determined he had the mental capacity to understand and participate in these proceedings. He met retention standards of AR 40-501, Standards of Medical Fitness.

h. On 21 October 1985, the applicant's immediate commander notified him of his intent to initiate separation action against him under chapter 14-12b of Army Regulation (AR) 635-200 (Personnel Separations) for his pattern of misconduct. The commander recommended a general discharge.

i. On 21 October 1985, the applicant acknowledged receipt of the commander's notification. He consulted with counsel who advised him of his rights. He acknowledged he was advised of the basis for the contemplated separation under the provisions of AR 635-200, paragraph 14-12b, its effects, of the rights available to him, and the effect of waiving any of his rights. He declined to submit statements in his own behalf. He waived consideration by, and appearance before, an administrative separation board. He understood he could expect to encounter substantial prejudice in civilian life he received a general under honorable conditions character of service and he also understood he could be deprived of many or all veterans, state, and federal benefits if he received an under other than honorable conditions character of service.

j. Following the applicant's acknowledgement and election of rights, the applicant's commander initiated separation action against him under provisions of AR 635-200, chapter 14-12b. The commander stated the applicant has received a Field Grade Article 15 for positive urinalysis and a Summary Court-Martial for AWOL. He is also currently barred from reenlistment and is making no effort to change his attitude or performance. Prior to being transferred to this unit, he received four Article 15's in 2/5th Field Artillery. He has demonstrated a behavior pattern that is prejudicial to the good order, and discipline of the Army. Despite repeated attempts to modify his actions through use of NJP, he does not respond. After an Article 15 for positive urinalysis, he received a Summary Court-Martial for AWOL. This kind of misconduct cannot be tolerated in the Army. The intermediate and senior commanders recommended approval.

k. On 6 November 1985, the separation authority approved the discharge and directed the applicant's separation under the provisions of AR 635-200, chapter 14-12b, with an under other than honorable conditions characterization of service.

l. On 12 November 1985, the applicant was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, chapter 14-12b with an under other than honorable conditions) characterization of service, Separation Code JKM and Reentry Code 3/3B. His DD Form 214 shows he completed 2 years, 10 months, and 15 days of active service.

m. There is no indication he petitioned the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

5. By regulation, Soldiers are subject to separation under the provisions of paragraph 14-12b of AR 635-200 for a pattern of misconduct or 14-12c for commission of a serious offense. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

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 under other honorable conditions discharge to honorable or general.

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 16 November 1982.
- He received nonjudicial punishment under Article 15 of the Uniform Code of Military Justice on multiple occasions as follows:
- 23 September 1983, wrongfully using marijuana; his punishment included reduction from E-2 to E-1
- 3 November 1983, disobeying a lawful order and being disorderly in the command
- 10 October 1984, being disrespectful in language by saying to his superior noncommissioned officer "F\*\*\* you ass\*\*\*\*, I quit;" his punishment included reduction from E-3 to E-2 (suspended until 30 October 1984)
- 14 February 1984, failing to go to his appointed place of duty (gate guard) and willfully disobeying a lawful order; his punishment included reduction from E-4 to E-3
- 1 August 1985, wrongfully using marijuana, his punishment included reduction from E-3 to E-1
- On 26 June 1985, his commander initiated a Bar to Reenlistment Certificate against him citing his multiple NJP. The commander stated [Applicant] has a history of misconduct requiring non-judicial punishment. He had a locally imposed bar to reenlistment which was lifted on 7 March 1984. Since that time, he has received two additional Article 15s. Since his arrival in this unit on 7 May 1985 his performance has been extremely poor. His attitude is very apathetic towards military activities and corrective counselling. Based on his history of misconduct and his negative attitude; recommend that he be barred from reenlistment.
- On 20 September 1985, the applicant was convicted by a summary court-martial of one specification of being absent without leave from 28 August to 18 September 1985. The court sentenced him to confinement for 30 days. The convening authority approved the sentence.
- On 21 October 1985, the applicant's immediate commander notified him of his intent to initiate separation action against him under chapter 14-12b of Army Regulation (AR) 635-200 (Personnel Separations) for his pattern of misconduct. The commander recommended a general discharge.
- On 12 November 1985, the applicant was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, chapter 14-12b with an under honorable conditions (general) characterization of service, Separation Code JKM and Reentry Code 3/3B. His DD Form 214 shows he completed 2 years, 10 months, and 15 days of active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, he wants his discharge upgraded. He checked "Other Mental Health"

and “Reprisal/Whistleblower” on his application but provides no information or rationale of how these issues/condition relate to his request.

d. Due to the period of service, no active-duty electronic medical records were available for review and the applicant did not provide any hardcopy documentation showing any mental health condition during his time in service. The applicant provides hardcopy documentation indicating, on 10 October 1985, he underwent a mental status evaluation that noted no mental health issues and indicated the applicant was mentally responsible, met retention standards, and had the mental capacity to understand and participate in separation proceedings.

e. The VA’s Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. No VA electronic medical records were available for review, the applicant is not service connected, and he did not submit any medical documentation post-military service substantiating his assertion of OMH.

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

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts a mitigating condition, OMH.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any behavioral health condition during military service or after his discharge. However, the applicant should submit any medical documentation that becomes available.

(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.

h. Per Liberal Consideration, the applicant’s assertion of OMH is sufficient to warrant consideration by the Board.

**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 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 misconduct with the commander citing nonjudicial punishment for the use of marijuana and a summary court-martial for being absent without leave. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant's contention that he experienced a mental health condition while on active duty; however, reviewed and concurred with the medical advisor's review finding insufficient evidence of any mitigating behavioral health condition. Based on the applicant's frequent nature of misconduct and positive urinalysis, the Board determined relief was not warranted and the characterization of service assigned during separation was appropriate.

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), in effect at the time, set forth the basic authority for the separation of enlisted personnel. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

a. 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.

b. 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.

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 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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which 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. 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. 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//