

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 July 2024

DOCKET NUMBER: AR20230014285

APPLICANT REQUESTS:

- upgrade of his under other than honorable conditions (UOTHC) characterization of service
- a change to his separation code, reentry code, and narrative reason for separation

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

- DD Form 149 (Application for Correction of Military Record)
- DD Forms 214 (Certificate of Release or Discharge from Active Duty), 25 June 1998 and 23 June 2005 (two)
- military service treatment records, 08 March 2005 to 03 June 2005
- Department of Veterans Affairs (VA) medical opinion, 26 March 2021
- Self-authored statement, 19 September 2023
- Attorney letter, 20 September 2023

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:

a. Although he received an honorable discharge from the Army at the end of his initial term of service, he had already started to experience mental health issues for which he needed medication. To cope with his mental health, he resorted to using alcohol, and in 2000, he sought help by voluntarily entering a detox and rehabilitation program.

b. His mental health issues worsened during his second enlistment, precisely when he received stop-loss orders, and his unit was preparing for deployment to Iraq. His

mental health deteriorated significantly during this time, which led him to rely on alcohol and drugs as coping mechanisms. As a result of his substance abuse, he faced two consecutive field-grade nonjudicial punishments under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ); he tried to commit suicide and was admitted to the mental health ward at Martin Army Community Hospital on four separate occasions within eight months.

c. He was separated from the Army with a UOTHC discharge in lieu of trial by court-martial and believes he should have been discharged on medical grounds due to his mental health conditions. His mental health condition was the underlying factor that triggered his behavioral and performance problems, which directly led to his discharge. While there may have been other reasons for his discharge, such as disciplinary actions and substance abuse, these were primarily a result of his mental health issues, making them the primary contributing factors to his discharge. He has continued to struggle severely with mental health issues and addiction and, in 2011, he attempted suicide.

3. The applicant enlisted in the Regular Army on 6 February 1996, and was honorably discharged on 25 June 1998. His DD Form 214 for this period of service shows he was credited with 2 years, 4 months, and 20 days of net active service this period.

4. After a 6-year break in service, he enlisted in the Regular Army on 29 September 2004, for 3 years and 2 weeks. The highest rank/grade he held was specialist/E-4.

5. The complete facts and circumstances surrounding his discharge are not available for review. However, his record contains a dully constituted DD Form 214 that shows the applicant was discharged on 23 June 2005, in the grade of E-1, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10, in lieu of trail by court-martial. His service was characterized as UOTHC, with separation code "KFS" and reentry code "4." He was credited with 8 months and 25 days of net active service this period. He was awarded or authorized the:

- Army Achievement Medal
- Army Good Conduct Medal
- Army Service Ribbon
- Global War on Terrorism Service Medal
- Driver and Mechanic Badge with Mechanic Bar

6. The applicant provides the following documents, which are available in their entirety for the Board's review within the supporting documents:

a. Military service medical treatment records from 8 March 2005 to 3 June 2005, showing the applicant's history of hospitalization in a psychiatric ward during his military service. The records show he received treatment for his mental health conditions,

alcohol and drug addiction, and attempted suicide. They further show he received the following diagnoses during the same period:

- alcohol dependence
- cocaine abuse
- narcissistic personality disorder
- prescription medication overdose
- depression disorder
- occupational problems

b. A VA medical opinion which states the applicant was treated for mental health problems and substance abuse while on active duty. He was hospitalized and discharged due to mental health problems. His current symptoms related to anxiety, depression, and substance abuse in remission are at least as likely as not related to the applicant's mental health during service.

c. A letter from the applicant's attorney requesting the Board consider the applicant's request and grant him relief.

7. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial. Additionally, the established Reentry Eligibility (RE) code for Soldiers separated under this authority and for this reason is RE code 4.

8. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

9. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 18 June 2002 discharge characterized as under other than honorable conditions. He has indicated on his DD form 149 that other mental health conditions are related to his requests. He states:

“I had a mental health condition that could explain or contribute to my discharge. It started during my first term of military service and it worsened during my reenlistment period, particularly when we received stop-loss orders and were preparing for deployment to Iraq.

This condition directly explains or contributes to the discharge because it led to disciplinary actions for substance abuse, multiple admissions to the mental health ward, and a suicide attempt. These issues negatively affected my military performance and behavior.

My condition was the underlying factor that triggered my behavioral and performance problems, which directly led to my discharge. While there may have been other reasons for my discharge, such as disciplinary actions, these were largely a result of my mental health condition and addiction issues, making them the primary contributing factors to my discharge.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the Regular Army on 29 September 2004 and was discharged on 23 June 2005 under the separation authority provided chapter 10 of AR 635-200, Active Duty Enlisted Administrative Separations (1 November 2000): Discharge in Lieu of Trial by Court-Martial. The DD 214 does not contain a period of Service in a hazardous duty pay area or lost time.

d. A discharge summary from Martin Army Community Hospital on Ft. Benning, GA, shows the applicant was admitted from 8 – 14 March 2005. His principal diagnosis was alcohol dependence followed by cocaine abuse, narcissistic personality traits, left lower lobe pneumonia, tremors, major depressive disorder, bilateral fungal foot infections, alcohol withdrawal, and occupational problem. From this discharge summary.

29-year-old male E-1 admitted from outpatient clinic yesterday afternoon after he presented requesting placement on an antidepressant. After being given the medication, he reported he felt anxious about returning to the barracks fearing he would continue to use alcohol and cocaine. He said that he had just received a field grade Article 15 being reduced from E-4 to E-1 for a positive urine drug screen for cocaine. He said he had been depressed since he tested positive in November.”

e. He was readmitted from 24-29 March 2005: “Last night he was drinking heavily, was angry, took eight Wellbutrin pills with alcohol. He denies any suicidal thoughts at that time or now. He states that he was irritated and taking extra pills to settle his mood. He awoke this morning with dizziness, chest tightness, shortness of breath, and blurry vision, so he came to the ER.

f. He was admitted again from 2 May – 3 June 2005:

“29-year-old single male previously admitted to this ward for alcohol dependence and cocaine dependence. He said he came into the ER this morning because he ‘wanted to get away from his chain of command.’ He said he had been abstinent after his last hospitalization but a urine drug screen done a few hours after his return to the unit was reportedly positive for cocaine.”

g. His discharge diagnoses were alcohol dependence, cocaine dependence, narcissistic personality disorder, and occupational problem. Neither the applicant’s separation packet nor documentation addressing his Chapter 10 separation were submitted with the application or uploaded into iPERMS.

h. JLV shows his has been diagnosed with non-service-connected anxiety disorder.

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant asserts other mental health conditions. Early in his treatment, he was diagnosed with depression which was secondary to his positive urinalysis.

(2) Did the condition exist or experience occur during military service? Yes

(3) Does the condition or experience actually excuse or mitigate the discharge? Without knowledge of the serious misconduct which led to the applicant’s separation, a recommendation to mitigate the misconduct cannot be made.

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 separation packet is not available for review. However, other available evidence shows the applicant was charged with commission of offenses that is punishable under the UCMJ with a punitive discharge. After being charged, he presumably consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. 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 that without knowledge of the serious misconduct which led to the applicant's separation, a recommendation to mitigate the misconduct cannot be made. 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, Separation Code, and RE Code: The Board noted that chapter 10 is a voluntary request in lieu of court-martial. The only valid narrative reason for enlisted separated under chapter 10 is "in lieu of court-martial." Additionally, enlisted Soldiers separated under the provisions of chapter 10 of AR 635-200 are assigned Separation Code KFS. The Separation Code/RE Code Cross Reference Table in effect at the time of his discharge stated that Separation Code KFS has a corresponding RE Code of 4. Therefore, the Board determined the reason, Separation Code, and RE Code listed on his DD Form 214 are not in error or unjust.

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. Title 10, U.S. Code, 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) states 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. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable – they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from their last period of service with a non-waivable disqualification

5. Army Regulation 635-5 (Separation Program Designator (SPD)/Reentry (RE) Code Cross Reference Table), in effect at the time, provides a list of SPD codes and coinciding RE codes. The table shows the RE code assigned to SPD code KFS was RE code "4."

6. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, 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 "KFS" is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 10.

7. Army Regulation 635-200, in effect at the time, set forth the primary authority for separating enlisted personnel.

a. Chapter 10 states in part, a member who has committed an offense or offenses, the punishment for any of which, under the UCMJ and the Manual for Court-Martial, include bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. In addition, the request for discharge may be submitted at any stage in the processing of the charges until the court-martial convening authority's final action on the case. Commanders will also ensure that a member will not be

coerced into submitting a request for discharge in lieu of trial by court-martial. The member will be given a reasonable time (not less than 72 hours) to consult with a consulting counsel and to consider the wisdom of submitting such a request for discharge.

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.

8. 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.

9. 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. 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//