

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 September 2024

DOCKET NUMBER: AR20230014414

APPLICANT REQUESTS: reconsideration of his earlier request for an upgrade of his under other than honorable conditions discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20120014032 on 28 February 2013.

2. The applicant states he was experiencing manic depression when he was in the service and now, he is diagnosed as bipolar. He is doing the best he can to survive, but he does not know what to do. He was discharged for being sick. He is grateful for the time he served in the Army.

3. A review of the applicant's service records show:

a. He enlisted in the Regular Army on 1 February 1980.

b. He accepted nonjudicial punishment on/for:

- 29 September 1980; for violating a lawful general regulation by misusing mail; his punishment included reduction to private (PVT)/E-1
- 30 August 1981; for having a bottle of whisky and being drunk on duty as a rifleman; his punishment included reduction to PVT/E-2 (suspended for 6 months)

c. On 6 May 1981, he was convicted by summary court-martial of being absent without leave from 2 March 1981 to 20 April 1981. The court sentenced him to forfeiture of pay and restriction.

d. On 17 September 1981, court-martial charges were preferred against the applicant. His DD Form 458 (Charge Sheet) shows he was charged with:

- Charge I: one specification of failing to be at his appointed place of duty (police call); and one specification of failing to be at his appointed place of duty (guard duty)
- Charge II: one specification of being disrespectful in language toward a noncommissioned officer and one specification of sleeping while at his post

e. On 29 October 1981, his commander initiated a bar to reenlistment. The commander stated the applicant's flagrant disregard for mission and personal wellbeing warrants a bar to reenlistment. His self-discipline falls far below the standards acceptable to the United States Army. Since his enlistment, the applicant has earned a summary court martial and is working on his second. He has also earned 3 Article 15s. He has made no positive contribution to this unit or the United States Army. Therefore, he (the commander) holds no reservation in requesting this bar to reenlistment.

f. The complete facts and circumstances surrounding the applicant's discharge are unavailable for the Board to review.

g. On 10 November 1981, the applicant was discharged under the provisions of Army Regulation 635-200, Chapter 10 for conduct triable by a court-martial. He was issued an under other than honorable conditions characterization of service with a separation code of JFS and reenlistment code of 3B. He completed 1 year, 7 months, and 21 days and was awarded or authorized:

- Marksman Marksmanship Qualification Badge with Rifle Bar
- Expert Marksmanship Qualification Badge with Grenade Bar
- Army Service Ribbon

4. On 26 November 1982, the applicant's request for a discharge upgrade to the Army Discharge Review Board was denied.

5. On 28 February 2013, the ABCMR considered the applicant's request for a discharge upgrade. The Board determined there was insufficient evidence to support his request and denied relief. The Board noted the applicant's contention of manic depression or bipolar; however, the evidence did not support his contention.

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. By regulation, an individual who has committed an offense or offenses, the punishment for which, under the Uniform Code of Military Justice, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Undesirable Discharge Certificate will normally be furnished an individual who is discharged for the good of the service.

8. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request for an upgrade of his under other than honorable conditions discharge. He contends Other Mental Health (OMH) as related to his request.

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 1 February 1980.
- He accepted nonjudicial punishment on/for:
- 29 September 1980; for violating a lawful general regulation by misusing mail; his punishment included reduction to private (PVT)/E-1
- 30 August 1981; for having a bottle of whisky and being drunk on duty as a rifleman; his punishment included reduction to PVT/E-2 (suspended for 6 months)
- On 6 May 1981, he was convicted by summary court-martial of being absent without leave from 2 March 1981 to 20 April 1981.
- On 17 September 1981, court-martial charges were preferred on the applicant for failing to be at his appointed place of duty (police call); failing to be at his appointed place of duty (guard duty); being disrespectful in language toward a noncommissioned officer; and sleeping while at his post. However, there is no record of further proceedings.
- On 29 October 1981, his commander initiated a bar to reenlistment.
- On 10 November 1981, the applicant was discharged under the provisions of Army Regulation 635-200, Chapter 10 for conduct triable by a court-martial. He was issued an under other than honorable conditions characterization of service with a separation code of JFS and reenlistment code of 3B.

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 experiencing manic depression when he was in the service and now, he is diagnosed as bipolar. He is doing the best he can to survive, but he does not know what to do. He was discharged for being sick. He is grateful for the time he served in the Army."

d. Due to the period of service, no active-duty electronic medical records were available for review and the applicant did not submit any hardcopy medical documentation from his time in military service. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. Limited VA electronic medical records were available for review, with a social work homeless program note, dated 28 May 1999, showing the applicant was seen in an outreach effort and a brief screening indicated he had no psychiatric or substance abuse issues. Overall, the applicant did not submit any medical documentation substantiating his assertion of bipolar disorder.

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 contends bipolar disorder on his application as related to his request. However, he provides no medical documentation.

(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. The applicant was discharged due to FTR, being disrespectful in language toward a noncommissioned officer; and sleeping while at his post. 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 OMH (bipolar), he did not provide any medical documentation substantiating any BH diagnosis.

h. Per Liberal Consideration guidelines, the applicant's self-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 DoD guidance for liberal consideration of discharge upgrade requests. The applicant's separation packet is not available for review. However, other available

evidence shows the applicant was charged with commission of offenses 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 finding insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. 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 was 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 to amend the decision of the ABCMR set forth in Docket Number AR20120014032 on 28 February 2013.

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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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provides the basic authority for the separation of enlisted personnel.

a. Paragraph 1-9d (Honorable Discharge) states an honorable discharge is a separation with honor. Issuance of an honorable discharge will be conditioned upon proper military behavior and proficient performance of duty during the member's current enlistment of current period of service with due consideration for the member's age, length of service, grade, and general aptitude.

b. Paragraph 1-9e (General Discharge) states a general discharge is a separation from the Army under honorable conditions of an individual whose military record is not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 1-10 (Issuance of an Undesirable Discharge) states an undesirable discharge will be directed only by a commander exercising general court-martial jurisdiction, a general office in command who has a judge advocate officer on his staff, or by a higher authority based on the approved recommendation of a board of officers.

2. 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 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//