

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 July 2024

DOCKET NUMBER: AR20230014586

APPLICANT REQUESTS:

- reconsideration of his prior request for an upgrade of his under other than honorable conditions discharge to honorable
- a video/telephonic appearance before the Board

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

- DD Form 293 (Application for Review of Discharge from the Armed Forces of the United States)
- DD Form 149 (Application for Correction of Military Record)

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 AR20130018224 on 26 May 2014.

2. The applicant states he is requesting a change in the characterization of his service to show honorable. The current discharge does not allow him to have access to his benefits. He 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 29 July 1980.

b. A DD Form 458 (Charge Sheet) shows on 10 June 1981, court-martial charges were preferred on the applicant for the following:

- failing to go at the time prescribed to his appointed place of duty (5 specifications)
- disobeying a lawful order from a noncommissioned officer (NCO)

- being disrespectful in language to an NCO
- larceny (wrongfully appropriate \$433.00)
- possessing marijuana

c. On 6 July 1981, the applicant consulted with legal counsel and requested a discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- he was making the request of his own free will
- maximum punishment
- he was guilty of at least one or more of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other conditions other than honorable
- he would be deprived of many or all Army benefits, he may be ineligible for many, or all benefits administered by the Veterans Administration,
- he may be deprived of his rights and benefits as a Veteran under both Federal and State law
- he may expect to encounter substantial prejudice in civilian life

d. On 8 July 1981, the separation authority approved the applicant's request for discharge for the good of the service under the provisions of AR 635-200, Chapter 10. He would be issued a Discharge Certification Under Other Than Honorable Conditions and reduced to the lowest enlisted grade.

e. A DA Form 3822-R (Report of Mental Status Evaluation) shows on 16 July 1981, the applicant underwent a mental evaluation. The physician noted the applicant felt the pending charges were excessive; however, he desired termination of his military obligation due to incompatibility. The applicant was determined to be mentally responsible and had the mental capacity to understand and participate in administrative proceedings.

f. On 22 July 1981, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 11 months, and 24 days of active service. He was assigned separation code JFS and the narrative reason for separation listed as "Administrative discharge, conduct triable by court-martial," with reentry code 3. It also shows he was awarded or authorized:

- Marksman Qualification Badge (M-16)
- Parachutist Badge

4. On 26 May 2014, the ABCMR rendered a decision in Docket Number AR20130018224. The Board noted the applicant's request for separation under the provisions of Army Regulation 635-200, chapter 10, for the good of the service in lieu of trial by court-martial was administratively correct and in conformance with applicable regulations. He had an opportunity to submit a statement in which he could have voiced his concerns and he elected not to do so. The type of discharge directed and the reasons for separation were therefore appropriate considering all the facts of the case. The Board denied his request for relief.

5. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or in lieu of trial by court-martial.

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. 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 (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or 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 in essence requesting a referral to the Disability Evaluation System (DES) and an upgrade of his 22 May 1981 discharge characterized as under other than honorable conditions. On his DD form 149, he had indicated that other mental health issues are related to his request. He states: "The current discharge does not allow me to have access to my benefits."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of Service under consideration shows he entered the Regular Army on 29 July 1980 was discharged on 22 July 1981 under the provisions provided in chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel (1 March 1978): Discharge for the Good of the Service – Conduct Triable by Court Martial.

d. No medical documentation was submitted with the application and his period of service predates the EMR.

e. A 5 June 1981 Charge Sheet (DA Form 458) shows the applicant was charged with 5 specifications of failure to repair, 2 specifications of failure to obey a lawful order, 1 specification of larceny, and one specification of wrongful possession of marijuana.

f. On 6 July 1981, the applicant voluntarily requested discharge for the good of the service under the provisions of Chapter 10 of AR 635-200. On 8 July 1981, the Commanding General of the 9th Infantry Division and Fort Lewis approved his request with the directives he be reduced immediately to the lowest enlisted grade and issued an Under Other Than Honor Conditions Discharge Certificate.

g. JLV show his first encounter with the VA was when he was admitted for evaluation and treatment of substance induced mood disorder with suicidal ideation and polysubstance use disorder (opioid, heroin, cocaine, benzos, alcohol) in July 2019. Since discharge, he received intensive outpatient care with intermittent readmissions from the VA as a non-service-connected Veteran through May 2024. PTSD was added as a diagnosis on 2 August 2023. The origin of his PTSD is unknown: It cannot be service-connected due to his characterization of service and causative stressor(s) were not identified in several of the behavioral health encounters (out of his more than 2400) reviewed for this case.

h. There is no evidence the applicant had a mental health or other medical condition which would have then contributed to or would now mitigate his multiple UCMJ violations; or that would have failed the medical retention standards of chapter 3, AR 40-501, Standards of Medical Fitness, and been a cause for referral to the DES prior to his discharge. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of her office, grade, rank, or rating prior to his discharge.

i. It is the opinion of the ARBA medical advisor that a neither a discharge upgrade nor a referral to DES is warranted.

j. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant asserts a mental health condition.

(2) Did the condition exist or experience occur during military service? Applicant asserts this mental health condition is related to his request.

(3) Does the condition or experience actually excuse or mitigate the discharge? NO: Mental health conditions are associated with avoidant behaviors, resistance to authority, and self-medication with drugs and/or alcohol. If the applicant had such a service-connected condition, it would mitigate his failures to repair, failure to obey an order, and wrongful possession of marijuana. However, these conditions do not impair one's ability to differentiate right from wrong and adhere to the right and so cannot mitigate his larceny.

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 that a neither a discharge upgrade nor a referral to DES is warranted. The opine found no evidence the applicant had a mental health or other medical condition which would have then contributed to or would now mitigate his multiple UCMJ violations; or that would have failed the medical retention standards.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the larceny, possessing illegal drugs and disrespect. The Board noted, the applicant provided no post service achievements or character letters of support to weigh a clemency determination. Furthermore, the Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to a honorable discharge. Therefore, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 AR20130018224 on 26 May 2014.

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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 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. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

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//