

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 August 2024

DOCKET NUMBER: AR20230015103

APPLICANT REQUESTS: a medical discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Email Correspondence
- September 2023 discharge from United Recovery Project

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 returning from a 2-year assignment from Korea (1986). Upon his return, he landed in Fort Dix, NJ. He immediately had to be rushed to the hospital on post. He was evaluated by Dr. Co***. His diagnosis was that he had a bladder infection. He went home and on this same night, his appendix ruptured. He was rushed to the closest civilian hospital. After his operation, he was administered the drug, Demerol, intravenously several times a day for acute pain.

a. He had the arduous task of reporting to his next assignment, which was Advanced Branch School, and was given Demerol in pill form with no guidance or explanation over the addictiveness or withdrawal symptoms of this medication. This is where his addiction led him to use "street drugs." The court martial, embarrassment, and incarceration all led to his trauma, addiction, and less than honorable discharge; because the military chose not to approve him for the necessary treatment; instead, the military chose incarceration. He was given a five year sentence. His case was overturned in the Appellate Courts with 18 months.

b. Afterwards, he was stationed back at Fort Lee, VA, pending retrial. The reason his case was overturned was because the court martial would not allow his attorney to present expert testimony from y physician on the trauma and lack of treatment for the

disease of addiction. While stationed back at Fort Lee, pending retrial, his illness was never addressed, and he continued to fight the battle of addiction. Therefore, he was offered a retrial or other than honorable discharge. Under my mental state at that time, I chose the latter. However, the military misdiagnosed his medical symptoms as a "bladder infection" when in fact it was his appendix. If it were not for a family member intervening, he would have died that night in his home, because his appendix ruptured.

3. The applicant provides a letter, dated 26 September 2023, that states he was discharged from treatment at United Recovery Project on 09/18/2023. He was admitted to the United Recovery Project on 08/29/2023. He will complete his episode of care on 09/18/2023. While in treatment, he worked on learning about the disease of addiction, in addition to addressing his substance and clinical issues. He participated in individual sessions and group therapy while in treatment. It is clinically recommended he follows up with PHP treatment upon completion of residential. United Recovery Project is licensed by the State of Florida to administer adult substance abuse treatment at its Lake Worth Florida location. The clinical regimen includes a psychiatric evaluation and medication management from our psychiatrist, a comprehensive psychosocial assessment, individual and group therapy, and psycho-educational lectures on numerous topics covering (but not limited to) coping with grief and loss; learning relapse prevention techniques; Anger management; family dynamics; dialectical behavior therapy (DBT); post-traumatic stress disorder and understanding trigger identification.

4. A review of the applicant's service record shows:

a. He was appointed as a Reserve commissioned officer of the Army and executed an oath of office on 20 May 1979. He entered active duty on 3 September 1980.

b. The applicant was stationed at Fort Lee, VA attending a military course when he went on leave on 17 December 1984. He was scheduled to return by 7 January 1985. On 4 February 1985, he was apprehended by DOD police at the Walter Reed Inn in Washington, D.C. Pursuant to a search of the veteran's room, drug paraphernalia was found.

c. On 8 February 1985, he was returned to Fort Lee where his company commander preferred charges against him.

d. On 26 July 1985, he was convicted by a general court martial of one specification of being absent without leave, one specification of wrongful possession of cocaine and heroin, and thirteen specifications of making and delivering checks with the intent to defraud. The court sentenced him to dismissal, forfeiture of all pay and allowances and confinement for 5 years.

e. The applicant appealed this decision to the U.S. Army Court of Military Review based on what he contended as violation of due process rights and whether the military judge failed in their duties to inquire into the issue of his mental responsibility.

f. In deciding his appeal, the U.S. Army Court of Military Review ordered a sanity board and "Du Bay" hearings to determine the applicant's mental responsibility at the time of the offenses. Pursuant to their findings, the U.S. Army Court of Military Review set aside the original findings and authorized a rehearing at a general court martial.

g. After he completed 621 days of confinement, the applicant was placed on parole from Fort Leavenworth on 24 March 1987.

h. In July 1988, court-martial charges were preferred against the applicant. The relevant DD Form 458 (Charge Sheet) shows he was charged with

- one specification of being absent without leave from 19 to 20 July 1988
- one specification of wrongfully use cocaine, a schedule II controlled substance, the use of which was detected by biochemical testing of a urine sample
- one specification of wrongfully use cocaine, a schedule II controlled substance, the use of which was detected by biochemical testing of a urine sample
- one specification of uttering a check to the Post Exchange with intent to defraud

i. On 6 July 1988, the applicant submitted a Resignation for the Good of the Service under the provisions of Chapter 5, Army Regulation (AR) 635-120 (Officer Resignations and Discharges). He stated: that he did not desire to appear before a court-martial or board of officers.

(1) He stated that he has not been subject to coercion with respect to this resignation and has been advised of and fully understand the implications of this action.

(2) He was advised that prior to submitting this resignation he may, at his option, consult with and be represented by legally qualified counsel who may be a member of the Judge Advocate General's Corps or civilian counsel retained by him. He has been fully advised and counseled in this matter by consulting counsel.

(3) He has been afforded an opportunity to present matters in explanation, mitigation, or defense of his case and such matters are attached hereto.

(4) He understood that this resignation, if accepted, may be considered as being under other than honorable conditions and that discharge certificate (Under Other Than

Honorable Conditions (DD Form 794A)) may be furnished. He also understood that a resignation for the good of the service may be withdrawn only with the approval of Headquarters, Department of the Army.

(5) He further understood that if his resignation is accepted under other than honorable conditions, he will not be entitled to compensation for unused accrued leave. If his resignation is accepted, regardless of the type of discharge certificate furnished, he understood he would not receive separation pay and that he shall be barred from all rights, based upon the period of service from which he will be separated, under any laws administered by the Department of Veterans Affairs.

j. On 20 July 1988, the applicant underwent a mental status evaluation. He was found to have the mental capacity to understand and participate in proceedings; h was mentally responsible, and he met retention standards of AR 40-501 (Standards of Medical Fitness).

k. The applicant's chain of command at the company, battalion, brigade, and school center recommended approval of the resignation for the good of the service with a discharge under other than honorable conditions.

l. On 19 August 1988, following an Army Ad Hoc board, the Deputy Secretary of the Army (Review Boards and Equal Opportunity) approved the recommendation of the Department of the Army Ad Hoc Review Board that the resignation for the good of the service tendered by [Applicant] be accepted with issuance of a discharge under other than honorable conditions, is approved.

m. The applicant was discharged from active duty on 21 September 1988. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Chapter 5 of AR 635-120 with an under other than honorable conditions discharge due to Conduct Triable by Court-Martial (Separation Code DFS). He completed 7 years, 11 months and 24 days and he had lost time from 18 August to 21 September 1988.

4. On 19 June 1991, the ABCMR denied his request deletion of the record of his conviction by general court-martial from his Official Military Personnel File (OMFF).

5. On 8 February 1994, at a formal hearing, the Army Discharge Review Board reviewed his discharge and decided to deny his appeal.

6. 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/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 requesting an upgrade of his 21 September 1988 discharge characterized as under other than honorable conditions and, in essence, referral to the Disability Evaluation System (DES). On his DD form 149, he indicates that other mental health issues are related to his requests. He states that he became addicted to the Demerol provided him following an appendectomy and this led him to the misconduct for which he requested resignation in lieu of court-martial.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The DD 214 for the period of service under consideration shows the former USAR Officer entered the active duty on 3 September 1980 and was discharged under other than honorable conditions on 21 September 1988 under the separation authority provided by chapter 5 of AR 635-120, Personnel Separation Officer Resignations and Discharges (21 July 1988): Conduct Triable by Court Martial.

d. The applicant's misconduct is addressed on page 3 of the ADRB case AS92-00719. They include absence without leave, wrongful possession of heroin and cocaine, and wrongfully and unlawfully making and delivering multiple checks. Much of this misconduct occurred after his court martial conviction was overturned/set aside in December 1987.

e. A discharge summary shows the applicant was admitted for treatment of cocaine abuse from 9-13 June 1988.

f. A second discharge summary shows the applicant was admitted 4-7 July 1988 for inpatient treatment of continuous cocaine abuse.

g. On 6 July 1988, he voluntarily tendered his resignation from the Army for the good of the service under provisions in chapter 5 of AR 635-120

h. On 20 July 1988, the applicant was evaluated by psychiatry. They noted a normal examination, opining he had the mental capacity to understand and participate in the proceedings, was mentally responsible, and met the medical retention requirements of

chapter 3 of AR 40-501, Standards of Medical Fitness. He was cleared for pre-trial confinement.

i. In a 26 September 2023 “To Whom It May Concern” memorandum, a case manager states the applicant had been admitted from 29 August – 18 September 2023 for treatment of addiction. It does not contain any other diagnoses.

j. JLV shows he is not registered with the VA.

k. There is no evidence the applicant had a mental health or other medical condition which would have failed the medical retention standards of chapter 3, AR 40-501. Thus, there is no cause for referral of his case to the Disability Evaluation System.

I. 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 the condition was present while he was on active duty.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant has submitted no medical documentation indicating a diagnosis of PTSD and/or other mental health conditions. Review of the EMR and VA medical records indicates that the applicant has not been diagnosed with either a service connected or nonservice connected BH condition.

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 record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding no evidence the applicant had a mental health or other medical condition which would have failed medical retention standards. Therefore, the Board denied relief for a medical discharge.

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 635-120, (Personnel Separations-Officer Resignations and Discharges) in effect at the time, prescribed procedures whereby an officer on active duty may tender his or her resignation or be discharged and whereby officers on active duty or retired officers may be dropped from the rolls of the Army. Chapter 5 provided for resignation for the good of the service when court-martial charges were preferred against the officer with a view toward trial by general court-martial. A resignation for the good of the service, when approved at Headquarters, Department of the Army, was normally accepted as being UOTHC in which case the officer will be furnished a UOTHC Discharge Certificate.

3. Army Regulation 600-8-24 (Officer Transfers and Discharges), currently in effect, prescribes the officer transfers from active duty to the Reserve component and discharge functions for all officers on active duty for 30 days or more.

a. Paragraph 1-22(a) states an officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearance for reasons that do not involve acts of misconduct, for an officer.

b. Paragraph 1-22(b) states an officer will normally receive an under honorable conditions characterization of service when the officer's military record is satisfactory but not sufficiently meritorious.

4. Army Regulation 635-5 (Separation Documents), states, the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

- Block 24 (Character of Service) characterization or description of service is determined by directives authorizing separation
- Block 25 (Separation Authority) enter the regulatory or other authority cited in the directives authorizing the separation.

- Block 26 (Separation Code) Obtain correct entry from Army Regulation 635–5–1, which provides the corresponding separation program designator code for the regulatory authority and reason for separation.
- Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in Army Regulation 635–5–1.

5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) 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 DFS is assigned when separated under the provisions of Chapter 5, of AR 635-120, conduct triable by court-martial.

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. 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.

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//