

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 August 2024

DOCKET NUMBER: AR20230015107

APPLICANT REQUESTS:

- in effect, reconsideration of his previous request to change the reason for his separation from “Drug Abuse – Rehabilitation Failure” to Disability with entitlement to compensation and/or back pay
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Military Drug Program Historical Timeline Printout
- Behavioral Health Document, 19 January 2022
- Department of Veterans Affairs Psychological Evaluation Report, 28 August 2023

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 AR20150000797 on 28 September 2015.

2. The applicant states he did not do drugs then. The drug tests that were done in Europe were inaccurate. He is asking for 100% compensation and/or pension. He marked the following items on his applicant: PTSD, Other Mental Health, and Reprisal/Whistleblower.

3. The applicant enlisted in the Regular Army on 11 August 1981 for a 3 year period. His DD Form 1966 (Record of Military Processing) shows in Section IV (Enlistment options accepted) that he enlisted for the U.S. Army Combat Arms Unit of Choice Enlistment Option with no indication of eligibility for an enlistment bonus.

a. He completed basic combat and advanced individual training, and he was awarded military occupational specialty (MOS) 11B (Infantryman).

b. Following completion of MOS training, he was assigned to 2nd Battalion, 6th Infantry Regiment, Berlin Brigade, Germany, on or about 18 November 1981. The highest rank/grade he attained was private first class/E-3.

c. The applicants record contains a Disposition Form, dated 18 August 1982, which shows he tested positive for tetrahydrocannabinol (THC) during a urinalysis test conducted on 5 August 1982.

d. As a result of his positive test result, his commander referred him for evaluation in accordance with USAREUR Supplement 1 to Army Regulation (AR) 600-85 (Alcohol and Drug Abuse Prevention and Control Program (ADAPCP)), with an appointment on 7 September 1982. He was recommended for enrollment in the Track I program that was approved by his company commander on 14 September 1982.

e. His record also contains three Disposition Forms dated 30 November 1982, 5 January 1983, and 10 December 1983, respectively, that show he failed three subsequent urinalysis drug tests all determined to have been positive for THC.

f. He underwent a mental status evaluation on 27 January 1983. The Community Mental Health Behavior Provider noted that the applicant was mentally responsible and had the mental capacity to understand and participate in board proceedings. He also met the retention standards of chapter 3, AR 40-501 (Standards of Medical Fitness).

g. His record contains an undated memorandum that shows he was referred to and enrolled in ADAPCP on 25 August 1982. He was enrolled in the program for the use of marijuana/hash (THC). He has since tested positive 3 more times on urinalysis tests.

(1) Rehabilitative efforts included date of detoxification: 25 August 1982, enrolled into Track I and on 26 December 1982, he was enrolled in Track II due to his continued use and desire not to cease the use of drugs.

(2) Rehabilitative efforts also included counseling by ADAPCP staff during the entire Track I program and part of the Track II. The applicant's continued use of drugs has forced the discontinuance of counselling by the BCC (Berlin Community Counseling) personnel. The applicant has been continuously counselled by his chain of command but has failed to take corrective measures to correct his abusing of drugs.

(3) Summary of performance: The applicant's overall performance has been below standards. He does not like authority and continuously combats against it. His attitude and appearance have yet to show any improvement. His behavior has been demoralizing to his platoon and he has only caused discontent. The applicant does not warrant continued service in the U.S. Army.

h. On 28 February 1993, the applicant's immediate commander notified the applicant of his intent to initiate separation action against the applicant under the provisions of chapter 9 of AR 635-200 (Personnel Separation) for the applicant's failure to successfully complete the ADAPCP. The commander stated there is a lack of potential for continued Army service and rehabilitation efforts are no longer practical. The commander further recommended the applicant receive a general discharge and advised the applicant of his rights.

i. On 1 March 1983, the applicant signed his notification letter. He consulted with counsel who advised him of the basis for his contemplated separation and its effect, the rights available to him and the effect of a waiver of his rights. The applicant acknowledged that he understood the action that was being taken against him and elected to request treatment in a Department of Veterans Affairs (VA) Medical Center. He acknowledged he understood that he could expect to encounter substantial prejudice in civilian life if he received a general discharge. He also elected not to submit a statement on his own behalf.

j. The applicant formally initiated separation action against the applicant for drug rehabilitation failure.

k. On 16 March 1983, the separation authority approved the recommendation to discharge the applicant and directed he receive a General Discharge Certificate.

l. The applicant was discharged on 4 April 1983. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, chapter 9, by reason of drug abuse – rehabilitative failure (Separation Code JPC/JKK and Reenlistment Code 3). He completed 1 year, 7 months and 24 days of his 3-year enlistment contract. The DD Form 214 he was issued shows in:

- Item 24, Character of Service, Under Honorable Conditions
- Item 25, Separation Authority, Chapter 9, AR 635-200
- Item 28, Narrative Reason for Separation, Drug Abuse – Rehabilitative Failure

4. There is no indication he applied to the Army Discharge Review Board for an upgrade of his discharge within its 15-year statute of limitations.

5. On 328 September 2015, the Board considered his application in relation to various issues and denied it. The Board stated:

a. The evidence of record shows he was enrolled in the ADAPCP after a positive urinalysis test. He failed three urinalysis tests between October and December 1982. Consequently, he was determined to be a rehabilitation failure and was discharged on 4

April 1983 under the provisions of AR 635-200, chapter 9. All requirements of law and regulation were met, and his rights were fully protected throughout the separation process. The type of discharge directed, and the reasons were appropriate considering all the facts of the case.

b. Once he had been placed in the ADAPCP, he was obligated to meet program requirements. His failure to do so constituted a failure to meet the standards of acceptable conduct and performance of duty for Army personnel, which warranted a general discharge. There is no evidence of mitigating factors that would support changing that decision now.

c. His DD Form 214 accurately reflects the type of separation, character of service, separation authority, and narrative reason for separation applicable to his discharge. He had no lost time.

d. There are no provisions of law for paying a former service member for time he/she would have completed had they not been discharged prior to their expiration of their term of service. Additionally, neither his enlistment contract nor any associated document shows he contracted for a \$10,000.00 bonus and he provided no evidence that confirms he contracted for a bonus.

6. The applicant provides a printout titled Military Drug Program Historical Timeline indicating that several drug tests did not meet forensic standards and that some servicemembers were discharged for use of illegal drugs were offered repatriation. He also provides:

a. Letter, dated 19 January 2022, indicating he is a patient of a [Name] Behavioral Health Center, with a diagnosis of: Moderate episode of Major Depressive Disorder, and Post Traumatic Stress Disorder.

b. VA letter dated 28 August 2023, wherein a Licensed Clinical Psychologist opines that the extreme stress caused by the events the applicant experienced while on active duty service in the United States Army more than likely were a contributing factor in the development of the clinically significant and ongoing symptoms of depression that he currently experiences.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request to change the reason for his separation from "Drug Abuse – Rehabilitation Failure" to Disability. He contends he warrants a medical discharge for mental health conditions including PTSD, which he experienced during his active service. He also asserts his discharge status is mitigatable due to consequences related to experiences

related reprisal/whistleblower. 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: 1) The applicant enlisted in the Regular Army on 11 August 1981; 2) There is evidence the applicant tested positive for THC on 5 August 1982; 3) As a result of his positive test result, his commander referred him for an evaluation at the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP), with an appointment on 7 September 1982. He was recommended for enrollment in the Track I program that was approved by his company commander on 14 September 1982; 4) The applicant's record contains three Disposition Forms dated 30 November 1982, 5 January 1983, and 10 December 1983 that show he failed three subsequent UA drug tests all determined to have been positive for THC; 5) His record contains an undated memorandum that shows he was referred to and enrolled in ADAPCP on 25 August 1982. He was enrolled in the program for the use of marijuana/hash (THC). He has since tested positive 3 more times on UA tests. In addition, his performance has been below standards, and he has not demonstrated any improvement; 6) The applicant was discharged on 4 April 1983, Chapter 9, by reason of drug abuse – rehabilitative failure with a under honorable conditions (general) character of service. He completed 1 year, 7 months and 24 days; 7) The ADRB reviewed and denied the applicant's request for an upgrade in September 2015.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) and hard-copy medical documentation provided by the applicant were also examined.

c. The applicant asserts he that he did not use illegal drugs while on active service, but he was falsely identified as using illegal drugs multiple times, despite being enrolled in ADAPCP, which is a military substance abuse program. There is evidence the applicant tested positive for THC and was enrolled in the military substance abuse program at this command's request. Specifically, the applicant took part in detoxification and enrolled in Track I of the program in August 1982. However, he tested positive again for THC in November 1982. Thus, he was enrolled in Track II in December 1982. The applicant then tested positive again for continued drug use in January 1983. In an undated memorandum, the applicant's history at ADAPCP was reviewed. It was noted the applicant was enrolled in the program, continued to use illegal drugs, and his overall performance fell below standards. He was noted to have a negative attitude towards his treatment and authority, and he did not demonstrate any improvement. The applicant underwent a mental status evaluation on 27 January 1983. He was found to be mentally responsible and had the mental capacity to understand and participate in board proceedings. He was not diagnosed with a mental health condition and also met medical retention standards.

d. A review of JLV provided evidence the applicant has been given assistance by the VA since 2020 for homelessness and medical/behavioral health care. However, the applicant has not been awarded any service-connected disability for a behavioral health condition at this time. He was diagnosed with Major Depressive Disorder in February 2023 by the VA. However, this was related to his current symptoms. The applicant provided hardcopy medical documentation that he was involved in care at [REDACTED] Behavioral Health Center in [REDACTED], dated 19 January 2022. The document state the applicant on 05 August 2022 was currently being treated for a moderate episode of recurrent Major Depressive Disorder and PTSD. There was no information provided on the onset of symptoms or if related to his military service. The applicant also provided a letter, dated 28 August 2023, from a Clinical Psychologist in the Primary Care Mental Health Integration service line in [REDACTED] VA Medical Center. The psychologist reported working with the applicant starting in late March 2023 predominately for symptoms of Depression. The provider stated the applicant reported the onset of his symptoms were related to "severe stress caused by racial discrimination as well as a false positive drug screen."

e. Based on the available information, it is the opinion of the Agency BH Advisor that many years after his discharge in 2022, the applicant was diagnosed with mental health conditions including PTSD. However, there is insufficient evidence the applicant was experiencing a mitigating mental health condition at the time of his active service. The applicant had multiple positive UAs for THC, despite being actively enrolled in substance abuse counseling, but the applicant stated he never used illegal drugs, and he reports his current mental health symptoms are a result of his discharge and reprisal/whistleblowing. During his active service, he was evaluated by multiple behavioral health providers, and he was not identified as experiencing a mental health condition including PTSD, and he was found to meet medical retention standards. Thus, there is sufficient evidence the applicant was appropriately discharged at this time of active service. There is insufficient evidence beyond self-report he was experiencing a mental health condition including PTSD along with reprisal/whistleblowing, during his active service. Lastly, there is insufficient evidence his case warrants a referral to IDES to assess his suitability for a medical discharge at this time.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No. The applicant was diagnosed with mental health conditions including PTSD many years after his discharge. However, there is insufficient evidence the applicant was experiencing a mitigating mental health condition at the time of his active service. The applicant had multiple positive UAs for THC, despite being actively enrolled in substance abuse counseling, but the applicant stated he never used illegal drugs, and he reports his current mental health symptoms are a result of his discharge and

reprisal/whistleblowing. During his active service, he was evaluated by multiple behavioral health providers, and he was not identified as experiencing a mental health condition including PTSD, and he was found to meet medical retention standards. Thus, there is sufficient evidence the applicant was appropriately discharged at this time of active service. There is insufficient evidence beyond self-report he was experiencing a mental health condition including PTSD along with reprisal/whistleblowing, during his active service. Lastly, there is insufficient evidence his case warrants a referral to IDES to assess his suitability for a medical discharge at this time.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the findings and recommendation in the medical review, the Board concluded there was insufficient evidence of an error or injustice which would warrant a change to the applicant's narrative reason for separation.

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.

2/13/2025

X

CHAIRPERSON

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 600-85 (The Army Substance Abuse Program (ASAP)), previously titled ADAPCP, prescribed the policies and procedures needed to implement, operate, and evaluate the ADAPCP.

a. Paragraph 3-4 provided that command identification occurred when a commander observed, suspected, or otherwise became aware of an individual whose job performance, social conduct, interpersonal relations, physical fitness, or health appeared to be adversely affected because of abuse of alcohol or other drugs (apparent or suspected). When abusers or suspected abusers were identified, they were to be interviewed by their unit commander or designated representative. If appropriate, they were to be referred to the ADAPCP for an initial screening interview.

b. Paragraph 3-5 provided that when a service member had a positive urinalysis as a result of drug screen testing, mandatory referral for ADAPCP screening and medical evaluation was required to determine whether the positive urinalysis was the result of administrative error, medically prescribed use of the substance, or actual drug abuse.

2. Army Regulation 635-200 (Personnel Separations) sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. Chapter 9 contains the authority and outlines the procedures for discharging Soldiers because of alcohol or other drug abuse. A member who has been referred to the ADAPCP for alcohol/drug abuse may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there is a lack of potential for continued Army service and rehabilitation efforts are no longer practical. Initiation of separation proceedings is required for Soldiers designated as alcohol/drug rehabilitation failures. The service of Soldiers discharged under this chapter will be characterized as honorable or general under honorable conditions unless the Soldier is in entry-level status and an uncharacterized description of service is required.

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. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

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//