

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 July 2024

DOCKET NUMBER: AR20230015176

APPLICANT REQUESTS: in effect, an upgrade of general, under honorable conditions discharge (GD) to honorable (HD).

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Letter from Ms. C.S., Licensed Professional Counselor (LPC), 10 October 2023
- List of Department of Veterans Affairs (VA) Rated Disabilities

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 in effect, he is requesting an upgrade of his general, under honorable conditions discharge to honorable. The applicant noted his request is related to Operation Just Cause and marked other mental health as a condition related to his request on his DD Form 293.
3. The applicant provides:
 - a. A letter from Ms. C.S., LPC, who confirms the applicant has been undergoing treatment at the McIntosh Trail Community Service Board, an approved community provider for VA since January 2016.
 - b. A list of his VA rated disabilities, showing he has a service-connected disability rating of 100% for depressive disorder with mixed features effective 9 October 2020.
4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 16 March 1989. He served in Panama from 20 December 1989 to 31 January 1990.

b. He accepted nonjudicial punishment on the following dates:

- On 17 May 1990, for one count of failing to go to his prescribed appointed place of duty for correctional training on or about 12 May 1990.
- On 16 July 1990, for one count of failing to obey a lawful order from First Sergeant J.M., to report his identification card as lost to the military police on or about 10 July 1990. His punishment included reduction to private/E-2, suspended for 6 months.

c. The applicant's immediate commander notified him of the intent to separate him under the provisions of AR 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12b for patterns of misconduct. The proposed action was based on the applicant's bar to reenlistment, nonjudicial punishments, and numerous counseling statements. The applicant acknowledged receipt of the notification of separation.

d. On 5 March 1991, after consulting with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he will not be eligible to apply for enlistment in the U.S. Army for a period of two years after discharge
- he elected not to submit matters

e. The immediate commander initiated separation action against the applicant under the provisions of AR 635-200, Chapter 14-12b for patterns of misconduct. He recommended his service be characterized as honorable. On 12 March 1991, the intermediate commander recommended the applicant be separated with a general, under honorable conditions characterization of service.

f. On 12 March 1991, the separation authority directed the applicant be separated under the provisions of AR 635-200, Chapter 14-12b, due to a pattern of misconduct. His service would be characterized as general, under honorable conditions.

g. On 22 March 1991, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 2 years and 7 days of active service with no lost time. He was assigned separation code JKM and the

narrative reason for separation is listed as "Misconduct—Pattern of Misconduct," with reentry codes 3. It also shows he was awarded or authorized the:

- Army Service Ribbon
- Armed Forces Expeditionary Medal (Operation Just Cause)
- Driver and Mechanic Badge, Mechanic
- Army Commendation Medal
- Marksman Marksmanship Qualification Badge with Rifle Bar

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

6. By regulation (AR 635-200), action will be taken to separate a soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory soldier, further effort is unlikely to succeed.

7. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions characterization of service. He contends he experienced Other Mental Health Issues that mitigates his misconduct. 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 16 March 1989, 2) he served in Panama from 20 December 1989 to 31 January 1990, 3) he received nonjudicial punishment on two occasions. On 17 May 1990 for one specification of failing to go to his prescribed appointed place of duty for correctional training on 12 May 1990 and on 16 July 1990 for one specification of failing to obey a lawful order to report his identification card as stolen to military police on or about 10 July 1990, 4) the applicant's commander notified him of his intent to separate him under the provisions of Army Regulation (AR) 635-200, Chapter 14-12b for patterns of misconduct. The proposed action was based on the applicant's bar to reenlistment, nonjudicial punishments, and numerous counseling statements, 5) the applicant was discharged on 22 March 1991. He was awarded several ribbons and medals, most notably the Armed Forces Expeditionary Medal (Operation Just Cause) and Army Commendation Medal.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The

electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. There were no military medical records available for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. Review of JLV shows the applicant is 100% service-connected through the VA for Mood Disorder. The applicant completed three Compensation and Pension (C&P) examinations through the VA dated 21 December 2012, 14 April 2020, and 17 December 2020. At the time of the applicant's first C&P examination in 2012, he was diagnosed with Depression Not Otherwise Specified (NOS) and it was documented that he did not meet criteria for a major depressive episode. At the time of his second C&P examination in April 2020, he was diagnosed with Depressive Disorder due to another medical condition, with mixed features. It was noted that the applicant had depression related to service-connected chronic pain of his foot, knee, back, and shoulder. His third C&P examination completed on 17 December 2020 documented his diagnosis as Unspecified Depressive Disorder with Mixed Features.

d. Regarding VA BH treatment, the applicant was referred for a psychiatry consultation through the VA on 10 February 2009 due to a positive PTSD screen. It does not appear he was evaluated by mental health until 27 May 2011. At the time of the visit, he reported not having many friends, difficulty with sleep due to pain in his elbow, and losing 20lbs in recent months (unspecified as to whether it was intentional). Regarding trauma exposure, the applicant reported to the provider he saw others get injured and shot. He endorsed having problems with his temper at the time of the visit. The applicant was diagnosed with Anxiety Disorder Not Otherwise Specified (NOS). The applicant was evaluated in the emergency room (ER) on 31 January 2012. It was documented that the applicant reported longstanding worsening mood, poor sleep, appetite, decreased concentration, poor energy, increased irritability/mood lability, and nightmares. He was diagnosed with Depression NOS and was discharged from the ER. The applicant engaged with mental health on-and-off since initiating services with the VA, with most of his treatment being referred to the community through the VA. The applicant's last documented encounter occurred on 05 December 2023 with his diagnoses noted as Major Depressive Disorder (MDD), Recurrent, with Psychotic Features and Intermittent Explosive Disorder. His current BH medications listed in JLV include Venlafaxine, Olanzapine, and Divalproex.

e. The applicant provided a letter from his treating provider, an LPC, dated 10 October 2023 from McIntosh Trail Community Service Board (CSB), an approved community provider for the VA. The letter documented that the applicant was being treated for Major Depressive Disorder with Psychotic Features and Posttraumatic Stress Disorder (PTSD).

e. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions characterization of service. He contends he experienced Other Mental Health Issues that mitigates his misconduct. There were not any in-service medical records available for review and therefore no evidence from in-service records that the applicant met criteria for a BH condition or required treatment for BH reasons while in the military. Subsequent to his discharge, the applicant has been 100% service-connected through the VA for Mood Disorder (diagnosed as unspecified depressive disorder with mixed features on his last available C&P examination). The applicant has also been clinically diagnosed with Major Depressive Disorder, Recurrent, with Psychotic Features, Intermittent Explosive Disorder, PTSD, and Anxiety NOS through the VA.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant is 100% service-connected for Mood Disorder through the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant is 100% service-connected through the VA for Mood Disorder. Service connection establishes that the condition existed during service.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes. Although there were not any military medical records available for review, the applicant has been 100% service-connected for Mood Disorder through the VA. Service connection establishes that the condition existed during service. Moreover, review of his military service records demonstrate that the applicant was awarded an Army Commendation Medal for his service while in Panama. The recommendation for award states that due to his capabilities as a mechanic the unit did not miss any of their patrols and that he was operating at a level higher than his rank/grade. After he returned from Panama, the applicant received nonjudicial punishment, numerous counseling statements (i.e., vehicle with expired registration, failure to report, violating an order, misplacing/losing keys, failure to report lost ID card, failure to purchase proper PT uniform, failure to get a new ID card, poor showing during TA-50 layout) and a bar to reenlistment. As such, it is reasonable to conclude that there was a change in the applicant's behavior and performance following his deployment to Panama. Per liberal guidance, a change in behavior is one of the potential indicators that a behavioral health condition may have been present. As lack of motivation, fatigue or loss of energy, and problems with concentration are associated with failure to report, failure to obey a lawful order, and decreased performance, there is a nexus between his depressive symptoms and the circumstances that led to his discharge. As such, BH medical mitigation is supported.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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 was separated for misconduct following a pattern of misconduct consisting of a bar to reenlistment, nonjudicial punishments, and numerous counseling statements. He was separated with a general discharge after completing 2 years and 7 days of active service. The Board found no error or injustice in his 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 finding it is reasonable to conclude that there was a change in the applicant's behavior and performance following his deployment to Panama. As lack of motivation, fatigue or loss of energy, and problems with concentration are associated with failure to report, failure to obey a lawful order, and decreased performance, there is a nexus between his depressive symptoms and the circumstances that led to his discharge, the Board agreed that a behavioral health condition mitigation is supported. Therefore, the Board determined an honorable characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board further determined that such upgrade did not change the underlying reason for his separation and thus the narrative reason for separation and corresponding codes should not change.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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| ■ | ■ | ■ | GRANT FULL RELIEF |
| : | : | : | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| : | : | : | DENY APPLICATION |

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant a DD Form 214 for the period ending 22 March 1991 as follows:

- Character of Service: Honorable
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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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) sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. 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.

c. Chapter 14 establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave. Action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as satisfactory Soldier, further effort is unlikely to succeed.

d. Soldiers are subject to separation for a pattern of misconduct consisting of—

(1) Discreditable involvement with civil or military authorities.

(2) Conduct prejudicial to good order and discipline. Discreditable conduct and conduct prejudicial to good order and discipline includes conduct violative of the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

3. 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.

4. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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.

5. 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//