

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 September 2024

DOCKET NUMBER: AR20240000152

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) characterization of service.

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

- DD Form 149 (Application for Correction of Military Record)
- Mental Health Intake Assessment (15 pages) and Diagnostic Review Form (3 pages), 7 November 2017
- Mental Health Evaluation and management assessment (28 pages), 12 March 2018 and 30 April 2018
- Medication History (3 pages), 10 November 2017 to 30 April 2018

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 diagnosed with bipolar disorder and believes his mental illness led to his terrible decision-making and caused him to make poor choices, which he truly regrets. He wants the military and the Board to know about his mental health issues and asks for relief. On his DD Form 149, the applicant indicates disability is related to his request; however, he provides no further details on this issue. The applicant notes other mental health issues as conditions related to his request.
3. The applicant enlisted in the Regular Army on 28 April 1999, for 4 years. The highest rank/grade he held was specialist/E-4
4. Permanent Order Number 136-09, issued by the 19th Maintenance Battalion, Fort Sill, OK, on 16 May 2001, shows the applicant was awarded the Army Achievement Medal for meritorious service from 21 February 2001 to 5 April 2001.

5. Three DA Forms 4187 (Personnel Action) show, effective 3 January 2002, the applicant's unit reported him absent without leave (AWOL), and on 2 February 2002 he was dropped from the rolls. His duty status changed to return to military control when he surrendered to military authorities on 18 February 2003.

6. On 20 February 2003, court-martial charges were preferred against the applicant. The DD Form 458 (Charge Sheet) shows he was charged with one specification of being AWOL from on or about 3 January 2002 and did remain so absent until on or about 18 February 2003.

7. On the same date, the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the Uniform Code of Military Justice (UCMJ); the possible effects of a UOTHC discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, discharge in lieu of trial by court-martial. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

b. He elected not to submit a statement in his own behalf and stated he did not desire a physical evaluation prior to separation.

8. The applicant's immediate commander recommended approval of the applicant's request for discharge and the issuance of an UOTHC discharge.

9. On 28 April 2003, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial. He directed the issuance of an UOTHC discharge and reduction to private/E-1.

10. The applicant was discharged on 20 May 2003, in the grade of E-1, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. His service was characterized as UOTHC, with separation code "KFS" and reentry code "4." He was credited with 2 years, 11 months, and 2 days of active service. He had lost time from 3 January 2002 thru 17 February 2003.

11. The applicant provides various mental health records, which are available in their entirety for the Board's review within the supporting documents, showing he was seen at Tri-County Behavioral Health Clinic for initial psychiatric evaluation and continued mental health and medication management from 7 November 2017 to 30 April 2018. These records show the applicant had a prior history of suicidal ideations and complained of anxiety, depression, and trauma and was diagnosed with bipolar I MRE (Most Recent Episode) mixed, moderate, and post-traumatic stress disorder. He was prescribed the following medication during this treatment period:

- Neurontin
- Seroquel
- Abilify
- Lithium
- Wellbutrin SR

12. The applicant petitioned the Army Discharge Review Board for upgrade of his service characterization. On 27 February 2008, the applicant was notified that after careful consideration the Board determined he was properly and equitably discharged.

13. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

14. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

15. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. He contends he experienced Bipolar Disorder that mitigates his misconduct. More specifically, the applicant asserts that his mental illness led poor decision-making in-service. On his DD Form 149 the applicant also marked the category of correction as 'disability.' 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 28 April 1999, 2) he was awarded the Army Achievement Medal for his service during a change of command inventory from 21 February 2001 to 05 April 2001, 3) on 20 February 2003, court-martial charges were preferred against the applicant due to being absent without leave (AWOL) from on or about 03 January 2002 through 18 February 2003, 4) the applicant was discharged on 20 May 2003 under the

provisions of Army Regulation (AR) 635-20, Chapter 10, in lieu of trial by court-martial, with a separation code of KFS and reentry code of '4,' 5) the Army Discharge Review Board (ARDB) declined the applicant's previous request for upgrade of his service characterization on 27 February 2008.

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. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. Some of the applicant's in-service medical records were available for review in JLV. His Report of Medical Examination for the purposes of enlistment dated 26 March 1999 documented no BH-related concerns and item number 42, psychiatric, was documented as 'normal' on clinical evaluation. The applicant was evaluated on 22 October 2001 due to reporting getting hit in the back of the head at the bar on 20 October 2001 with a loss of consciousness for approximately 10-15 minutes. It was documented that he was evaluated by EMT's at the time of the incident and was advised to get a medical evaluation, but he refused at the time. At the time of his visit on 22 October 2001, he was reporting dizziness, headaches, ringing in his ears (another symptom was illegible) and was referred for a CT scan which was negative. The documentation showed that neurological was documented as intact and visual acuity was 20/20. The instructions to the applicant appear to be rest for 48 hours and to follow-up at sick call in two days. There were no additional follow-up visits regarding this incident available for review. The records are void of any BH diagnosis or treatment history.

d. A review of JLV was void of VA medical records and he is not service-connected through the VA for any BH conditions. Of note, his UOTHC renders him ineligible for VA services.

e. The applicant provided civilian BH records from Tri-County MHMR Services dated 07 November 2017, 12 March 2018, and 30 April 2018, to include a medication list. He presented to the clinic as a walk-in on 07 November 2017 requesting medication and counseling due to anger and depressed mood. His current symptoms were documented as lack of patience, feeling like he wants to lash out at others, anxiety, depressed, problems with sleep, problems going to work, impulsivity (e.g., spending money), isolates from others, lack of energy, low self-esteem, racing thoughts, and problems with concentration. The provider also documented reported symptoms consistent with mania to include extreme feelings (e.g., like he wants to run a marathon), pressured speech, decreased need for sleep, impulsivity, distractibility, and racing thoughts. He also endorsed experiencing suicidal ideation about 2-3 times per week. During the visit the applicant reported having a trauma history, noted as possibly 'daddy issues or seeing death' though he did not want to elaborate on his experiences. It was

documented that the applicant had experienced problems with avoidance, re-experiencing, and emotional detachment that that he had experienced symptoms related to PTSD since 2004. The applicant reported a history of one psychiatric hospitalization in 2006 due to suicidal ideation. The applicant reported he was previously diagnosed with Bipolar Disorder (date not documented) and that he had been prescribed Paxil (antidepressant), Abilify (antipsychotic), and Depakote (mood stabilizer), which he did not think were effective. At the time of the evaluation the applicant endorsed consuming alcohol to self-medicate, drinking approximately a 6 pack or pint every day for the past month. He denied any history of illicit drug use. Regarding stressors, it was documented that the applicant was laid off from his job one year prior to the appointment and was a single parent to his 4-year-old son. The provider diagnosed the applicant with Bipolar Disorder, most recent episode depressed, Moderate and Posttraumatic Stress Disorder (PTSD). At the time of his follow-up appointment on 12 March 2018, it was documented that the applicant reported he started having mental health problems in his 20s and was told that he was 'Bipolar.' He reported that he had sporadic BH treatment since that time. The applicant also reported that he was previously employed as a police officer and experienced trauma in the past which was specified in the record. He was started on Abilify for mood stabilization and paranoid ideation as well as Lithium for mood stabilization. On 30 April 2018, it was documented that the applicant reported improvement in his symptoms, except for concentration, and wanted to continue Abilify and discontinue Lithium. The provider discontinued Lithium, his Abilify was increased, and he was started on Wellbutrin to help with concentration. His medication list shows that he was also previously prescribed Seroquel (antipsychotic) and Neurontin (indication unknown).

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient information that the applicant had a condition or experience in-service that mitigated his misconduct. The applicant's available in-service records are void of any BH diagnosis or treatment history. The records indicate he was evaluated following a head injury in October 2001 though do not indicate he was diagnosed with a condition following that event nor that he had any continuing sequelae. The applicant provided civilian BH records from 2017 and 2018 indicating he has been diagnosed with Bipolar Disorder and PTSD since being discharged from the military. However, the available documentation does not indicate the date onset of his Bipolar Disorder nor was it associated with his service. Regarding PTSD, it was documented that the applicant endorsed symptoms consistent with PTSD since 2004, the year following his discharge. Despite the applicant being diagnosed with two potentially mitigating BH conditions post-service, Bipolar Disorder and PTSD, there is insufficient information available that these conditions existed in-service.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he experienced Bipolar Disorder.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unclear. The applicant's military treatment records were void of any BH diagnosis or treatment history. The applicant does not have any VA records available for review though it is noted that he is ineligible for VA services due to his UOTHC characterization of service. Post-discharge, the applicant has been diagnosed and treated for Bipolar Disorder and PTSD through a non-VA civilian provider noting that he reported he started having symptoms in his 20s; however, the available documentation does not specify the date(s) of onset of these conditions nor associate these conditions with his service and there is insufficient evidence that the applicant exhibited symptoms consistent with these conditions in-service. As such, while there is evidence that the applicant has two potentially mitigating conditions that might otherwise provide the basis for BH mitigation for his misconduct, there is insufficient information available indicating that these conditions existed in-service. As such, BH mitigation is unclear.

h. Regarding disability, there is no indication that the applicant had a BH condition that fell below retention standards IAW AR 40-501 and therefore a referral to IDES is not warranted.

#### 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 was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he 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 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 insufficient evidence to support that 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 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 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. Title 10, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the primary authority for separating enlisted personnel.

a. Chapter 10 states in part, a member who has committed an offense or offenses, the punishment for any of which, under the UCMJ and the Manual for Court-Martial, include bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. In addition, the request for discharge may be submitted at any stage in the processing of the charges until the court-martial convening authority's final action on the case. Commanders will also ensure that a member will not be coerced into submitting a request for discharge in lieu of trial by court-martial. The member will be given a reasonable time (not less than 72 hours) to consult with a consulting counsel and to consider the wisdom of submitting such a request for discharge.

b. 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.

c. 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.

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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; 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 to those conditions or experiences.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 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.

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.

//NOTHING FOLLOWS//