

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 September 2024

DOCKET NUMBER: AR20240000282

APPLICANT REQUESTS:

- reconsideration of his prior request for an upgrade of his under honorable conditions (General) discharge
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Department of Veterans Affairs (VA) Benefits Statement

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous considerations of the applicant's cases by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers AR20140014326 on 31 March 2015 and AR20190012882 on 13 March 2020.

2. The applicant states he is 100% disabled from the injuries he sustained during his service. He believes instead of being classified directly for his injuries, the unit frowned upon the applicant getting medical treatment and continuously punished him for seeking treatment.

a. He sustained an injury but chose not to report it immediately due to homesickness, waiting instead until he arrived at his permanent duty station at Fort Bragg in January 1987. Upon reporting the injury, he was informed that he needed two surgeries, which were performed in March 1987. Although the doctor granted him 30 days of convalescent leave, his first sergeant reduced it to 20 days. When he returned, he still had complications, including a burst incision, which led to additional leave that further angered his superiors. Over the next few months, he endured constant harassment and ridicule from leadership, including being falsely accused of minor infractions, such as not making his bed correctly or not shining his boots, which were

used as grounds to push for his discharge. Despite knowing that he was being targeted, he received no support from his chain of command.

b. The harassment escalated when he was unfairly singled out for missing a formation while attending a Levy Briefing, despite many other soldiers also missing it. Although he provided a signed statement from the briefing officer as proof, his leadership dismissed it and issued him an Article 15, further intensifying the mental toll. The daily mistreatment and unjust actions led to severe mental strain, to the point where he contemplated harming others. In an attempt to prove his ability to perform his duties, he injured himself again in November 1987 but, overwhelmed by the attacks, chose to wait until he was discharged to seek medical attention.

c. Following his discharge, he returned to college and earned a degree in Mathematical Statistics but was unable to use the GI Bill, despite having fully paid into it. Twenty years later, he learned that he had been misinformed and that he could have used the benefits for his education. This misinformation only compounded his mental anguish. After years of fighting, he finally secured 100% disability compensation in 2015, but the process of obtaining VA benefits was long and grueling. Despite this, he continued to face barriers, particularly in accessing educational benefits, which he recently discovered required an honorable discharge. After all these years of mental and physical suffering, he is now seeking a discharge upgrade to bring these long-standing injustices to an end and to finally achieve the peace he deserves.

3. The applicant provides a VA summary of benefits which indicates he receives service-connected disability with a combined service-connected evaluation of 100% effective 26 October 2023.

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

a. He enlisted in the Regular Army on 23 September 1986.

b. A DA Form 2627-1 (Summarized Record of Proceedings Under Article 15, UCMJ) shows he accepted nonjudicial punishment on 4 June 1987 for one specification for failure to obey a lawful order from his superior noncommissioned officer on or about 28 May 1987.

c. On 14 October 1987, the applicant's immediate commander notified the applicant of the proposed action to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 14, paragraph 14-12b, for a pattern of misconduct consisting of failing to be at his appointed place of duty, dereliction of duty, poor performance, insubordination, failure to obey orders, and numerous negative counseling statements.

d. On 14 October 1987, the applicant acknowledged receipt of the proposed separation. He stated:

- he desired to consult with counsel
- he did wish to submit statements in his own behalf (his records do not contain any statement he may have provided)

e. On 29 October 1987, after consulting with legal counsel, he acknowledged:

- he 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 conditionse was issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he will be ineligible to apply for enlistment for a period of 2 years after discharge.

f. On 14 October 1987, 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 that his period of service be characterized as general, under honorable conditions. The intermediate commanders recommended approval.

g. Consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for separation under the provisions of AR 635-200, Chapter 14, paragraph 14-12b for a pattern of misconduct. He would be issued a general, under honorable conditions discharge.

h. On 3 December 1987, he was discharged from active duty with an under honorable conditions (General) characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 2 months, and 11 days of active service. He was assigned separation code JKM and the narrative reason for separation listed as "Misconduct - Pattern of Misconduct," with a reentry code of 3. It also shows she was awarded or authorized:

- Army Service Ribbon
- Sharpshooter Marksmanship Qualification Badge with M16 Rifle Bar
- Expert Marksmanship Qualification Badge with Hand Grenade 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. On 31 March 2015, the ABCMR rendered a decision in Docket Number AR20140014326. The Board found all requirements of law and regulation were met and the rights of the applicant were fully protected throughout the separation process. Based upon his personal conduct, his service did not meet the standards of acceptable conduct and performance of duty for Army personnel. Accordingly, there was no basis upon which to grant the applicant an honorable discharge.

7. On 13 March 2020, the ABCMR rendered a decision in Docket Number AR20190012882. The Board found insufficient evidence of in-service mitigation to overcome the applicant's misconduct. The Board considered the document with a VA Claim number but found insufficient evidence showing a condition that failed to meet medical retention standards. The applicant provided no evidence of post-service achievements or letters of reference 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.

8. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

9. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as a pattern of 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.

10. 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.

11. 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 requesting a discharge upgrade, and, in essence, a referral to the Disability Evaluation System. He has indicated on his DD 149

that PTSD, Other Mental Health Conditions, and Reprisal / Whistleblower status are issues related to his requests. states:

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 under consideration shows he entered the regular Army on 23 September 1986 and received an under honorable conditions (general) discharge on 4 December 1987 under the separation authority provided by paragraph 14-12b of AR 635-200, Personnel Management – Enlisted Personnel (15 July 1985): A Pattern of Misconduct. It shows no periods of service in an imminent danger pay area.

d. No medical medical documentation was submitted with the application and there are no encounters in the EMR.

e. On 14 October 1987, his company commander informed the applicant of the initiation of action to separate him from the United States Army under 14-12b of AR 635-200:

“This is based upon the following: FTR [failure to repair], dereliction of duty, poor performance, insubordination, failure to obey orders, numerous negative counseling statements.

f. The initiated action was approved by the Commander of the XVIII Airborne Corps Artillery with the directive he receives a general discharge certificate.

g. There is no evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

h. JLV shows he has been awarded multiple VA service-connected disability ratings. None of these are related to mental health. He does have non-service-connected major depressive disorder.

i. The DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential

complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

j. It is the opinion of the ARBA Medical Advisor that neither a discharge upgrade nor a referral of his case to the DES is warranted.

k. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: Major depressive disorder

(2) Did the condition exist or experience occur during military service? NO: The condition has not been connected to his military service.

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

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for misconduct with the commander citing dereliction of duty, poor performance, insubordination, and failure to report. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board reviewed and concurred with the medical advisor's review finding no evidence the applicant had any duty incurred medical condition that would have failed medical retention standards while on active duty. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. 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 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 amendment of the ABCMR decision rendered in Docket Numbers AR20140014326 on 31 March 2015 and AR20190012882 on 13 March 2020.

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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. Army Regulation 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.

b. 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.

2. Army Regulation 635-5 (Separation Documents), in effect at the time, 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.

3. 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. 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. 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 14 of the regulation states action will be taken to separate a Soldier for misconduct, such as a pattern of 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.

d. Paragraph 10–6. Medical and mental examination provides that a medical examination is not required but may be requested by the Soldier under AR 40–501, chapter 8.

4. 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.

5. 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.

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.

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.

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//