

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 December 2024

DOCKET NUMBER: AR20240000409

APPLICANT REQUESTS: an upgrade to his character of service from under honorable conditions (General).

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)
- Self-authored letter
- High school diploma, June 2017
- DD Form 4 (Enlistment/Reenlistment Document)
- Orders 7268023, 30 August 2017
- Orders 322-533, 18 November 2017
- Orders 346-380, 12 December 2017
- Orders 18043-57, 12 February 2018
- Army Substance Abuse Program (ASAP) certificate, 15 November 2018
- Separation packet with attachments
- Three DA Forms 4856 (Developmental Counseling Form)
- DA Form 3822 (Report of Mental Status Evaluation)
- DA Form 268 (Report to Suspend Favorable Personnel Actions (FLAG))
- Medical Records
- Enlisted Record Brief (ERB)
- Orders 112-0005, 22 April 2019
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Two character references

FACTS:

1. The applicant states he is requesting an upgrade to his character of service from general to honorable, so he can reenlist in the Army. He began to use alcohol as a coping method to deal with his mother's health condition. He received counseling and was even enrolled in the U. S. Army Prime for life program, which he successfully completed. However, upon further news of his mother's declining health, he began to drink again and once he was notified that he could be separated if he failed the ASAP,

he decided to inform his ASAP counselor, that he continued the use of alcohol so he may be separated under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 9, Alcohol or Other Drug Abuse Rehabilitation Failure. He is now hoping to continue his military service, by joining the Washington Army National Guard (WAARNG), so he can retire after 20 years of service. His mother is well, and her health has now improved. The applicant's statement is available in its entirety for the Board's review.

2. The applicant provides:

a. A certificate issued by ASAP, 15 November 2018, which shows he completed the program.

b. Medical records that will be reviewed and discussed by the Behavioral Staff at the Army Review Boards Agency (ARBA).

c. Two character references, that are available in their entirety for the Board's review, reflect the following:

(1) On 5 January 2020, Sergeant (SGT) M. T., states, in effect, the applicant is an outstanding person, Soldier, and mentee. He was dependable, inspirational, took initiative, did not settle for "good enough" and always volunteered to work extra hours. Any organization would be lucky to have him.

(2) On 14 February 2020, Specialist (SPC) A. S., states, in effect, the applicant was one of the best Soldiers he ever worked with. He recommends him on personal and professional level to any organization. He did not require supervision and was never afraid to ask for help. Even during the challenging times of work and his personal life, he maintained a positive attitude, and did not allow it to hinder his performance. He always sought out opportunities to better himself.

3. The applicant's service record reflects the following:

a. He enlisted in the Regular Army on 25 September 2017.

b. DA Form 3822-R, 7 February 2019, shows he underwent a mental status evaluation, as part of his separation under the provisions of Army Regulation 635-200, Chapter 9. He presented a behavioral health disorder, which resulted in duty limitations that may impact deployability. He could understand and participate in the administrative proceedings, as he could distinguish right from wrong. His chain of command was to ensure he attended all follow-up appointments and prohibit his use of alcohol as it will interfere with medications, decrease rational judgement, and increase chances for

impulsive acts. The provider recommended an administrative separation due to the applicant's failure to successfully complete his mandatory program.

c. On 9 April 2019, his commanding officer initiated separation under the provisions of Army Regulation 635–200, Chapter 9, with an honorable discharge for his inability or refusal to participate in, cooperate in, or successfully complete his mandatory substance abuse treatment. He was advised by consulting counsel on 10 April 2019, for his separation action, its effects of the rights available to him, and the effect of any action taken by him in waiving his rights. He further acknowledged:

- he could consult with consulting counsel as his military counsel and/or civilian counsel at no expense to the government, he waived that right
- the possible effects of a general discharge
- he was advised he could submit any statements he desired in his own behalf, he elected not to do so
- he could be ineligible for many, or all benefits administered by the VA
- he could be deprived of many, or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he could expect to encounter substantial prejudice in civilian life by reason of a general under honorable conditions discharge

d. On 10 April 2019, his commanding officer recommended the applicant be discharged prior to his expiration of his term of service (ETS) from the U.S. Army under the provisions of Army Regulation 635–200, Chapter 9.

e. On 12 April 2019, the battalion commander recommended that the applicant be discharged prior to his ETS, under the provisions of Army Regulation 635–200, Chapter 9, for Alcohol or Other Drug Abuse Rehabilitation Failure, with a general discharge.

f. On 16 April 2019, the separation authority approved the applicant's discharge prior to his ETS and directed the issuance of a general discharge.

g. His DD Form 214 shows he was discharged on 7 May 2019 pursuant to Army Regulation 635-200, Chapter 9 with a general characterization of service. He completed 1 year, 7 months, and 13 days of active service. He was awarded or authorized the Army Service Ribbon. His grade/rank at the time of discharge was private (PV2)/E-2. His DD Form 214 also shows in:

- item 26 (Separation Code): JPD
- item 27 (Reentry Code): 4
- item 28 (Narrative Reason for Separation): Alcohol Rehabilitation Failure

4. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under honorable conditions (general) to honorable so he can reenlist in the Army. He contends he experienced a mental health condition that mitigates his misconduct.

b. 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:

- The applicant enlisted into the Regular Army on 25 September 2017.
- On 9 April 2019, his commanding officer initiated separation under the provisions of Army Regulation 635–200, Chapter 9, with an honorable discharge for his inability or refusal to participate in, cooperate in, or successfully complete his mandatory substance abuse treatment, but his battalion commander recommended a general discharge.
- The applicant was discharged on 7 May 2019 and completed 1 year, 7 months, and 13 days of active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts his mental health had been compromised, and he was depressed because of his mother's health condition. He resorted to using alcohol as a coping mechanism, and he ultimately chose to report drinking as a way of failing the Army Substance Abuse Program (ASAP) in order to get out of the military. Developmental counseling forms showed counselings for underaged drinking, smoking illegal substance (marijuana), and admitting to using alcohol while enrolled in ASAP. A Report of Mental Status Evaluation dated 7 February 2019 showed a diagnosis of Unspecified Alcohol-Related Disorder and Unspecified Cannabis-Related Disorder, and administrative separation was recommended based on his refusal to participate in the ASAP and his personal beliefs about alcohol conflicting with the Army. A Report of Medical Examination dated 25 March 2019 did not indicate any mental health symptoms or diagnoses and noted the applicant was considered qualified for service. A Report of Medical History on 25 March 2019 showed that the applicant endorsed nervous trouble and depression or excessive worry, and he elaborated that he felt like bad things were always going to happen or were constantly turning for the worse and his current family problems at home resulted in constant worry and feeling like everyone is against him. The examiner noted he had been seen by behavioral health for his concerns. There was insufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed the applicant was command referred for a substance abuse evaluation on 23 August 2018 for underaged drinking, and he

reported the incident was related to consuming “a couple of beers” at a barracks cookout where another soldier was drunk, resulting in an investigation. He denied significant alcohol use, but he reported a history of using alcohol dating back to age 15. He completed two follow up sessions but was referred again in November 2019 due to self-reported marijuana use following a drug test. He was diagnosed with Unspecified Alcohol-Related Disorder and Unspecified Cannabis-Related Disorder, and at follow up he discussed smoking marijuana due to being stressed over his family’s health issues. He reported adjustment difficulty with being in the Army and feeling like he was treated as an example to others in his unit, and he reported he had been told he would be discharged if his drug test came back positive. He engaged in group counseling related to substance abuse and individual counseling for his stressors. Documentation on 17 January 2019 showed that the applicant reported he actually had not tested positive and was not being chaptered out of the Army, which he was ambivalent about because of his worries about his family. Subsequent sessions showed that the applicant’s Hispanic cultural background and his personal beliefs related to alcohol use, coupled with his worries about his mother’s health, resulted in him reporting continued alcohol use and being considered a rehabilitation failure with recommendation for a Chapter 9 separation. Documentation from 26 March 2019 noted the mental status evaluation for separation, and the applicant indicated he was looking forward to getting out of the Army, being closer to family, and starting school in the fall.

e. The applicant engaged mental health treatment through the VA on 30 May 2024 when his primary care provider started him on an antidepressant medication after his report of long-standing feelings of depression. A Care Management note dated 7 August 2024 showed that there had been an increase in dosage of the medication, but there was no additional follow up with mental health.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition at the time of the misconduct. The applicant engaged in treatment for an Unspecified Alcohol-Related Disorder and an Unspecified Cannabis-Related Disorder from August 2018 until February 2019, and he reported stress related to his military service and separation from family during their health problems. He has also sought mental health services through the VA in 2024 for depression symptoms.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed that the applicant was command referred to ASAP following an underaged drinking incident, and while engaged in the program, he reported marijuana use. There is documentation of his concern about his family and his mother's health problems, and the applicant deliberately continued to report alcohol use in order to get discharged from the Army. While alcohol use can be a coping mechanism for stressful events, there is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service.

h. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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 Department of Defense guidance for liberal consideration of discharge upgrade requests. The applicant was enrolled in the Army Substance Abuse Program and failed to meet appropriate standards. His commander declared him an alcohol rehabilitation failure and he was discharged from active duty due to alcohol rehabilitation failure with an under honorable conditions (General) discharge. The Board found no error or injustice in his separation processing. The Board noted the applicant's contention of a mental health condition; however, the Board reviewed and concurred with the medical advisor's review finding insufficient evidence to support the applicant had a condition or experience that would mitigate his misconduct. Based on a preponderance of evidence, the Board determined that the characterization 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. Army Regulation 15-185 (Army Board for Correction of Military Records), currently in effect, 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

2. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), 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. Readiness is promoted by maintaining high standards of conduct and performance.

a. Honorable discharge. 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. Only the honorable characterization may be awarded a Soldier upon completion of his/her period of enlistment or period for which called or ordered to Active Duty (AD) or Active Duty Training (ADT) or where required under specific reasons for separation unless an entry-level status separation (uncharacterized) is warranted. When a Soldier is discharged before ETS for a reason for which an honorable discharge is discretionary, the following considerations apply:

(1) Where there have been infractions of discipline, the extent thereof should be considered, as well as the seriousness of the offense(s).

(2) A Soldier will not necessarily be denied an honorable discharge solely by reason of the number of convictions by court-martial or actions under the Uniform Code of Military Justice (UCMJ), Article 15 (Non-judicial punishment). Conviction by a general court-martial or by more than one special court-martial does not automatically rule out the possibility of awarding an honorable discharge.

(3) An honorable discharge may be furnished when disqualifying entries in the Soldier's military record are outweighed by subsequent honest and faithful service over a greater period of time during the current term of service. It is a pattern of behavior and not the isolated incident that should be considered the governing factor in determination of character of service.

b. General discharge. 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to AD.

c. Chapter 9, Alcohol or Other Drug Abuse Rehabilitation Failure, provides the authority and outlines the procedures for discharging Soldiers for alcohol or other drug abuse rehabilitation failure. Discharge is based upon alcohol or other drug abuse such as illegal, wrongful, or improper use of any controlled substance, alcohol, or other drug when:

(1) The Soldier is enrolled in Alcohol and Drug Abuse Prevention and Control Program (ADAPCP).

(2) The commander determines that further rehabilitation efforts are not practical, rendering the Soldier a rehabilitation failure. This determination will be made in consultation with the rehabilitation team.

(3) When not precluded by the limited use policy, offenses involving alcohol or drugs may properly be the basis for discharge proceedings under chapter 14. However, the limited use policy is applicable. Soldiers processed for separation under other provisions of this regulation who also are, or become, subject to separation under this chapter and whose proceedings on other grounds ultimately result in their retention in the Service, will be considered for separation under this chapter.

(4) When the commander determines that a Soldier who has never been enrolled in ADAPCP lacks the potential for further useful service, the Soldier will be screened per AR 600–85. If found non-dependent, the Soldier will not be rehabilitated but will be considered for separation under other appropriate provisions of this regulation.

3. Army Regulation 635-8 (Separation Processing and Documents), The DD Form 214 (Certificate of Release or Discharge from Active Duty) is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clearcut record of all current active, prior active, and prior inactive duty service at the time of release from active duty (REFRAD), retirement, or discharge. The DD Form 214 is not intended to have any legal effect on termination of a Soldier's service.

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 (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 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. 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. Title 10 (Armed Forces), U.S. Code, section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//