

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 September 2024

DOCKET NUMBER: AR20240000572

APPLICANT REQUESTS: upgrade of his under honorable conditions (general) characterization of service to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 16 September 1987
- DD Form 215 (Correction to DD Form 214), 27 October 1987
- Department of Veterans Affairs (VA) rating decision letter, 3 October 2023
- VA summary of benefits letter, 5 October 2023
- letter of support, undated

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 suffering from an undiagnosed mental/psychological disorder, which contributed to his separation from the Army. He has been diagnosed with depression and anxiety, which were caused by events that led him to be disconnected mentally and emotionally during his military service. He asks the Board to grant him relief so he may receive the benefits and assistance he needs.
3. The applicant enlisted in the Regular Army on 2 January 1985, for 3 years. The highest rank/grade he held was private first class/E-3.
4. Two DA Forms 4187 (Personnel Action) show, effective 25 September 1986, the applicant's unit reported him absent without leave (AWOL). His duty status changed to present for duty when he surrendered to military authorities on 1 October 1986. His punishment included a nonpunitive letter of reprimand.

5. The applicant received general counseling on four occasions from 27 February 1987 to 12 May 1987 for:

- talking in formation while marching
- twice failing to be at his appointed place of duty
- disrespect toward and disobeying a lawful order from a noncommissioned officer

6. On 14 July 1987, he accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), for wrongfully using marijuana between 20 April 1987 to 20 May 1987 and for being AWOL between 24 June 1987 to 8 July 1987. His punishment included reduction to private/E-1, forfeiture of \$333.00 pay per month for two months, 45 days restriction and 45 days extra duty.

7. On 20 July 1987, the applicant underwent a complete mental status evaluation and medical examination as part of his consideration for discharge due to his misconduct. He was mentally responsible and had the mental capacity to understand and participate in the proceedings.

8. On 25 July 1987, he accepted NJP under the provisions of Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty and for using disrespect language toward a noncommissioned on or about 10 July 1987. His punishment included forfeiture of \$155.00 pay per month for one month (suspended for 3 months and to be automatically remitted if not vacated before 25 October 1987), 14 days restriction and 14 days extra duty.

9. On 20 August 1987, the applicant's commander notified the applicant of his intent to initiate action to separate him from service under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 13, for unsatisfactory performance.

10. On 21 August 1987, the applicant acknowledged receipt of his commander's notification. He consulted with counsel and was advised of the reason for separation and the rights available to him. He understood if he was issued a general discharge, he may encounter substantial prejudice in civilian life.

a. He elected to submit a statement in his own behalf.

b. In his statement, he told his commander that he had experienced many family difficulties and was overwhelmed by them. Although he violated some rules, he felt he learned from his mistakes and paid his dues when punished for his mistakes. He did everything he thought he could do and felt he had contributed 100 percent to his effort to being in the Army. He believed he served his country honorably while serving a hardship tour of duty in Korea. He still needed to care for his family and felt he could not

find an excellent job in the civilian world if he received an under honorable conditions (general) discharge.

11. On an undisclosed date, the applicant's immediate commander formally recommended the applicant's separation from service with a General Discharge Certificate, under the provisions of Army Regulation 635-200, Chapter 13.

12. On 26 August 1987, the separation authority approved the recommended discharge and directed the issuance of a General Discharge Certificate.

13. The applicant was discharged on 16 September 1987, in the grade of E-1, under the provisions of Army Regulation 635-200, Chapter 13, for unsatisfactory performance. His service was characterized as under honorable conditions (General), with separation code "LHJ" and reenlistment code "RE-3, 3B and 3C." He was credited with 2 years, 8 months, and 8 days of active service and 11 months and 14 days of foreign service. His DD Form 214 contains the following entries in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized):
 - Army Achievement Medal (2nd Award)
 - Army Service Ribbon
 - Overseas Service Bar
 - Marksman Marksmanship Qualification badge with Rifle Bar (M-16)
 - Expert Marksmanship Qualification Badge with Grenade Bar
- Item 29 (Dates of Time Lost During This Period): 25 September 1986 thru 1 October 1986 and 24 June 1987 thru 8 July 1987

14. On 27 October 1987 and 20 January 1988, the applicant was issued a DD Form 215 correcting item 23 (Type of Separation) and item 26 (Separation Code):

- deleting "Relief from Active Duty" and "LHJ"
- adding "Discharge" and "JHJ"

15. The applicant provides the following documents, which are available in their entirety for the Board's review within the supporting documents:

a. A VA rating decision letter and summary of benefits letter, showing the VA three times granted the applicant an increased service-connected disability rating for major depressive disorder (previously rated as depressive disorder) from 0 percent (%) to 10% effective 27 January 2021, from 10% to 60% effective 27 August 2021, and from

60% to 100% effective 20 March 2023. The VA decision to increase the applicant's rating to 50% was based on:

b. A letter of support from his ex-wife stating:

1) She was married to the applicant for 35 years and has seen his mental, emotional, and overall health decline. Before he enlisted, he was always upbeat, funny, hard-working, clean, and sober. However, things changed on or around August or September 1985, when the applicant informed her that he was verbally and physically sexually harassed and assaulted by one of his sergeants. After this incident, the applicant's desire to serve his country and his behavior changed. He became distant and showed what she believed to be signs of depression and anxiety by becoming more withdrawn, heavily drinking alcohol, chain-smoking cigarettes, talking in his sleep, having sleepless and restless nights, having nightmares, and being late to roll calls.

2) Although she spoke to the applicant about getting help, she could tell it was embarrassing and difficult for the applicant to deal with. At one point, the applicant reported his harassment and assault to his staff sergeant, and even though the applicant was told his staff sergeant would investigate the incident and he would get to the bottom of the allegations, nothing was ever done, and no one ever got back to him.

3) The applicant became more paranoid, anxious, worried, and withdrawn and began to smoke marijuana and drink alcohol daily until he eventually failed a drug test. He failed his second drug test after his sergeant threatened him for reporting him, and he was reassigned to an overseas unit in Korea without his family. His ex-wife believes the crime that fits the assault the applicant suffered was the fact that the applicant never received any drug or alcohol counseling, assistance, or therapy for his mental health conditions during his military service and before his discharge.

16. On 30 July 2024, in the processing of this case the U.S. Army Criminal Investigation Division, searched their criminal file indexes, which revealed no Criminal Investigative and/or Military Police Reports pertaining to the applicant.

17. Regulatory guidance in effect at the time provided the service of Soldier's separated because of unsatisfactory performance under the provisions of Army Regulation 635-200, Chapter 13 would be characterized as honorable or under honorable conditions.

18. 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.

19. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) characterization of service to honorable. The applicant marked "other mental health" on his DD Form 149 as an issue related to his request.

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 in the Regular Army on 2 January 1985.
- Two DA Forms 4187 (Personnel Action) show, effective 25 September 1986, the applicant's unit reported him absent without leave (AWOL). His duty status changed to present for duty when he surrendered to military authorities on 1 October 2003. His punishment included a nonpunitive letter of reprimand.
- The applicant received general counseling on four occasions from 27 February 1987 to 12 May 1987 for: talking in formation while marching; twice failing to be at his appointed place of duty; and disrespect toward and disobeying a lawful order from a noncommissioned officer.
- On 14 July 1987, he accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), for wrongfully using marijuana between 20 April 1987 to 20 May 1987 and for being AWOL between 24 June 1987 to 8 July 1987.
- On 25 July 1987, he accepted NJP under the provisions of Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty and for using disrespectful language toward a noncommissioned officer on or about 10 July 1987.
- On 20 August 1987, the applicant's commander notified him of intent to initiate action to separate him from service under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 13, for unsatisfactory performance.
- On 21 August 1987, the applicant acknowledged receipt of his commander's notification. He consulted with counsel and was advised of the reason for separation and the rights available to him. He elected to submit a statement on his own behalf. In his statement, he indicated experiencing many familial difficulties and was overwhelmed by them. Although he violated some rules, he felt he learned from his mistakes and paid his dues when punished for his mistakes. He did everything he thought he could do and felt he had contributed 100 percent to his effort of being in the Army. He believed he served his country honorably while serving a hardship tour of duty in Korea. He still needed to care for his family and felt he could not find an excellent job in the civilian world if he received an under honorable conditions (general) discharge.
- The applicant was discharged on 16 September 1987, in the grade of E-1, under the provisions of Army Regulation 635-200, Chapter 13, for unsatisfactory

performance. His service was characterized as under honorable conditions (General), with separation code "LHJ" and reenlistment code "RE-3, 3B and 3C." He was credited with 2 years, 8 months, and 8 days of active service and 11 months and 14 days of foreign 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 states, "he was suffering from an undiagnosed mental/psychological disorder, which contributed to his separation from the Army. He has been diagnosed with depression and anxiety, which were caused by events that led him to be disconnected mentally and emotionally during his military service. He asks the Board to grant him relief so he may receive the benefits and assistance he needs."

d. Due to the period of service, limited active-duty electronic medical records were available for review. The applicant submitted hardcopy medical documentation indicating he participated in a mental status evaluation for the purpose of separation on 20 July 1987. The evaluation psychiatrically cleared him for any administrative action deemed appropriate by his command, no significant behavioral health findings were noted.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected for Major Depressive Disorder. A letter of support from his ex-wife to the VA, in support of his requested service connection increase, states: she was married to the applicant for 35 years and has seen his mental, emotional, and overall health decline. Before he enlisted, he was always upbeat, funny, hard-working, clean, and sober. However, things changed on or around August or September 1985, when the applicant informed her that he was verbally and physically sexually harassed and assaulted by one of his sergeants. After this incident, the applicant's desire to serve his country and his behavior changed. He became distant and showed what she believed to be signs of depression and anxiety by becoming more withdrawn, heavily drinking alcohol, chain-smoking cigarettes, talking in his sleep, having sleepless and restless nights, having nightmares, and being late to roll calls. Although she spoke to the applicant about getting help, she could tell it was embarrassing and difficult for the applicant to deal with. At one point, the applicant reported his harassment and assault to his staff sergeant, and even though the applicant was told his staff sergeant would investigate the incident and he would get to the bottom of the allegations, nothing was ever done, and no one ever got back to him. The applicant became more paranoid, anxious, worried, and withdrawn and began to smoke marijuana and drink alcohol daily until he eventually failed a drug test. He failed his second drug test after his sergeant threatened him for reporting him, and he was reassigned to an overseas unit in Korea without his family. His ex-wife believes the crime that fits the assault the applicant suffered was the fact that the applicant never received any drug or alcohol counseling,

assistance, or therapy for his mental health conditions during his military service and before his discharge.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence the applicant had a behavioral health condition during military service that mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts a mitigating condition, OMH.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 100% service connected for Major Depressive Disorder. And, although not asserted by the applicant, a buddy statement provided by his ex-wife to the VA indicates he experienced MST.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to unsatisfactory performance based on his wrongfully using marijuana, AWOL, FTR, and using disrespectful language toward a noncommissioned officer. Given the nexus between depression and the use of substances to alleviate/cope with the symptoms of his behavioral health condition, the applicant's use of marijuana is mitigated by his condition. Also, given the nexus between depression and avoidance, his AWOL and FTR are also mitigated by his BH condition. Further, given the nexus between MST and difficulty with authority, his use of disrespectful language towards a noncommissioned officer is also mitigated.

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 evidence of record shows the applicant's performance was unsatisfactory as evidenced by his frequent counseling and two instances of NJP, one of which for using illegal drugs and being AWOL. As a result, his chain of command initiated separation action against him for unsatisfactory performance and he was separated with a general, under 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 sufficient evidence to support that the applicant had a condition or experience that mitigates his

misconduct. Based on this finding, the Board determined that 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 DD Form 214 for the period ending 16 September 1987 as follows:

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

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, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, 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) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. Chapter 13 provided for separation due to unsatisfactory performance when in the commander's judgment the individual would not become a satisfactory Soldier; retention would have an adverse impact on military discipline, good order and morale; the service member would be a disruptive influence in the future; the basis for separation would continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, was unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation would be characterized as honorable or under honorable conditions.

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 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//