

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 October 2024

DOCKET NUMBER: AR20240001048

APPLICANT REQUESTS: an upgrade of the deceased former servicemember's (SM's) under other than honorable conditions discharge.

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)
- Birth Certificate
- Death Certificate
- Self-Authored statement
- Army Board for Correction of Military Records (ABCMR) letter to applicant

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 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 she is requesting an upgrade of her deceased brother's under other than honorable conditions discharge. The applicant marked other mental health as a condition related to her request on behalf of the SM.

a. She seeks to clear her brother's name. He suffered from attention deficit hyperactivity disorder (ADHD) and was taking ritalin to control his behavior. Her brother stopped taking his medication to allow him to enter the military, making coping more difficult for him. Following his discharge, he did quite well for himself, successfully managing several health clubs. He had the leadership qualities needed for his position.

b. Her brother refused to be considered "disabled," despite the fact that he was chronically short of breath, was uninsured, and made several visits to the emergency room (ER) to try and control his symptoms. Her brother died unexpectedly of dilated

cardiomyopathy at the age of 34 years old. Ritalin can cause cardiomyopathy, and she believes that is why her brother passed away. Her brother was loved by his employees, friends, and family. She is hoping to clear her brother's name and asks the Board to grant him relief and recognize his service to his country. When the time comes, she wishes to bury her brother next to her father, a Navy Vietnam Veteran.

3. The applicant provides:

a. A birth and death certificate to support her application to the ABCMR as the sibling of the SM.

b. A letter from the ABCMR acknowledging receipt of her application dated 15 May 2014, further requesting she provide documentation proving her relationship to the SM.

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

a. He enlisted in the Regular Army on 18 August 1994.

b. On 26 March 1996, the SM accepted nonjudicial punishment for one specification of driving while on a suspended license on or about 22 January 1996. His punishment included reduction to private first class (PFC)/E-3.

c. A Standard Form 88 (Report of Medical Examination), dated 22 April 1996, shows the SM underwent an examination for the purpose of separation. The applicant's clinical evaluation was marked normal and in block 77 (Examinee) he was marked qualified for chapter.

d. A DA Form 3822-R (Report of Mental Status Evaluation) shows on 30 April 1996 the SM was evaluated at Division Mental Health in conjunction with the commander's request for a mental status examination for separation. His behavioral health specialist noted the SM met retention requirements, was mentally responsible, and had the mental capacity to understand and participate in board proceedings. He was cleared for any administrative action deemed necessary by his command.

e. On 26 June 1996, the SM's immediate commander notified the SM of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 14-12b, for a pattern of misconduct. As reasons for the proposed action, his commander cited the SM's multiple failures to repair (FTR), driving on a suspended license, speeding, no proof of insurance, dereliction, indebtedness, disobeying a lawful order, bad checks, and wrongful appropriation. The SM acknowledged receipt on the same day.

f. On 3 July 1996, after consultation 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 be ineligible for many or all benefits as a veteran under both Federal and State laws
- he may expect to encounter substantial prejudice
- 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 following discharge
- the SM elected consideration of his case before an administrative separation board

g. On 1 August 1996, the separation authority disapproved the SM's conditional waiver and directed a board of officers to convene to determine the SM's fitness for continued military service.

h. On 5 August 1996, the SM was notified to appear before a board of officers to determine whether he should be discharged from the Army and if so his characterization of service.

i. On 9 August 1996, the SM elected to waive consideration and personal appearance before a board of officers.

j. On 17 September 1996, the SM underwent a second complete mental status/psychiatric evaluation as part of his consideration for discharge due to his misconduct. His psychiatric evaluation shows he was diagnosed with ADHD by history and present complaint and narcissistic personality traits. His evaluation also shows he requested treatment and was taking ten milligrams (mg) of the medication Ritalin twice a day. His evaluation noted, while his ADHD could to some degree adversely affect his ability to perform duty up to acceptable standards, it did not account for most of the problems he encountered during his military career. He was cleared for any action deemed appropriate by his command.

k. On 18 September 1996, the immediate commander initiated separation action against the applicant for patterns of misconduct. He recommended that his period of service be characterized as under other than honorable conditions. The intermediate commander recommended approval of the discharge with a general, under honorable conditions characterization of service.

l. On 24 September 1996, the SM acknowledged he received, read, and understood his subsequent psychiatric evaluation. He understood he had the right to seek additional

legal counsel and to go before an administrative separation board. He elected to voluntarily waive both of these rights.

m. On 30 September 1996, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter 14, paragraph 14-12b for a pattern of misconduct. He would be issued a UOTHC discharge.

n. On 10 October 1996, the SM was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 2 years, 1 month, and 23 days of active service with no lost time. The narrative reason for separation listed as "Misconduct."

5. 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.

6. 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.

7. MEDICAL REVIEW:

a. Background: The deceased former service member's sister is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge.

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 deceased former service member (SM) enlisted in the Regular Army on 18 August 1994.
- On 26 March 1996, the SM accepted nonjudicial punishment for one specification of driving while on a suspended license on or about 22 January 1996. His punishment included reduction to private first class (PFC)/E-3.
- On 26 June 1996, the SM's immediate commander notified the SM of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 14-12b, for a pattern of misconduct. As reasons for the proposed action, his commander cited the SM's multiple failures to report (FTR), driving with a suspended license, speeding, no proof of insurance, dereliction of duty, indebtedness, disobeying a lawful order, bad checks, and wrongful appropriation. The SM acknowledged receipt on the same day.

- On 18 September 1996, the immediate commander initiated separation action against the applicant for patterns of misconduct. He recommended that his period of service be characterized as under other than honorable conditions. The intermediate commander recommended approval of the discharge with a general, under honorable conditions characterization of service.
- On 10 October 1996, the SM was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 2 years, 1 month, and 23 days of active service with no lost time. He was assigned separation code JKA and the narrative reason for separation listed as "Misconduct," with a reentry code of 3.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, she is requesting an upgrade of the deceased SM's (her brother), under other than honorable conditions discharge. She seeks to clear her brother's name. He suffered from attention deficit hyperactivity disorder (ADHD) and was taking Ritalin to control his behavior. Her brother stopped taking his medication to allow him to enter the military, making coping more difficult for him. Following his discharge, he did quite well for himself, successfully managing several health clubs. He had the leadership qualities needed for his position. Her brother refused to be considered "disabled," even though he was chronically short of breath, was uninsured, and made several visits to the Emergency Room (ER) to try and control his symptoms. Her brother died unexpectedly of dilated cardiomyopathy at the age of 34 years old. Ritalin can cause cardiomyopathy, and she believes that is why her brother passed away. Her brother was loved by his employees, friends, and family. She is hoping to clear her brother's name and asks the Board to grant him relief and recognize his service to his country. When the time comes, she wishes to bury her brother next to her father, a Navy Vietnam Veteran.

d. Due to the period of service no active-duty electronic medical records were available for review. However, a Mental Status Evaluation for the purpose of separation, dated 30 April 1996, indicates the SM met retention standards, was mentally responsible, and had the mental capacity to understand and participate in board proceedings. He was cleared for any administrative action deemed necessary by his command. On 17 September 1996, the SM underwent a second Mental Status Evaluation for the purpose of separation. The evaluation shows he was diagnosed with ADHD and narcissistic personality traits. The evaluation further indicates his ADHD was being treated while in service with Ritalin 10 mgs twice daily. The clinician opined, while his ADHD could to some degree adversely affect his ability to perform his duties up to acceptable standards, it did not account for most of the problems/misconduct he encountered during his military career. He was cleared for any action deemed appropriate by his command.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the former SM was not service connected, and he never received any behavioral health treatment from the VA.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a BH condition, ADHD, while in military service. However, this BH condition would not mitigate 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 her brother was diagnosed with ADHD.

(2) Did the condition exist or experience occur during military service? Yes. A Mental Status Evaluation dated 17 September 1996 indicates the SM was diagnosed with ADHD and was prescribed Ritalin 10 mg twice daily.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The SM was discharged due to a pattern of misconduct including multiple failures to report (FTR), driving with a suspended license, speeding, no proof of insurance, dereliction of duty, indebtedness, disobeying a lawful order, bad checks, and wrongful appropriation. Per available records, the former SM's ADHD was treated with Ritalin 10 mg twice daily, while in military service, which is a typical standard of care. Consistent with the opine provided in his mental status evaluation prior to discharge, his ADHD would not account for or mitigate his pattern of misconduct.

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.

2. 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 Board considered the review and conclusions of the medical advisor, the applicant's ADHD diagnosis and the four Kurta questions as related to his claim. The applicant was discharged due to a pattern of misconduct. The Board concurred with the medical advisor's concluding that consistent with the opine provided in his mental status evaluation prior to discharge, his ADHD would not account for or mitigate his pattern of misconduct. Based on a preponderance of evidence, the

Board determined that the character and reason for the applicant's 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.

4/28/2025

X

CHAIRPERSON

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 (Active Duty Enlisted Administrative Separations), 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 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.

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 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed.

3. 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.

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 (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 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 misconduct that led to the discharge.

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.

6. 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//