

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 August 2024

DOCKET NUMBER: AR20240001068

APPLICANT REQUESTS:

- change the reason for his separation from misconduct (frequent involvement in incidents of a discreditable nature with civil or military authorities) to disability
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214, Certificate of Release or Discharge from Active Duty, March 1982
- Letter from a DAV national Service Officer to the Department of Veterans Affairs

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 is suffering from a mental disorder. [Note: On 16 May 2024, a staff member of the Army Review Boards Agency sent a letter to the applicant informing him that in order for the ABCMR to consider his application, he must provide a copy of the medical documents that support his Mental Health issues. The applicant did not respond to this letter and did not provide any medical documentation].
3. The applicant enlisted in the Regular Army on 21 November 1979 and held military occupational specialty 75B, Personnel Administration Specialist. He was assigned to Fort Ord, CA. He was advanced to private first class/E-3 in November 1980.
  - a. At Fort Ord, he accepted nonjudicial punishment under Article 15 on/for:
    - 1 May 1981, failing to go at the time prescribed to his appointed place of duty; his punishment included a suspended reduction to E-2.

- 14 May 1981, without authority failing to go to his appointed place of duty on 3 separate occasions; his punishment included a suspended reduction to E-1
- 5 June 1981, being absent from his unit from 19 to 20 May 1981

b. On 30 November 1981, the applicant's immediate commander-initiated a Bar to Reenlistment against the applicant citing his misconduct. The commander stated the applicant has been a continual discipline problem since joining this unit. He has been unresponsive to counseling from his chain of command in regard to correcting his deficiencies. His job performance has been consistently substandard, and he has made no effort to meet even minimum standards. His disregard for authority is evidenced by his record of NJP, and the repeated need to vacate suspended portions of punishments imposed. He has expressed no desire to improve his conduct.

c. The applicant was furnished with a copy of this bar. He elected to submit a statement but failed to do so. The approval authority ultimately approved the bar to reenlistment.

d. On 23 December 1981, the applicant was convicted by a special court-martial of Charge I, 3 specifications of failure to report on 16, 19, and 27 October 1981, and Charge II, one specification of failure to report on 29 October 1981. The court sentenced him to confinement for 1 month, forfeiture of pay, and rehabilitative transfer.

e. The applicant was confined from 23 December 1981 to 15 January 1982. He was reassigned to the Retraining Brigade at Fort Riley, KS. The Retraining Brigade was a unique program designed to prepare former enlisted prisoners and other selected personnel for improved military performance and personal conduct at their next duty station.

f. The complete facts and circumstances surrounding the applicant's discharge are not available for review. However, his records contain:

(1) Orders 41-14, issued by the U.S. Army Retraining Brigade on 2 March 1982 ordering the applicant's discharge from the Army effective 8 March 1982.

(2) DD Form 214 that shows he was discharged on 8 March 1982 in accordance with chapter 14-33(b) of Army Regulation (AR) 635-200 (Personnel Separation) by reason of "Frequent involvement in incidents of a discreditable nature with civil or military authorities" with an under other than honorable conditions characterization of Service (Separation Code JKA and Reentry Code 3B). He completed 2 years, 2 months. And 24 days of active service with lost time on 19 May 1981 and from 23 December 1981 to 15 January 1982.

4. There is no indication the applicant applied to the Army Discharge Review Board for review of his separation processing within that board's 15-year statute of limitations.

5. In reaching its determination, the Board should consider the applicant's request in accordance with the published equity, injustice, or clemency determination guidance.

6. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his characterization of service as well as a change of the narrative reason from misconduct (frequent involvement in incidents of a discreditable nature with civil or military authorities) to disability. He selected PTSD on his application as 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:

- Applicant enlisted in the Regular Army on 21 November 1979.
- Applicant accepted nonjudicial punishment under Article 15 on/for:
- 1 May 1981, failing to go at the time prescribed to his appointed place of duty; his punishment included a suspended reduction to E-2.
- 14 May 1981, without authority failing to go to his appointed place of duty on 3 separate occasions; his punishment included a suspended reduction to E-1
- 5 June 1981, being absent from his unit from 19 to 20 May 1981
- On 30 November 1981, the applicant's immediate commander-initiated a Bar to Reenlistment against the applicant citing his misconduct. The commander stated the applicant "has been a continual discipline problem since joining this unit. He has been unresponsive to counseling from his chain of command in regard to correcting his deficiencies. His job performance has been consistently substandard, and he has made no effort to meet even minimum standards. His disregard for authority is evidenced by his record of NJP, and the repeated need to vacate suspended portions of punishments imposed. He has expressed no desire to improve his conduct."
- On 23 December 1981, the applicant was convicted by a special court-martial of Charge I, 3 specifications of failure to report on 16, 19, and 27 October 1981, and Charge II, one specification of failure to report on 29 October 1981. The court sentenced him to confinement for 1 month, forfeiture of pay, and rehabilitative transfer.
- Applicant was confined from 23 December 1981 to 15 January 1982. He was reassigned to the Retraining Brigade at Fort Riley, KS. The Retraining Brigade was a unique program designed to prepare former enlisted prisoners and other selected personnel for improved military performance and personal conduct at their next duty station.

- The complete facts and circumstances surrounding the applicant's discharge are not available for review.
- DD Form 214 shows he was discharged on 8 March 1982 in accordance with chapter 14-33(b) of Army Regulation (AR) 635-200 (Personnel Separation) by reason of "Frequent involvement in incidents of a discreditable nature with civil or military authorities" with an under other than honorable conditions characterization of Service (Separation Code JKA and Reentry Code 3B). He completed 2 years, 2 months. And 24 days of active service with lost time on 19 May 1981 and from 23 December 1981 to 15 January 1982.

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 is suffering from a mental disorder.

d. Due to the period of service no active-duty electronic medical records were available for review. However, the applicant provides hardcopy documentation showing a Social Work In-processing Form, dated 4 January 1982, while in confinement where the applicant endorsed feelings of depression. The applicant reported having felt sad previously, when his parent's separated, and currently due to familial and financial stressors. The applicant shared he was financially supporting his mother and his difficulties in the Army were impacting his ability to provide for his mother. He requested to speak with a social worker to make his mother his legal dependent in order to increase his income as well as to discuss obtaining his GED. No diagnosis or BH conditions were noted. There is no evidence in the applicant's available record indicating he was unable to perform his military duties due to a medical disability. Overall, the applicant's available service record does not show any evidence that he was issued a permanent physical profile rating, was treated for any behavioral health condition, was diagnosed with a condition that failed retention standards and/or rendered him unfit for military service.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. The record indicates the applicant initially established contact with the VA on 22 December 2021 via the Health Care for Reentry Veteran (HCRV) Program while in the Florida Department of Corrections. The applicant was seeking support with housing and other needs since he was being released after serving a 25-year prison sentence. He continued to receive support until 15 May 2023. Following his release from prison, he connected with the homeless veteran's program and received housing support, case management, mental health services, vocational rehabilitation, and pastoral care. The applicant was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood due to his Problems related to other legal circumstances and Sheltered Homelessness.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service. However, given the specific facts and circumstances surrounding the applicant's discharge are not available for review, this Advisor is unable to opine regarding mitigation of his discharge. In addition, there is no evidence the applicant failed the medical retention standards of AR 40-501, chapter 3, Standards of Medical Fitness, prior to his separation. Based on the documentation available for review, there is no indication that an omission or error occurred that would warrant a referral to the IDES process. In summary, his separation process appears proper, equitable and free of error, and insufficient new evidence has been provided to determine otherwise.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant self-asserts post-traumatic stress disorder (PTSD).

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any behavioral health condition during military service. However, the applicant should submit any medical documentation that becomes available.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unable to opine since the specific facts and circumstances surrounding the applicant's discharge are unavailable. However, there is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses and the VA has not service-connected the applicant for any BH condition. Although he selected PTSD on his application, he did not provide any rationale or an index trauma as related to his assertion. The VA electronic medical record indicates the applicant started receiving supportive services in relation to his upcoming release from 25 years of incarceration. The only BH diagnosis in the applicant's VA electronic medical record is Adjustment Disorder with mixed Anxiety and Depressed mood related to his difficulties transitioning to civilian life following his lengthy incarceration.

h. Per Liberal Consideration, the applicant's assertion of PTSD is sufficient to warrant consideration by the Board.

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 record of service, documents submitted in support

of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and the medical review, the Board concurred with the advising official finding insufficient evidence to support the applicant had a behavioral health condition during military service. The opine determined there is no indication that an omission or error occurred that would warrant a referral to the IDES process.

2. The Board found insufficient evidence to support the applicant's contention to change the reason for his separation from misconduct (frequent involvement in incidents of a discreditable nature with civil or military authorities) to disability. The Board determined there is no evidence the applicant failed the medical retention standards, prior to his separation. The Board noted, the applicant provided insufficient evidence that supports any rationale or an index trauma as related to his assertion. Based on the preponderance of evidence the Board found the applicant's separation process proper, equitable and free of error, and noted insufficient new evidence was provided to determine otherwise. Therefore, the Board denied relief.

3. 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 correction of the records of the individual concerned.



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 (Personnel Separations), in effect at the time, prescribed policies and procedures for enlisted administrative separations.
  - a. Paragraph 1-13a (Honorable Discharge). An honorable discharge was a separation with honor; commanders issued an honorable discharge certificate based on the Soldier's proper military behavior and proficient duty performance. Commanders were to give due consideration to the Soldier's age, length of service, and general aptitude. Where there were infractions of discipline, commanders were to assess the extent of those infractions as well as the seriousness of the offenses.
  - b. Paragraph 1-13b (General Discharge). A general discharge was a separation from the Army under honorable conditions, where the Soldier's military record was not sufficiently meritorious to warrant an honorable discharge.
  - c. Paragraph 14-33 (Other Misconduct). Commanders identified Soldiers for discharge when they displayed a pattern of misconduct; this included Soldiers who were

involved in frequent incidents of a discreditable nature with civil or military authorities. An under other than honorable conditions character of service was normally issued for Soldiers discharged under this provision.

3. The Disability Evaluation System (DES), Medical Evaluation Board (MEB) determines whether Service Member meets/met medical retention standards. When Soldiers are identified with medical conditions or physical defects that fall below medical retentions standards IAW AR 40-501, Chapter 3, and have reached their medical retention determination point (MRDP), they are referred to the DES by a clinician

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 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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which 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. 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. 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. AR 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. 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. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, 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.

8. 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//