

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 September 2024

DOCKET NUMBER: AR20240001142

APPLICANT REQUESTS: Upgrade of his under honorable conditions (general) discharge.

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)
- DD Form 2807-1 (Report of Medical History)
- DD Form 2808 (Report of Medical Examination)

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 married and assigned to Fort Lewis, WA, during his time in service. His wife complained about the duty location, she preferred to live in New Orleans, LA. He couldn't afford to send his wife \$600 monthly to live elsewhere. His commander kicked him out of the Army for not providing financial support to his family. He was a great Soldier. He went Airborne and got injured. He has cancer and needs help.
3. On his DD Form 149, the applicant notes post-traumatic stress disorder (PTSD), and other mental health issues are related to his request.
4. On 2 August 2000, the applicant enlisted in the Regular Army. Upon completion of training, he was awarded military occupational specialty 62E (Heavy Construction Equipment Operator).
5. The applicant received formal counseling on the 16 January 2002, for reporting to duty late. He was counseled on 1 July 2002, for failing to make support payments to his dependents.

6. On 23 July 2002, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice, for failing to provide financial support to this family, between on or about 1 May 2002 and on or about 1 July 2002. His punishment included reduction to E-2, forfeiture of \$289.00 (suspended), and 14 days extra duty and restriction.

7. On 13 August 2002, the applicant underwent a medical examination. He was diagnosed with depression and recurrent knee pain. However, he was deemed medically qualified for administrative separation.

8. The applicant received additional counseling on the following dates/for:

- 21 August 2002, failing to report
- 23 August 2002, driving with a suspended driver's license
- 28 August 2002, speeding while operating a vehicle

9. The applicant's commander notified him on 17 September 2002, the was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b, for a pattern of misconduct. As the specific reasons, his commander cited the applicant's failure to provide financial support to his dependents, driving with an invalid driver's license and speeding on post.

10. On 23 September 2002, the applicant acknowledged that he had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to him. He indicated he understood he could expect to encounter substantial prejudice in civilian life if he was issued an under honorable conditions (general) discharge. He submitted a statement in his own behalf; however, the available record is void of his statement.

11. On 26 September 2002, the applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, paragraph 14-12b, prior to his expiration term of service.

12. The separation authority approved the recommended discharge on 2 October 2002, and directed issuance of an under honorable conditions (general) discharge.

13. The applicant was discharged on 25 October 2002. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12b, for misconduct. His service was characterized as under honorable conditions (general). He was assigned Separation Code JKA and Reentry Code 3. He completed 2 years, 2 months, and 24 days of net active service this period.

14. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

15. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) characterization of service. He selected Post-traumatic Stress Disorder (PTSD) and Other Mental Health (OMH) as issues 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 into the Regular Army on 2 August 2000.
- Applicant received formal counseling on 16 January 2002, for reporting to duty late. He was counseled on 1 July 2002, for failing to make support payments to his dependents.
- On 23 July 2002, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice, for failing to provide financial support to his family, between on or about 1 May 2002 and on or about 1 July 2002. His punishment included reduction to E-2, forfeiture of \$289.00 (suspended), and 14 days extra duty and restriction.
- Applicant received additional counseling on the following dates/for:
 - 21 August 2002, failing to report
 - 23 August 2002, driving with a suspended driver's license
 - 28 August 2002, speeding while operating a vehicle
- Applicant's commander notified him on 17 September 2002, he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b, for a pattern of misconduct. As the specific reasons, his commander cited the applicant's failure to provide financial support to his dependents, driving with an invalid driver's license and speeding on post.
- On 23 September 2002, the applicant acknowledged that he had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to him. He indicated he understood he could expect to encounter substantial prejudice in civilian life if he was issued an under honorable conditions (general) discharge. He submitted a statement in his own behalf; however, the available record is void of his statement.
- Applicant was discharged on 25 October 2002. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12b, for misconduct. His service was characterized as under honorable conditions (general). He was assigned Separation Code JKA and Reentry Code 3. He completed 2 years, 2 months, and 24 days of net active service this period.

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 married and assigned to Fort Lewis, WA, during his time in service. His wife complained about the duty location, she preferred to live in New Orleans, LA. He couldn't afford to send his wife \$600 monthly to live elsewhere. His commander kicked him out of the Army for not providing financial support to his family. He was a great Soldier. He went Airborne and got injured. He has cancer and needs help".

Due to the period of service limited electronic medical records were available for review. The applicant provides hardcopy documentation evidencing on 13 August 2002, he underwent a medical examination for the purpose of separation. The examination notes the applicant self-reported feelings of depression and worry due to personal issues and his discharge from the military. The applicant was not diagnosed with depression; however, it was noted as something the applicant self-reported but was related to transient current stressors, not a mental health diagnosis.

d. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 10% service connected for a medical condition, he is not service connected for any behavioral health condition. The applicant was seen by social work on 3 January 2024 due to issues with potential homelessness. He declined assessment of any mental health concerns and was only interested in obtaining support related to housing. A comprehensive social work consult, dated 28 January 2024, diagnosed the applicant with Post-traumatic Stress Disorder, Unspecified, unrelated to military service; Problems related to housing and economic circumstances; and Adjustment Disorder with depressed mood. The applicant reported, "multiple concerns, including adjusting to illness and feelings of frustration with not knowing fully his diagnosis and the impact his illness has had on his ability to maintain employment". The applicant has participated intermittently in behavioral health services due to concerns related to employment, housing, and medical issues. An encounter dated 28 February 2024, indicates his significant medical issues and chronic pain contribute to his depression, with his symptoms increasing in response to ongoing stressors of chronic pain, medical issues, risk of homelessness, and financial issues. He met criteria for Major Depressive Disorder, Generalized Anxiety Disorder, and Insomnia.

e. 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 that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected Post-traumatic Stress Disorder (PTSD) and Other Mental Health (OMH) as conditions that may mitigate his discharge.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was discharged due to failure to provide financial support to his dependents, driving with an invalid driver's license and speeding on post. There is insufficient evidence of a mitigating BH condition. The applicant was not diagnosed with a BH diagnoses while in service, the VA has not service-connected the applicant for any BH condition, and the VA electronic record indicates he has participated intermittently in mental health services related to current stressors including medical issues, risk of homelessness, and financial issues.

g. Per Liberal Consideration his contention of PTSD and OMH is sufficient to warrant consideration by the Board.

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 shows the applicant exhibited a pattern of misconduct consisting of multiple negative counseling for various infractions, failing to pay support and driving-related offenses. As a result, his chain of command initiated separation action against him for misconduct and he received a general 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 agreed with the medical reviewers' finding insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his misconduct. Also, the applicant provided insufficient evidence of post-service achievements or letters of reference in support of a clemency determination. However, given the non-serious nature of the applicant's misconduct (minor offenses) and given his length of service (2 years and 2 months of total service), the Board determined 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 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 25 October 2002, as follows:

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

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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. 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, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), sets forth the requirements for the administrative separation of enlisted personnel. The version in effect at the time provided that:
 - 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 Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. It states that action will be initiated to separate a Soldier for misconduct when it was clearly established that rehabilitation was impracticable or unlikely to succeed.
4. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, 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. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the mental health condition was not diagnosed until years later. 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.

6. 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, Boards 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//