

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 October 2024

DOCKET NUMBER: AR20240001299

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge.

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

- DD Form 149 (Application for Correction of Military Record), 4 December 2023
- DD Form 214 (Report of Separation from Active Duty), for the period ending 24 June 1975
- medical documents, 2023
- letter of support, 7 November 2023
- letter, National Personnel Records Center (NPRC)

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 indicates on his DD Form 149 that post-traumatic stress disorder (PTSD) and other mental health conditions are issues related to his request. He states undiagnosed mental health disorders, PTSD, depression, schizoaffective disorder, and alcoholism were related to his discharge.
3. The applicant provides:
  - a. Medical documents showing medications and diagnosis he received in 2023. Among the diagnosis are anxiety, schizoaffective disorder, depressive disorder, with alcohol abuse with many noted active problems. Resolved problems include alcohol withdrawal.
  - b. A letter of support from AM \_\_\_, Direction of Case Management, (Organization) who noted he was under treatment for a long history of substance abuse and mental health issues. His current support system included (Organization), and his adopted

sister, who gave insight into how these issues affected his life. He was adopted at age 1 because his parents had substance use issues. His adopted father died when he was age 7 and his mother was unable to care for him because of his impulsive behaviors. He began to experiment with alcohol and cigarettes at age 13 and continued to struggle as he was admitted to recovery programs prior to adulthood. He was unable to cope in the Army because of substance abuse issues, leading to his discharge. In 2022, he began his current treatment. He has worked hard to overcome his struggle with alcoholism. He attends weekly outpatient treatment and has been able to refrain from alcohol with a few minor slip ups. He has been successfully housed through a program and has made the effort to contribute to his own recovery.

4. A review of the applicant's service records show:

- a. On 6 June 1972, he enlisted in the Regular Army.
- b. In connection with this enlistment, he underwent a medical examination (Standard Form (SF) 88) and he gave a report of medical history (SF 93). The examining physician noted he had reported no physical or neurological disqualifications for enlistment; he stated he was in good health, and he noted no history of medical or neurological disqualifications. The examining physician noted he was qualified for enlistment.
- c. On 5 July 1972, he accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for breaking restriction at Fort Jackson on 2 July 1972.
- d. On 9 October 1972, a flag was imposed against him by reason of absence without leave (AWOL) from his unit, 502d Administrative (Replacement) Detachment, C Company, 2nd Battalion, 66th Armor, 2nd Armored Division, Fort Hood.
- e. On 11 October 1972, he returned to military control but on the same date, he was again reported AWOL from his unit. His status was changed to dropped from the rolls.
- f. On 25 May 1973, the Department of Justice, Federal Bureau of Investigation, notified the Department of the Army, the applicant was apprehended by civilian authorities in Virginia and was in custody awaiting trial on charges of armed robbery.
- g. Special Orders Number 203, issued by U.S. Army Personnel Control Facility (USAPCF), Fort Meade, dated 23 October 1973, reflect he was confined by civil authorities, dropped from the rolls, and assigned to Company B, 2d Armored Division, Fort Meade, effective 24 May 1973.

h. On 27 February 1975, the Commanding Officer, USAPCF, Fort Meade advised him he was being recommended for elimination from the service under the provisions of Army Regulation 635-206 (Discharge – Misconduct – Fraudulent Entry, Conviction by Civil Court, and Absence Without Leave or Desertion) by reason of his conviction by civil authorities on the charge of armed robbery. The commander notified him of his rights and indicated he was recommending he receive an undesirable discharge. He understood he could request appointment of military counsel to represent him, and in his absence, present his case before a board of officers; submit statements in his own behalf; waive his rights in writing; or request that a board of officers hear his case.

i. On 5 March 1975, he waived representation by counsel, he waived consideration of his case by a board of officers, he elected not to submit statements in his own behalf, and he indicated he did not intend to appeal his civil conviction. He was appealing his conviction through the civil court. He further understood that he may expect to encounter substantial prejudice in civilian life in the event a general discharge under honorable conditions were issued to him. He further understood that, as a result of issuance of an undesirable discharge under conditions other than honorable, he may be ineligible for many or all benefits as a Veteran under both Federal and State Laws.

j. A copy of a district court document showing the charges against the applicant, its findings, and its sentence, are not contained in the available records.

k. On 6 March 1975, the applicant was tried and convicted by the Circuit Court of Rockingham County, Virginia, on 11 June 1973 and sentenced on 19 February 1974 for attempted robbery and robbery. He was sentenced to 12 months in jail for attempted robbery and he was sentenced to 10 years in the penitentiary for robbery, with 5 years suspended. He was confined by civil authorities.

l. On 19 May 1975, the Commanding Officer, USAPCF, Fort Meade, requested the applicant be discharged with an Undesirable Discharge Certificate under the provisions of Army Regulation 635-206 for civil conviction. The commander noted he was sentenced to 5 years, the charge was equivalent to Article 122 of the UCMJ, and that he had 95 days' time lost to the present (15 May 1975).

m. On an unspecified date, the separation approval authority, Post Commander, Fort Meade, approved the discharge recommendation under the provisions of Army Regulation 635-206, Chapter 33a, and directed reduction to the lowest grade with issuance of an Undesirable Discharge Certificate.

n. On 24 June 1975, he was discharged. His DD Form 214 shows he completed 3 months and 13 days of active service and he was not awarded any medals or decorations. It further shows in:

(1) Item 9c (Reason and Authority) – Army Regulation 635-206, Section VI, Separation Program Designator: JKB.

(2) Item 9d (Effective Date) – 24 June 1975.

(3) Item 9e (Character of Service) – under other than honorable conditions.

(4) Item 10 (Reenlistment Code) – RE-4.

(5) Item 27 (Remarks) – 977 days' time lost under Title 10, Section 972 from 2 October 1972 to 23 May 1973; 24 May 1973 to 15 May 1975; he was unavailable for signature.

4. There is no evidence indicating he applied to the Army Discharge Review Board for an upgrade of his discharge within that board's 15-year statute of limitations.

5. 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.

6. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to honorable. He contends he experienced an undiagnosed mental health condition, including PTSD, 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 6 June 1972.
- The applicant received NJP for breaking restrictions in July 1972, and he was AWOL in October 1972 and eventually dropped from the rolls. On 27 February 1975, his Commanding Officer advised him he was being recommended for elimination from the service under the provisions of Army Regulation 635-206 by reason of his conviction by civil authorities on the charge of armed robbery.
- The applicant was discharged on 24 June 1975, and he completed 3 months and 13 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he had undiagnosed mental health disorders, PTSD, depression, schizoaffective disorder, and alcoholism related to his discharge. The application

included medical documentation showing these diagnoses as well as anxiety and suicidal ideation, and a statement dated 7 November 2023 from a case manager at Our Community Place, which discusses the applicant's childhood history, alcoholism, and homelessness. A Report of Medical Examination and Report of Medical History dated 1 June 1972 showed no history of any medical or mental health symptoms or diagnoses. 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 no history of mental health related treatment or diagnoses.

e. 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.

f. 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, including PTSD, at the time of the misconduct. Documentation from a case manager dated in 2023 discusses a history of substance abuse and mental health issues.

(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 no documentation of any mental health condition(s) while on active service. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. Additionally, there is no nexus between his asserted mental health condition, including PTSD, and his misconduct related to robbery and armed robbery: 1) these types of misconduct are not part of the natural history or sequelae of a mental health condition; 2) his asserted mental health conditions do not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he had a mental health condition or an experience that mitigated 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 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 applicant was separated due to conviction by civil authorities on the charge of armed robbery. The Board found no error or injustice in the separation proceedings under the regulation and subsequent characterization of service assigned at separation. The Board noted the applicant's diagnosis; however, reviewed and concurred with the medical advisor's review finding insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

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 15-185 (Army Board for Correction of Military Records) 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.
3. Army Regulation 635-206 (Discharge – Misconduct – Fraudulent Entry, Conviction by Civil Court, and Absence Without Leave or Desertion), in effect at the time, (15 July 1966, with changes), established policy and prescribed procedures for the elimination of enlisted personnel for misconduct by reason of fraudulent entry into the service, conviction by civil court, and absence without leave or desertion. Section VI provided procedures for processing cases of individuals who, during their current term of active military service, have been initially convicted or adjudged juvenile offenders.
  - a. Paragraph 33a provided the conditions which subjected an individual to discharge when he had been initially convicted by civil authorities, or action taken against him which is tantamount to a finding of guilty, of an offense for which the maximum penalty under the UCMJ is death or confinement in excess of 1 year.
  - b. Paragraph 36 provided an individual discharged for conviction by civil court normally will be furnished an undesirable discharge certificate except that an honorable or general discharge certificate may be furnished if the individual being discharged has been awarded a personal decoration, or if warranted by the particular circumstances in a given case.
  - c. Paragraph 37a provided the authority for discharge or retention. The convening authority is authorized to order discharge or direct retention in military service when disposition of an individual has been made by a domestic court of the United States or its territorial possessions. Upon determination that an individual is to be separated with an Undesirable Discharge, the convening authority will direct reduction to the lowest enlisted grade by the reduction authority under provisions of AR 600-200 (Enlisted Personnel Management System).

4. Army Regulation 635-200 (Personnel Separations) in effect at the time, set 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.

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.

5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect on 20 May 1974, listed the specific authorities-regulatory, statutory, or other directives-and reasons for separation from active duty. The SPD JKB corresponded to the authority Army Regulation 635-206, Section VI and the narrative reason "Conviction by a civil court or adjudged as a juvenile offender."

6. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Chapter 3 prescribes basic eligibility for prior-service applicants for enlistment and includes a table of U.S. Army reentry eligibility (RE) codes.

- RE-1 applies to persons completing an initial term of active service who are considered qualified to reenter the U.S. Army if all other criteria are met
- RE-3 applies persons who are not considered fully qualified for reentry or continuous service at the time of separation, but disqualification is waivable
- RE-4 applies to persons separated from their last period of service with a nonwaivable disqualification

7. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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.

8. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.
9. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to 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.
10. Section 1556 of Title 10, U.S. 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//