

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 August 2024

DOCKET NUMBER: AR20240001349

APPLICANT REQUESTS:

- upgrade of his general, under honorable conditions discharge to honorable
- a change in the narrative reason for separation

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

DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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 in effect, he is requesting an upgrade of his general under honorable conditions discharge and a change in the narrative reason for his separation.
 - a. He arrived from Germany to Fort Campbell and immediately tested positive for drugs. He received an Article 15. He was assigned as the personnel/finance clerk for the unit and was instructed by his first sergeant (1SG) to submit documentation to stop the benefits of a former spouse from a Soldier that was recently divorced. He submitted the documentation on multiple occasions, but there was no change. A new 1SG took over and the applicant was immediately removed from his duties.
 - b. The applicant had 7 months remaining before his expiration of term of service (ETS) and the new 1SG assigned him daily cleaning duties at the barracks. He was also required to change his uniform every 4 hours and sign in at staff duty. He only slept 4 hours. The applicant continued to perform the details assigned by the new 1SG; however, after 45 days he asked the 1SG if he could stop. The 1SG asked him if he wanted to quit and he replied, "no," because his term was nearly over with a mere 6 months remaining. He was directed to leave the 1SG's office. He found himself at the

firing range a few days after the incident in the 1SG's office. He was firing his weapon and turned around to point the weapon at his 1SG. He does not remember whether or not he fired the weapon but does recall waking up in the Military Police (MP) station.

c. He was court-martialed and did not see anyone following that incident. He was returned back to his home in Virginia within 48 hours. He went to the Department of Veterans Affairs (VA) on multiple occasions and was denied treatment. A coworker noticed his demeanor and asked if he was prior service. The coworker took him to see his Veteran Service Officer (VSO) and it was then that he received guidance and was told he was still considered a Veteran. He did not know he was still a Veteran until that moment. He identified medical concerns and attempted to retrieve records only to be told he had no records. He believes the 1SG destroyed his career because he was unable to get the Soldier's pay issues resolved. He now receives behavioral health treatment and was told he likely "snapped without any control," yet he has nothing in his service record. He was mistreated and wrongfully discharged for an incident that occurred while he was being mentally and emotionally abused.

3. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 1 December 1994. He held military occupational specialty 75B, Personnel Administration Specialist. He was assigned to Fort Campbell, KY.

b. On 15 September 1998, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 14-12b, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) for patterns of misconduct. The specific reasons for his proposed recommendation were based upon:

- his failure to be at his appointed place of duty on diverse occasions
- his failure to follow instructions, wrongful use of marijuana
- being arrested for public drunkenness
- his disrespecting and disobeying noncommissioned officers.

c. The applicant acknowledged receipt of the notification of separation action the same day. On 16 September 1998, after consulting 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 discharge under other than 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 apply to the Army Discharge Review Board or the ABCMR for upgrading
- he is ineligible to apply for enlistment in the Army for 2 years after discharge
- he elected not to submit matters

d. On 18 September 1998, the separation authority approved the discharge recommendation for immediate separation, under the provisions of Chapter 14, AR 635-200, paragraph 14-12b for a pattern of misconduct. He would be issued a general, under honorable conditions discharge.

e. On 30 September 1998, he was discharged from active duty. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged in accordance with chapter 14-12b of AR 635-200 with a general, under honorable conditions characterization of service. He completed 3 years and 10 months of active service. He was assigned separation code JKA and the narrative reason for separation listed as "Misconduct." It also shows he was awarded or authorized: National Defense Service Medal, Army Service Ribbon, Overseas Service Ribbon, and Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M16).

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

5. By Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), action will be taken to separate a Soldier for misconduct, such as patterns 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 applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under honorable conditions (general) to honorable. He contends he experienced an undiagnosed mental health condition 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 1 December 1994.

- The applicant's immediate commander notified the applicant on 15 September 1998 of his intent to separate him under the provisions of Chapter 14, Army Regulation (AR) 635-200, for patterns of misconduct. The specific reasons for his proposed recommendation were based upon his failure to be at his appointed place of duty on diverse occasions, his failure to follow instructions, wrongful use of marijuana, being arrested for public drunkenness, and his disrespecting and disobeying noncommissioned officers. The separation authority approved the discharge recommendation on 18 September 1998.
- The applicant was discharged on 30 September 1998 and is credited with 3 years and 10 months of 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 has received behavioral health treatment, and his treating providers have told him that he likely "snapped without any control" during an incident on the firing range. He indicates that he was provoked through a series of events and encounters he had with his first sergeant. There were no medical or mental health records included in the application. There was insufficient evidence that the applicant was diagnosed with any psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed the applicant has a combined service-connected disability rating of 60% for physical health conditions. The applicant initially engaged VA for mental health treatment on 2 June 2022 related to anger problems and interpersonal conflict. He reported symptoms of depression, anxiety, and PTSD as well as daily marijuana use. He was referred to psychiatry, a group wellness program, and psychotherapy. He engaged in six group sessions focused on psychoeducational topics (i.e. anger management), and he completed an evaluation by psychiatry on 20 July 2022. He reported a history of anger, irritability, and interpersonal difficulties as well as alcohol and drug use dating back to his time in the service. He described the incident that occurred at the firing range and stated that he pointed his weapon at his first sergeant, and he was jailed and later discharged because of this incident. He discussed increased substance use, including cocaine and marijuana, and a history of suicidal ideation (no suicide attempts). He was diagnosed with PTSD associated with witnessing decapitation of two friends in a car accident that occurred while he was in the service, and he was started on an antidepressant medication. He completed an initial visit for psychotherapy on 3 August 2022 and was diagnosed with Depressive Disorder, unspecified. He was seen for monthly psychotherapy visits, which focused on work stressors and anger management, through March 2023, and his medication was changed to an antipsychotic used to aid with sleep in January 2023. His psychiatrist's diagnosis was changed to Depressive Disorder, unspecified, Cannabis Use Disorder, and history of Alcohol Use Disorder. His most recent visit with behavioral health was with his psychiatrist in June 2023, and he

reported improved sleep and mood, but he expressed frustration with denial of disability claim.

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 at the time of the misconduct. There is insufficient evidence, beyond self-report, that he was experiencing any mental health condition during his time in service. The applicant has been diagnosed and treated for Depressive Disorder since 2022 through the VA.

(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 appears to be a discrepancy between what the applicant asserts as the precipitating event of his discharge and what the records show regarding his misconduct. Additionally, the primary diagnoses for which he has been treated are Depressive Disorder and Cannabis Abuse, and there is no nexus between his pattern of misconduct and these diagnoses. However, the applicant contends he was experiencing 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 DoD guidance for liberal consideration of discharge upgrade requests.

a. Discharge upgrade: Deny. The evidence shows the applicant exhibited a pattern of misconduct consisting of failure to be at his appointed place of duty on diverse occasions, failure to follow instructions, wrongful use of marijuana, being arrested for public drunkenness, and disrespecting and disobeying noncommissioned officers. As a result, his chain of command initiated separation action against him for a pattern of misconduct. 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 concurred with the medical official's determination finding insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination, that would outweigh his misconduct. Based on a preponderance of evidence, the Board determined that the character of service and reason for separation the applicant received upon separation was not in error or unjust.

b. Narrative Reason for Separation and associated codes: Deny. The Board noted that the applicant exhibited a pattern of misconduct, and he was separated under the provision of chapter 14-12b of AR 635-20. The only valid narrative reason for separation under this chapter is misconduct and the appropriate Separation Code is JKA which as a corresponding RE Code of 3. The Board found no error or injustice or a reason to change his narrative reason for separation.

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.

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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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), 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. 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 of the regulation states action will be taken to separate a Soldier for 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.

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 Under Secretary 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, 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, on 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 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.

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 based on 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. Title 10, U.S. Code, section 1556, 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//