

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 December 2024

DOCKET NUMBER: AR20240001981

APPLICANT REQUESTS RECONSIDERATION: for an upgrade to 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)
- Womack Army Medical Center memorandum
- Elite DNA Therapy Services letter

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20190012354 on 11 August 2022.

2. The applicant states, via statement of material contentions:

a. His Other Than Honorable Conditions discharge in question involves an error, as the period of service cited for this discharge is inaccurate and misleading. He served in the Army from 17 March 1998 through 16 October 1999. He left Fort Knox on 5 October 1999 and was never stationed there again. The period of service stated as 5 May 2000 through 18 January 2001, was either falsified or erroneously created. During that time, he was living and working in Georgia.

b. Furthermore, the Other Than Honorable discharge was unjust and should be upgraded to Honorable with medical retirement due to the following factors that affected his ability to serve and ultimately led to his status of Absence Without Leave (AWOL).

(1) He has experienced ongoing mental health issues that continue to significantly affect him to this day. These issues began during his time in the Army and are documented in his Army medical records. His entire life after leaving the Army has involved either self-medicating or receiving care from a psychiatrist.

(2) He experienced overwhelming grief following the death of his father, his only remaining parent, on 15 December 1998. He was also concerned about his minor-aged brother, who had been living with their father and was now left an orphan.

(3) He faced stressful and chaotic marital problems.

c. The documents titled "Admission of AWOL for Administrative Purposes," "Medical Examination for Statement of Option," and "Request for Discharge in Lieu of Trial by Courts-Martial" should be considered invalid for the following reasons:

(1) These documents were unknowingly signed. His counsel did not inform him of all available defenses, particularly concerning his mental health status. Additionally, the regulatory requirement to assess mental health status when a problem is suspected was not adhered to. The Deserter/Absentee Warrant indicated that he was receiving psychiatric treatment, suggesting he may not have possessed the ability to knowingly waive his rights. A psychiatrist or mental health professional should have evaluated his capacity to knowingly waive those rights; this evaluation should not have been assumed by individuals lacking the qualifications to assess mental health conditions.

(2) The signing was involuntary. The environment created by the Special Processing Company was highly coercive. There was immense pressure to "just sign so you can go home." He was informed that he would be separated from his wife and young child indefinitely if he did not sign the documents and request a discharge in lieu of courts-martial. He also feels he was misled, as he was assured he would receive the necessary mental health treatment upon accepting the discharge, which did not turn out to be the case.

(3) Moreover, the ABCMR decision from 2009, specifically on page 4, number 4, concluded that "there is no evidence that the psychiatric treatment would have warranted his referral to the Physical Disability Evaluation System" and "without a PEB the applicant could not have been issued a medical discharge or separated/retired for physical disability." These statements appear to serve as the primary basis for the denial of his discharge upgrade request. However, evidence submitted with the original application contradicts these assertions. A memo from Womack Army Medical Center, dated 23 November 1998 (page 2, number 5) states, "the service member does not meet medical retention standards and will be referred to the Physical Evaluation Board (PEB) for administrative adjudication." He has maintained that he was waiting for a PEB and anticipated being medically discharged. While awaiting the PEB, his father became terminally ill and passed away; consequently, his grief over losing his father and concern for his younger brother caused his existing mental health issues to spiral out of control, ultimately leading him to go AWOL.

Additionally, a significant number of documents were not listed or considered in the original decision. Those documents were uploaded again using the DoD safe link provided to him on 18 May 2023. It is important to note that the National Personnel Records Center could not locate his remaining mental health records from August 1998 to November 1998. The only way to obtain copies of his mental health records, his doctor must request them, as they could not be provided directly to him. He does not believe these circumstances should be held against him.

3. In addition to the previously submitted supporting documents, the applicant provides the following new evidence:

a. Womack Army Medical Center memorandum, dated 23 November 1998, paragraph 5, which was highlighted in the applicant's material contentions, states, "the service member does not meet medical retention standards and will be referred to the Physical Evaluation Board for administrative adjudication in accordance with Army Regulation 40-501.

b. Elite DNA Therapy Services letter, dated 16 February 2024, written by C.G., Psychiatric-Mental Health Nurse Practitioner Board Certified (PMHNP-BC), indicates the applicant is currently under her care at Elite DNA and that he is being treated for anxiety disorder, moderate mixed bipolar disease.

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

a. He enlisted in the Regular Army on 17 March 1998.

b. DD Form 458 (Charge Sheet), dated 5 October 1999, court-martial charges were preferred against the applicant for one specification of being AWOL from 5 March 1999 to 1 October 1999.

c. On 5 October 1999, the applicant consulted with legal counsel. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice (UCMJ), the possible effects of an under other than honorable conditions discharge, and the procedures and rights that were available to him. Subsequent to receiving legal counsel, he voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10, in lieu of trial by court-martial. In his request for discharge, he acknowledged his understanding that:

- by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of an undesirable discharge

- he acknowledged he understood that if his discharge request was approved he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws
- he was advised he could submit any statements he desired in his own behalf; he did not submit any statements

d. The separation authority approved the applicant's request for discharge on 14 December 1999, under the provisions of AR 635-200, chapter 10, in lieu of trial by court-martial, and directed that he be reduced to the lowest enlisted grade and discharged under other than honorable conditions. He completed 2 years, 3 months, and 1 day of active service this period and he had lost time from 5 March 1999 to 30 September 1999. The DD Form 214 also shows in:

- Items 4a (Grade, Rate or rank) and 4b (Pay Grade) show PV1/E-1
- Item 12h (Effective Date of Pay Grade) – 14 December 2000
- Item 26 (Separation Code) - KFS
- Item 27 (Reentry Code) - 4
- Item 28 (Narrative Reason for Separation) - In Lieu of Trial by Court-Martial

5. Army Regulation 635-200 states, a member who has committed an offense for which the authorized punishment includes a punitive discharge may submit a request for discharge in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

6. The Board should consider the applicant's submissions 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 under other than honorable conditions (UOTHC) discharge and consideration of a medical retirement. He contends he experienced a 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 17 March 1998.

- DD Form 458 (Charge Sheet) dated 5 October 1999 showed court-martial charges were preferred against the applicant for one specification of being AWOL from 5 March 1999 to 1 October 1999. He voluntarily requested discharge under the provision of AR 635-200, chapter 10, in lieu of trial by court-martial.
- The applicant was discharged on 14 December 1999 and completed 2 years, 3 months, and 1 day of active service.
- His case was previously reviewed in Docket Numbers AR20090010886 and AR20190012354.

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 asserts errors in the dates of service, which exceeds the scope of this BH Advisor's expertise and will not be further addressed, and mental health issues as a mitigating factor in his discharge. He discusses the death of his father and his younger brother being orphaned as traumatic experiences leading to his misconduct, and he asserts a belief of entitlement to a medical discharge. His case was previously reviewed in Docket Numbers AR 20190012354 and AR20090010886, and the 2019 case showed a review of inpatient mental health records from the applicant's time in service, which concluded he had an Adjustment Disorder that was not a mitigating factor in his misconduct. A summary of those records is provided by the previous Medical Advisor and can be reviewed in AR 20190012354. As new evidence, the applicant provides a letter from a provider at Elite DNA Therapy Services dated 14 February 2024, which showed that the applicant was being treated for Anxiety Disorder and Moderate Mixed Bipolar Disorder. A memorandum for commander with subject line "Mental Health Evaluation" dated 23 November 1998 showed that the applicant was evaluated at the Womack Army Medical Center Inpatient Psychiatry Service from 20 to 23 November 1998, and he was diagnosed with Schizophreniform Disorder. It was determined that he had the mental capacity to participate in the proceedings and was mentally responsible for his actions. However, the evaluator stated, "the service member does not meet retention standards and will be referred to the Physical Evaluation Board for administrative adjudication IAW 40-501," and a duty-limiting profile was put in place. There was sufficient 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 the applicant initiated mental health treatment through the VA Emergency Department on 15 August 2019, and he reported symptoms of low mood, anhedonia, poor sleep, and feelings of guilt. He related a history of cyclic mood changes and symptoms indicative of mania/hypomania, and he reported a history of diagnoses of schizophrenia, anxiety, depression, and substance abuse disorders. He reported hospitalizations from 20 to 23 November 1998 for Brief Psychotic Disorder and from 24 November 1998 to 15 January 1999, resulting in a diagnosis of Adjustment Disorder, and he had three additional hospitalizations since

then as well as five suicide attempts. He was diagnosed with Unspecified Depressive Disorder (versus Bipolar Disorder) and Alcohol Use Disorder and Opioid Use Disorder, both in full remission. He was started on an antidepressant, suboxone for opioid dependence, and a mood stabilizer, and he was routinely followed for medication management through 2022. In 2023 he had several 'no show' appointments and dropped out of care, and his primary diagnosis at the time was Bipolar II Disorder.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support that the applicant had a mental health condition while on active service, but this condition only partially mitigates his misconduct. Hospitalization records from 20 to 23 November 1998 showed a diagnosis of Brief Psychotic Disorder and Partner Relational Problems, and another record dated 2 February 1999 indicated a second hospitalization as well as convalescent leave resulting in a diagnosis of Adjustment Disorder not otherwise specified and a recommendation for administrative separation. New evidence presented in this application showed that the applicant did not meet retention standards and a PEB was recommended. Based on this new evidence, it is this BH Advisor's opinion that the applicant should have had a mental health evaluation prior to discharge, and documentation supports that the applicant was not psychiatrically fit for duty as a result of his mental health condition. Therefore, a referral to the Disability Evaluation System is warranted.

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 a mental health condition at the time of the misconduct. Documentation from his time in service showed diagnoses of Schizophreniform Disorder with hospitalization and Adjustment Disorder. VA records from 2019 show a diagnosis of Bipolar II Disorder, and the applicant is currently receiving treatment for a similar condition.

(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, and mental health documentation showed he was diagnosed with a psychotic disorder, Schizophreniform Disorder, while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. A review of military medical and mental health records revealed the applicant was hospitalized and diagnosed with Schizophreniform Disorder while on active service, and a memorandum to his commander indicated he was profiled and did not meet retention standards. The documentation during the applicant's time in service does support that the applicant was psychiatrically unfit at the time of discharge for a

boardable mental health condition, but there is no documentation of an MEB or referral to DES prior to his discharge.

g. As to the applicant's misconduct of being AWOL, AWOL can be a natural sequela to mental health conditions associated with exposure to traumatic or stressful events, but there is insufficient evidence to fully mitigate his misconduct. The applicant clearly was suffering from a mental health condition prior to his father's death, and documentation showed notation of marital problems. However, his misconduct was not deployment-related or directly associated with his military service, and documentation showed that the applicant was determined to have capacity to understand right from wrong and act in accordance with the right.

h. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the findings and recommendation in the medical review, the Board concluded there was sufficient evidence to refer the applicant's record to the Disability Evaluation System for further review to determine whether a medical discharge or retirement are warranted.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:                :                :                GRANT FULL RELIEF

■                ■                ■                GRANT PARTIAL RELIEF

:                :                :                GRANT FORMAL HEARING

:                :                :                DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined that the evidence presented was sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by directing the applicant be entered into the Disability Evaluation System (DES) and a Medical Evaluation Board (MEB) convened to determine whether the applicant's condition(s), to include mental health condition, met medical retention standards at the time of service separation.

a. In the event that a formal physical evaluation board (PEB) becomes necessary, the individual concerned will be issued invitational travel orders to prepare for and participate in consideration of their case by a formal PEB. All required reviews and approvals will be made subsequent to completion of the formal PEB.

b. Should a determination be made that the applicant should have been separated or retired under the DES, these proceedings will serve as the authority to void their administrative separation and to issue them the appropriate separation retroactive to their original separation date, with entitlement to all back pay and allowances and/or retired pay, less any entitlements already received.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading the characterization of his discharge.

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. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. Paragraph 3-7b provides that 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 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

2. 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.

3. 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.

4. 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 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. 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.

5. 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//