

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 October 2024

DOCKET NUMBER: AR20240002116

APPLICANT REQUESTS: his under honorable conditions (general) discharge be upgraded to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs Letter

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 suffered from post-traumatic stress disorder (PTSD) and was using alcohol to cope.
3. The applicant enlisted in the Regular Army on 2 April 2004, for 4 years. His military occupational specialty was 21B (Combat Engineer).
4. A military police report (MPR) shows the applicant was driving while impaired, off post, and stopped for speeding on 27 January 2007. He was arrested and his post driving privileges were suspended.
5. The applicant was counseled on 29 January 2007 for receiving a driving under the influence.
6. The applicant received a General Officer Memorandum of Reprimand (GOMOR) on 22 February 2007. This was the second time he had been involved in an alcohol related incident. On 31 October 2004 he was involved in underage consumption of alcohol. On 27 January 2007, he drove or was in physical control of a motor vehicle while his blood-alcohol level was .15 grams of alcohol per 210 liters of breath. He was reprimanded. The applicant acknowledged receipt.

7. The applicant's commander recommended the reprimand be filed in the applicant's local file. He stated the applicant had great potential for continued service in the U.S. Army; he was committed to the company and the Army, and he was a young Soldier who made a mistake. He truly felt the applicant had learned from his mistake and would continue to be a great asset to the unit.

a. The applicant's chain of command recommended the reprimand be filed in his official military personnel file (OMPF). The applicant must prove that he has the potential for retainability to serve, he must prove this with exceptional service in his performance and a chapter would be recommended.

b. Two incidents show it didn't appear the applicant had learned from his mistake, and he hadn't shown the ability to learn from his mistakes.

8. DA Form 3822-R (Report of Mental Status Evaluation), dated 22 March 2007, shows the applicant had the mental capacity to understand and participate in the proceedings, was mentally responsible, and met retention requirements. The applicant was diagnosed with alcohol abuse. Suicidality and/or homicidality was denied, and the current potential for absence without leave, harm to self, and harm to others was thought to be minimal.

9. Having been reviewed, it was determined on 17 April 2007 that the GOMOR would be filed in the applicant's OMPF.

10. The applicant's commander notified him on 24 April 2007, that he was initiating action under the provisions of Army Regulation (AR) 635-200 (Active-Duty Enlisted Administrative Separations), Chapter 14-12b, to separate the applicant for patterns of misconduct. The applicant consumed alcohol underage and was arrested for driving while impaired. The commander recommended a under honorable conditions (general) discharge. The applicant acknowledged receipt on the same date.

11. The applicant consulted with legal counsel and was advised of the basis for the contemplated actions to separate him under the provisions of AR 635-200, Chapter 14-12b, for patterns of misconduct and of the rights available to him. He was advised that he could submit statements in his own behalf.

12. The applicant's commander formally recommended him for separation from service under the provisions of AR 635-200, paragraph 14-12b, prior to his expiration term of service. The chain of command recommended approval with a under honorable conditions (general) discharge.

13. The separation authority approved the recommended separation and directed the issuance of a under honorable conditions (general) discharge.

14. The applicant was discharged on 1 June 2007. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, paragraph 14-12b, for a pattern of misconduct with Separation Code JKA and Reentry Code 3. His service was characterized as under honorable conditions (general). He completed 3 years and 2 months of net active service. He was awarded or authorized the: National Defense Service Medal, Global War on Terrorism Service Medal, Army Service Ribbon, and the Parachutist Badge.

15. Soldiers are subject to separation under the provisions AR 635-200, Chapter 14, for misconduct. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the overall record.

16. The applicant provides a Department of Veterans Affairs letter, dated 6 December 2023 that shows he has service-connected disabilities evaluated at 50 percent.

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

18. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) discharge to honorable.

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 2 April 2004.
- A military police report (MPR) shows the applicant was driving while impaired, off post, and stopped for speeding on 27 January 2007. He was arrested and his post driving privileges were suspended.
- Applicant received a General Officer Memorandum of Reprimand (GOMOR) on 22 February 2007. This was the second time he had been involved in an alcohol related incident. On 31 October 2004 he was involved in underage consumption of alcohol. On 27 January 2007, he drove or was in physical control of a motor vehicle while his blood-alcohol level was .15 grams of alcohol per 210 liters of breath. He was reprimanded.
- Applicant's commander notified him on 24 April 2007, that he was initiating action under the provisions of Army Regulation (AR) 635-200 (Active-Duty Enlisted Administrative Separations), Chapter 14-12b, to separate the applicant for patterns of misconduct. The applicant consumed alcohol underage and was

arrested for driving while impaired. The commander recommended a under honorable conditions (general) discharge.

- Applicant was discharged on 1 June 2007. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, paragraph 14-12b, for a pattern of misconduct with Separation Code JKA and Reentry Code 3. His service was characterized as under honorable conditions (general). He completed 3 years and 2 months of net active service.

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 suffered from post-traumatic stress disorder (PTSD) and was using alcohol to cope.

d. Active-duty electronic medical records available for review indicate the applicant participated in a Mental Status Evaluation, on 22 March 2007. The applicant was diagnosed with Alcohol Abuse and the clinician opined: "there is no evidence of mental defect, emotional illness, or psychiatric disorder of sufficient severity to warrant disposition through military medical channels. This soldier is mentally responsible, can distinguish right from wrong, and possesses sufficient mental capacity to understand and participate intelligently as a respondent in any administrative proceedings. This soldier is psychiatrically cleared for any administrative action deemed appropriate by command."

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 50% service connected for PTSD. His most recent behavioral health encounter in May 2024, indicates he was being seen to address issues of anxiety, depression, PTSD, and Alcohol Use Disorder.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts PTSD as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 50% service connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to underage alcohol consumption and being arrested

for driving while impaired. The applicant's VA electronic medical record shows that he is service connected for PTSD. Given the nexus between PTSD and the use of alcohol to cope with the symptoms of the condition, the applicant's misconduct is mitigated by his BH condition.

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. The evidence shows the applicant displayed a pattern of misconduct. The applicant consumed alcohol underage and was arrested for driving while impaired. As a result, his chain of command initiated separation action against him. He was accordingly discharged with an under honorable conditions (general) characterization of service. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official, and agreed with the medical reviewer's determination that there is sufficient evidence of a behavioral health condition that mitigates his misconduct. The Board did not find this mitigation a good reason to upgrade his discharge:

- a. The applicant joined the Army with a moral waiver. Instead of utilizing the resources available in the Army to better himself, he did the opposite.
- b. The applicant's misconduct included consuming alcohol underage and an arrest for driving while impaired (driving 67 in a 45 and choosing to drive while intoxicated). Board members agreed that he could have killed a number of innocent people or even friends in his car.
- c. He did not complete his enlistment contract due to his own misconduct. Board members did not believe it is equitable to have an honorable character of service similar to thousands of faithful Soldiers who did not drive while impaired, who were not arrested, and who did not endanger others. Board members determined a general discharge is appropriate in his case.

Based on a preponderance of evidence, the Board determined that the character of service he received upon separation was not in error or unjust.

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 (USC), 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, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or

Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. Army Regulation 635-200 (Active-Duty Enlisted Administrative Separations), sets forth the basic authority for the 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. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if merited by the Soldier's overall record.

4. 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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including Post-Traumatic Stress Disorder; 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 to those conditions or experiences.

5. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and BCM/NRs on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//