

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 October 2024

DOCKET NUMBER: AR20240002234

APPLICANT REQUESTS:

- a medical discharge
- a video/telephonic appearance before the Board

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

- Two DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- Medical Letter-County Hospital Ehingen
- DA Form 3647-1 (Clinical Record Cover Sheet)
- DA Form 3349 (Medical Condition-Physical Profile Record) Temporary
- DA Form 3349, Permanent
- SF 600 (Chronological Record of Medical Care)
- SF 93 (Report of Medical History)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 served in the Army from 24 July 1972 until 10 January 1975. He was stationed in Germany from December 1972 until approximately July 1974. He was with the 1st Infantry Division in Boeblingen Germany from approximately July 1974 until January 1975. He was with the 3rd Infantry Division in Aschaffenburg Germany. However, he does not even consider the 3rd Infantry Division service, or will he ever claim to be part of the 3rd Infantry, even though that is what is on his DD-214.

a. He was on Reforger in September 1973 with his unit, the 1st Infantry Division. While setting up an M60 on the rooftop of an electrical installation, he was electrocuted

by 20,000 volts. He spent until January 1974 in the hospital. After 4 months of Darvon, Demerol, and Morphine, he developed a drug addiction. When he was discharged from the hospital, he had a profile where he could not do anything. He could not even carry a rifle. He should have been medically discharged so he could go back home and receive the support from his family to heal. He was just an 18-year-old kid. At the very least, he should have had a military occupational specialty (MOS) change. His unit kept him around doing nothing while he kept flunking the urinalysis tests. He was sent to a drug treatment program. He had a habit and he had pain. As an adult looking back, having his family to support him would have been better.

b. The 1st Infantry Division got tired of him, so they transferred him to the 3rd Infantry Division. He remembered when he arrived the Commanding Officer (CO) told him in the CO's office he was not going to be here long. The CO was right. He was given a chapter 13 discharge about 5 months later. When he looks back, he wondered how the army could treat someone like that. He got hurt doing his job. He still believes he should have been medically discharged or sent back to the states for an MOS change. He was an infantryman and could not even carry a rifle. An 18-year-old kid that developed a drug habit while recovering from a serious electrocution got to basically do nothing and they expected him to stay out of trouble.

c. In conclusion, since January 1975 he has not used any narcotic drug illegal or legal. When he is offered a prescription narcotic, he turns it down, always have and he always will. The whole thing caused him to be demoted. He is sorry but looking back he really felt he was screwed over after almost dying doing his job and serving this nation. He would like his separation code to be changed to a medically discharge code and his narrative reason for separation to also changed from drug abuse to discharged medically.

### 3. The applicant provides the following documents

a. A medical letter explaining the details and circumstances surrounding the applicants' injury and what how he was medically treated.

b. A copy of a clinical record detailing the diagnoses and special procedures.

c. Two copies of DA Forms 3349 identifying the details of the applicants' physical profile:

- Temporary-90 days: dated 14 January 1974 expired 15 April 1974
- Permanent: dated 1 April 1974

d. Copies of medical forms indicating the applicant was in good health, his permanent profile with recommendation of MOS change, and other conditions:

- Standard Form 600 (Chronological Record of Medical Care)
- Standard Form 93 (Report of Medical History)

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

a. He enlisted in the Regular Army on 24 July 1972.

b. DA Form 2627-1 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)), dated 31 August 1973 shows the applicant accepted nonjudicial punishment (NJP) for:

- for absenting himself from his unit without authority for the period 10 August 1973 to 12 August 1973
- failing to go to his appointed place of duty
- wrongfully and unlawfully possessing prohibited items (Hypodermic syringes and needle), and a spoon which was burnt on the bottom

d. A copy of the applicant's Report of Medical Examination dated 27 September 1974, indicated the applicant was in good health, with a summary of defects and conditions.

e. A copy of the applicant's Report of Mental Status Evaluation indicated he met the retention standard.

f. On 14 October 1974, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 13-5a (3)b, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) for unfitness. The applicant acknowledged the same day.

g. After consulting with legal counsel, he requested a discharge for the good of the service under the provisions of AR 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13. He acknowledged.

h. The immediate commander initiated a request for the applicant to be eliminated from the service under the provisions of paragraph 13-5a(3)b, chapter 13.

i. A copy of the Alcohol and Drug Abuse Prevention and Control Program Progress Report indicated the applicant's counseling sessions and the counselor's observations.

j. On 21 October 1974, the intermediate commander submitted a request for the applicant be eliminated from the service under the provisions of paragraph 13-5a(3)b, chapter 13.

k. On 7 November 1974, DA Form 2627-1, dated 31 August 1973 shows the applicant accepted (NJP) for wrongfully having possession of one ounce of marijuana, in hashish form.

l. On 19 November 1974, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for elimination from the service under the provisions of paragraph 13- 5a(3 )b, chapter 13, AR 635-200, for Unfitness and "medevac" program as outlined in Annex H, USAREUR Circular 600-85, dated 10 Sep 73. To obtain a "medevac" flight reservation for subject individual the following items will be taken to the hospital.

j. On 10 January 1975, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 2 year, 5 months, and 11 days of active service with 6 days of lost time. It also shows he was awarded or authorized:

- National Defense Service Medal
- Marksman Marksmanship Qualification Badge with Rifle Bar

k. On 27 November 1979, ordered of the United States District Court for the District of Columbia in *Giles v. Secretary of the Army* and under the authority of the Secretary of the Army, the actions indicated were directed by the agency concerned to issue an honorable discharge.

l. On 21 Oct 1980, the Department of the Army sent a letter to the applicant regarding his recharacterization of service to fully upgraded to honorable.

5. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

## 6. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR in essence requesting referral to the Disability Evaluation System (DES). He states:

“I suffered 2nd and 3rd degree burns on my feet and left leg while defending a power station during REFORGER [return of Forces to Germany] 1973. I spent 4 months in the hospital. While in there, I got addicted to morphine and started doing heroin. I had a permanent profile. I could not carry a weapon or go to the field. I should have been discharged medically. I was an 18-year-old kid at the time and did not know any better.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. The applicant’s DD 214 for the period of Service under consideration shows he entered the regular Army on 24 July 1972 and was discharged under honorable conditions (general) on 10 January 1975 under the authority provided in paragraph 13-5a(3) of AR 635-200, Personnel Separations – Enlisted Personnel (14 December 1973): Separation for Unfitness or Unsuitability: Drug Abuse.

d. His Enlisted Qualification Record (DA Form 20) shows he was absent without leave received for 6 thru 11 August 1973.

e. An Article 15 shows the applicant had a drug problem prior to his accident in September 1973. He received an Article 15 on 31 August 1973 for 3 days of absence without leave (10-12 August 1973), a failure to repair on 18 August 1983, and wrongfully possessing prohibited items consisting of hypodermic syringes, a needle, and a spoon with a burnt bottom.

f. A 12 September 1973 translation of a “Dear Colleague” letter from a German hospital confirms the applicant’s story:

“He was shocked by 20,000 volts; fell and received bruises and scratches on left face and a brain concussion. The 3rd degree burns to legs and feet have been treated with Thesit Gel Branolind and he received a Tetanus shot. For shock, an infusion of solution Decortin H200 mg was given.”

g. A Clinical Record Cover Sheet (DA Form 3647) show the accident occurred on 9 September 1973 when he stepped on a “voltage wire” while in the field at Neu Ulm, Federal Republic of Germany (FRG). It shows he was hospitalized thru 12 January 1974 (123 days) during which he was treated for 3<sup>rd</sup> degree burns of both feet, 2<sup>nd</sup> degree burns of the left leg and both feet with debridement of the burns, amputation of his right 5<sup>th</sup> toe, and skin grafting of his right foot.

h. The applicant was placed on a permanent duty limiting physical profile effective 1 April 1974. The listed limitations:

“No crawling, stooping, running, jumping, prolonged standing or marching.

No strenuous physical activity.

No assignment requiring prolonged handling of heavy materials including weapons.

No overhead work, no push-ups or pull-ups.

No field duty.”

i. The provider noted the then Infantryman was “medically qualified for duty within permanent assignment limitations.”

j. The applicant was referred to mandatory drug rehabilitation on 13 August 1974 and was in the program thru 20 September 1974. The counselor annotated the applicant had shown no desire to reform in during this third time in the program and that there had been on change in his drug habits:

“PV2 [Applicant] has not progressed favorably during his Rehabilitation Program. He has made no effort on his own behalf to terminate his drug involvement . This is the third time for PV2 [Applicant] to be entered into the Active Rehabilitation Program ...

During his Rehabilitation Program, PV2 [Applicant] admitted freely to the abuse of heroine and hashish on a frequent and regular basis. He appeared at CDAAC on 21 August 1974 for a session and was obviously high. PV2 [Applicant] admitted to being high on that date. EM [enlisted member] also admitted to smoking hashish prior to coming in for sessions at the CDAAC. EM was counseled on his drug abuse and was offered educational opportunities, Service Centers and detox as alternatives to his drug abuse. PVT [Applicant] refused to cooperate in any manner.

k. The counselor opined the applicant would create serious disciplinary problems, create a hazard to the military mission, create a hazard to himself, and was obviously resisting all attempts to be rehabilitated. He concluded that rehabilitation would not produce a quality soldier acceptable to the military and recommended to the unit commander that he consider eliminating the applicant from the U.S Army.

l. He underwent a pre-separation medical examination on 27 September 1974. The provider documented the small toe amputation, friable (easily damaged) scar tissue on

both feet with extensive scaring, his permanent duty limiting profile, and found the applicant qualified for separation.

m. In his 14 October 1974 recommendation the applicant be involuntarily separated, his company commander wrote:

“Since SM [service member] was assigned to this unit, his appearance has been substandard and a discredit towards this and any other unit in the U.S. Army. SM is also an admitted drug abuser and is a CDAAC failure. SM has been a constant disciplinary problem to the NCO’s and officers of this unit.”

n. He received another Article 15 on 9 November 1974 for possession of 1 ounce of hashish.

o. The applicant’s mental status evaluation is undated. The provider documented a normal examination except noting the applicant was “Aggressive.” He opined the applicant had no significant mental illness, met the medical retention standards in AR 40-501, Standards of Medical Fitness, was able to distinguish right from wrong and adhere to the right, and was able to understand and participate in all proceedings. He likewise recommended the applicant be eliminated.

p. His discharge was approved on 19 November 1974.

q. The applicant’s misconduct made him ineligible for referral to the DES. Paragraph 1-2c of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 October 1970) or (25 February 1975) states:

“A member who is charged with an offense for which he could be dismissed or given a punitive discharge may not be referred for disability processing. However, if the officer exercising appropriate court-martial jurisdiction dismisses the charge or refers it for trial to a court-martial which cannot adjudge such a sentence, the case may be referred for disability processing.”

r. Paragraph 1-2e provides similar guidance:

“No enlisted member may be referred for physical disability processing when action has been or will be taken to separate him for unfitness under chapter 13 or misconduct under chapter 14, AR 635-200, except when the officer exercising general court-martial jurisdiction determines that the disability was the cause or substantial contributing cause of the misconduct, or that circumstances warrant physical disability processing in lieu of administrative processing.”

s. JLV shows the applicant has been diagnosed with PTSD related to the accident in 1973. It has been service connected by the Veterans Benefits Administration (VBA).

t. It is the opinion of the ARBA medical advisor that a referral of his case to the DES is unwarranted.

u. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: PTSD

(2) Did the condition exist or experience occur during military service? YES: The condition has been service connected by the VBA

(3) Does the condition or experience actually excuse or mitigate the discharge? NO: The applicant's August 1973 Article 15 shows he was a substandard Soldier and was abusing heroin prior to the September 1973 accident; and his DA Form 20 shows a period of absence without leave in August 1973. Thus, it cannot mitigate the substandard performance and drug use for which he was administratively separated.

#### BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding that the applicant's contention of post-traumatic stress disorder does not mitigate his substandard performance prior to the PTSD incident in 1973. Based on this, the Board determined referral of his case to the Disability Evaluation System (DES) is not warranted.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.



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 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. The SPD code of JLF was the appropriate code for the applicant based upon the guidance provided in Army Regulation 635-5-1 for Soldiers separating under the provisions of AR 635-200, chapter 13 Para 13-5a(3) . Additionally, the SPD/RE Code Cross Reference Table establishes RE code 3-3B as the proper RE code to assign to Soldiers for this reason.

3. 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.

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.

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.

5. Army Regulation 40-501 (Standards of Medical Fitness), governs medical fitness standards for enlistment, induction, appointment, retention, and separation. It states medical evaluation of certain enlisted military occupational specialties and officer duty assignments in terms of medical conditions and physical defects are causes for rejection or medical unfitness for these specialized duties. If the profile is permanent the profiling officer must assess if the Soldier meets retention standards. Those Soldiers on active duty who do not meet retention standards must be referred to a medical evaluation board.

6. 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.

7. Army Regulation 15-185 (ABCMR) 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, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right

to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//