

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 September 2024

DOCKET NUMBER: AR20240002237

APPLICANT REQUESTS: Reconsideration of his request for upgrade of his under other than honorable conditions (UOTHC) discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- in-service documents, certificates, and character witness (19 pages)

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 AR20140019454 on 9 July 2015.
2. The applicant states at the time of his discharge, he was diagnosed with a mental health disorder. It was the medical board's opinion that his conduct was caused by his illness. His military record was excellent with numerous awards and commendations. Immediately following his discharge, he received mental health treatment.
3. On 20 July 1983, the applicant enlisted in the Regular Army. He reenlisted on 20 March 1986 for 3 years. The highest grade he attained was E-5.
4. On 18 August 1987, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) for stealing a can of smokeless tobacco from the post exchange on or about 3 August 1987. His punishment included reduction to E-4.
5. On 16 November 1988, the applicant self-enrolled in the Alcohol and Drug Abuse Prevention and Control Program for alcohol abuse.
6. A memorandum, dated 14 February 1989, from Headquarters, U.S. Army Medical Department Activity, Fort Benning, GA, for the Chief of Criminal Law, Office of the Staff Judge Advocate, U.S. Army Infantry Center, Fort Benning, GA, noted the applicant was evaluated by a medical board to inquire into his current sanity as well as at the time of

his alleged criminal offense. The board found at the time of the alleged criminal conduct, the applicant did have a severe mental illness, namely, chronic alcoholism (Type 1) and acute alcohol intoxication. Additionally, during the evening of the alleged offense, the applicant had several alcoholic "black-outs" and may have been in a "black-out" at the time of the offense (i.e., at the time he reportedly cut the bus driver with a knife). It was the medical board's opinion that the applicant's alleged offense was totally caused by his illness, and had he not been drinking, the offense would not have occurred.

7. On 15 February 1989, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.

8. Court-martial charges were preferred against the applicant for violations of the UCMJ; however, the relevant DD Form 458 (Charge Sheet) is not available for review.

9. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing.

10. The applicant was discharged on 17 March 1989. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service – in lieu of trial by court-martial. He was discharged in the lowest enlisted grade and his service characterized as UOTHC. He completed 5 years, 7 months, and 28 days of net active service this period.

11. Additionally his DD Form 214 shows he was awarded or authorized the Army Service Ribbon, Army Achievement Medal with 1 Bronze Oak Leaf Cluster, Driver and Mechanic Badge (Driver-Tracked), Army Good Conduct Medal, Overseas Service Ribbon, Second Class Qualification Badge (Hand Grenade), and Expert Qualification Badge (M-16).

12. The applicant petitioned the ABCMR requesting upgrade of his UOTHC discharge. On 9 July 2015, the Board voted to deny relief and determined the overall merits of this case were insufficient as a basis for correction of the applicant's records.

13. The applicant provides additional in-service documents that highlight various accolades and professional accomplishments. Additionally, he provides a character reference letter, dated 4 November 1988, attesting to his work ethic and respect for superiors. These documents are provided in their entirety for the Board's review within the supporting documents.

14. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he would have consulted with counsel and requested discharge under the provisions of Army

Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

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

16. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. He contends he experienced mental health conditions that mitigates his misconduct. 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: 1) The applicant enlisted in the Regular Army on 20 July 1983; 2) On 18 August 1987, the applicant accepted non-judicial punishment for stealing a can of smokeless tobacco from the post exchange; 3) On 14 February 1989, the applicant was evaluated by a medical board to inquire into his current sanity and at the time of his alleged criminal offense. The board found at the time of the alleged criminal conduct, the applicant was experiencing chronic Alcoholism and acute Alcohol Intoxication. Also, during the evening of the alleged offense, the applicant had several alcoholic "black-outs" and may have been in a "black-out" at the time of the offense (i.e. at the time he reportedly cut the bus driver with a knife); 4) Court-martial charges were preferred against the applicant for violations of the UCMJ, but the Charge Sheet is not available for review. Also, the applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing; 5) The applicant was discharged on 17 March 1989, Chapter 10, for the good of the service – in lieu of trial by court-martial. He was discharged in the lowest enlisted grade and his service characterized as UOTHC; 6) On 9 July 2015, the ABCMR reviewed and denied the applicant's request for an update.

b. The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the available supporting documents and the available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. The applicant asserts he experienced mental health conditions that mitigate his misconduct while on active service. There is evidence the applicant self-enrolled in the Alcohol and Drug Abuse Prevention and Control Program for alcohol abuse on 21 October 1988. He reported not drinking since 24 September 1988, but he described a long history of alcohol abuse and also assaulting a bus driver by cutting him with a knife. He was reported to be actively engaged in treatment at that time. He was diagnosed with Alcohol Abuse with a rule out of Alcohol Dependence. The applicant

was also prescribed Antabuse. On 14 February 1989, the results of a Medical Board in regard to the applicant's current sanity and at the time of his alleged criminal offense were reviewed. The applicant was evaluated by a psychiatrist and clinical psychologist. The Medical Board's opinion was the applicant's crime of assaulting a bus driver with a knife was caused by the applicant's Alcohol Dependence and Acute Alcohol intoxication. Later on, 15 February 1989, the applicant underwent a medical examination, and he was determined medically qualified for administrative separation.

d. A review of JLV was void of any mental health information in regard to the applicant, and he did not provide any additional medical documentation to review.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence the applicant was experiencing a mitigating mental health condition or experience while on active service. The applicant was diagnosed with Alcohol Dependence and Acute Alcohol intoxication at the time of his misconduct. There is evidence a military Medical Board felt the applicant was "blacked out" during his assault of a bus driver and his misconduct was a result of his Alcohol Dependence, but he was still discharged in lieu of trial by court-martial and determined medically qualified for discharged. Also, a physical assault with a knife is not a natural sequelae of alcohol dependence or acute alcohol intoxication, and alcohol dependence and acute alcohol intoxication does not completely remove one's ability to distinguish right from wrong and act in accordance with the right. Lastly, there is insufficient evidence surrounding the complete events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of a mental health condition or experience.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No. There is insufficient evidence the applicant was experiencing a mitigating mental health condition or experience while on active service. The applicant was diagnosed with Alcohol Dependence and Acute Alcohol intoxication at the time of his misconduct. There is evidence a military Medical Board felt the applicant was "blacked out" during his assault of a bus driver and his misconduct was a result of his Alcohol Dependence, but he was still discharged in lieu of trial by court-martial and determined medically qualified for discharged. Also, a physical assault with a knife is not a natural sequelae of alcohol dependence or acute alcohol intoxication, and alcohol dependence and acute alcohol intoxication does not completely remove one's ability to distinguish right from wrong and act in accordance with the right. Lastly, there is insufficient evidence surrounding the complete events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of a mental health condition or experience. However, the applicant contends he experienced

mental health condition while on active service, which mitigates his discharge. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's mental health claim and the review and conclusions of the ARBA Behavioral Health Advisor.

2. The Board noted the applicant's prior honorable service, which included two awards of the Army Achievement Medal and award of the Army Good Conduct Medal. In light of his prior honorable service and medical board's finding that the applicant's incident of misconduct was totally caused by his illness, the Board found relief is warranted. Based on a preponderance of the evidence, the Board determined the applicant's character of service should be changed to honorable. Because his reduction to the lowest enlisted grade was based on his original character of service, this correction will be a basis for restoring his rank/grade to specialist four/E-4.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 to show his character of service as honorable and to show he held the rank/grade of specialist four/E-4 with an effective date of pay grade of 18 August 1987.

X

CHAIRPERSON

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 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.
2. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.
3. Army Regulation 635-8 (Separation Processing and Documents) provides: for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable, enter Continuous Honorable Active Service From" (first day of service for which DD Form 214 was not

issued) until (date before commencement of current enlistment). Then, enter the specific periods of reenlistment as prescribed above.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) 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. 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 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

5. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR), on 3 September 2014, 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.

6. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the mental health condition was not diagnosed until years later. 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.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military 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, 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//