

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 October 2024

DOCKET NUMBER: AR20240002433

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- A letter issued by the Department of Veterans Affairs (VA), 12 November 2023
- A list of medications prescribed by the VA, 4 December 2023

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 to honorable. He loved the Army during his service, and his children are proud to have a father that is also a Veteran. Due to his ruptured eardrums, he was not able to meet medical standards, in order to become an Army helicopter pilot, additionally he faced some family challenges due to the infidelity of his spouse with his best friend, these two events took a toll on him. At a recent Veteran medical center event, he discovered that after 40 years, he could possibly apply for an upgrade.
3. The applicant provides
 - a. In a letter issued by the VA, 12 November 2023, shows a summary of benefits he is currently receiving. This document further reflects, due to his service-connected disabilities he was found to be unemployable. He was evaluated at 70 percent (%) disability rating and is totally and permanently disabled.
 - b. A list of medications prescribed by the VA, 4 December 2023.

4. The applicant's service record reflects the following:

- a. He enlisted in the Regular Army on 20 March 1981.
- b. DA Form 4856 (Developmental Counseling Form), 3 January 1984, shows the applicant was counseled for failure to report to duty.
- c. DA Form 2627 (Record of Proceedings Under Article 15, UCMJ), 4 January 1984, reflects the applicant received non-judicial punishment under the provisions of Article 15, UCMJ for on or about 3 January 1984, failure to repair. He was found guilty. His punishment consisted of fourteen-days restriction and extra duty. He did not appeal.
- d. DA Form 4856, 14 January 1984, shows the applicant was counseled for failure to comply with the fourteen-days restriction, previously imposed on him, under the provisions of Article 15, UCMJ.
- e. DA Form 2627, 24 January 1984, reflects the applicant received non-judicial punishment under the provisions of Article 15, UCMJ for having been duly restricted, and on or about 14 January 1984, broke said restriction. His punishment consisted of reduction to private first class (PFC), forfeiture of pay of \$171.00, fourteen-days restriction and extra duty. He did not demand a trial by court-martial, and he declined to have a person speak on his behalf. He did not appeal.
- f. On 8 February 1984, his commanding officer initiated action to separate the applicant, under the provisions of Army Regulation AR 635-200 (Personnel Separations Enlisted Personnel), Chapter 13, unsatisfactory performance of duty, and unqualified for further service. The applicant subsequently acknowledged the separation notice and after he was advised by consulting counsel, he further acknowledged:
 - he was advised he could submit any statements he desired in his own behalf, and he elected not to do so
 - he was afforded the opportunity to consult with appointed counsel, he declined
 - he could be ineligible for many, or all benefits administered by the VA
 - he could be deprived of many, or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
 - he could expect to encounter substantial prejudice in civilian life by reason of a general under honorable conditions discharge
 - he will be ineligible to apply for enlistment in the United States Army for a period of two years after discharge
 - that he may up until the date the separation authority orders, directs, or approves his separation, withdraw the waiver of any of the above rights

g. On 9 February 1984, in a memorandum subject: Separation Under the Provisions of Chapter 13, paragraph 13-2, Army Regulation AR 635-200, shows his commanding officer recommended the applicant be discharged from the service.

h. On 10 February 1984, the separation authority directed the applicant's separation from the Army under the provisions of Army Regulation 635-200, Chapter 13, paragraph 13-2. He further directed that the applicant be issued an "general" discharge certificate, and the Separation Program Designator Code (SPD) of JHJ.

i. Orders 34-136, 14 February 1984, show he was to be separated from the Army, with an effective date of 21 February 1984.

g. His DD Form 214 for the period ending 21 February 1984 shows he was discharged with a general characterization of service, pursuant to Army Regulation 635-200, chapter 13, Unsatisfactory Performance. He was assigned Separation Code JHJ and Reentry Code 3. He completed 2 years, 11 months, and 2 days of active service. His grade at the time of discharge was PFC/E3. He was awarded the Army Service Ribbon and the Army Achievement Medal.

5. 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, including PTSD, 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 20 March 1981.
- The applicant received NJP under the provisions of Article 15, UCMJ on 3 January 1984 for failure to repair and again on 24 January 1984 for having been duly restricted and breaking said restriction.
- On 10 February 1984, following command's initiation, the separation authority directed the applicant's separation from the Army under the provisions of Army Regulation 635-200, Chapter 13, paragraph 13-2 unsatisfactory performance.
- The applicant was discharged on 21 February 1984 and completed 2 years, 11 months, and 2 days of active service.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts PTSD and mental health as mitigating factors in his discharge, and he discussed marital infidelity and distress in his application. A VA Summary of Benefits letter dated 12 November 2023 showed that the applicant is 70%

service connected and consider unemployable and totally and permanently disable as a result of his disabilities. A medication list included a medication used for sleep and an antidepressant. There was insufficient evidence that the applicant was diagnosed with PTSD or another 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 is 70% service connected for Major Depressive Disorder since 13 July 2009. He initiated mental health treatment through the VA on 3 July 2009 by presenting to the ER and reporting suicidal ideation and depression associated with tinnitus and psychosocial stressors. He was admitted to the psychiatric inpatient unit, and he discussed a history of non-VA medication treatment with an anxiolytic and an antidepressant. His medications were changed, and he discharged four days later. A Compensation and Pension (C&P) exam was conducted on 11 September 2009, and the applicant reported depression, anxiety, and sleep difficulty secondary to tinnitus. He described how the condition had interfered with his concentration, memory, and social functioning, and the evaluator concluded the tinnitus is more likely than not a contributing factor to the development of depression. He followed up for medication management only through early 2011 and was prescribed four medications to help with sleep and mood, and his diagnoses were Depression, not otherwise specified (NOS) and Anxiety NOS. The applicant initiated individual therapy in January 2011, and he reported continued depression associated with his physical health problems and feeling like a burden to his family. However, he discontinued after only a couple of sessions. In July 2012 a neuropsychological evaluation was conducted due to the applicant's concerns about memory problems, and the results showed some slowed cognitive-motor processing speed, reduced attention, and word-finding difficulty, which were associated with his depression and vascular risk factors (i.e. hypertension; diabetes). Another C&P exam was conducted on 11 September 2012, and it was again concluded that his symptoms of irritability, insomnia, concentration problems, depressed mood, and anxiety were related to his tinnitus. He was diagnosed with Major Depressive Disorder and Generalized Anxiety Disorder. In April 2013 the applicant was admitted to a psychiatric inpatient unit due to psychotic symptoms (i.e. belief that wife was poisoning him; visual and auditory hallucinations) and volatile behavior (i.e. threw a computer; smashed a glass top table). These symptoms were later minimized by the applicant, but he was diagnosed with Psychosis NOS, had medications changed, and discharged after six days. After discharge he continued with medication management and engaged in monthly individual therapy through May 2014. On 3 February 2014, the applicant completed another C&P exam where he reported a history of auditory and visual hallucinations, especially when not taking his medications, and inability to work "since the 1990s" due to his mental health symptoms. He was diagnosed with Major Depressive Disorder with Psychotic Features and Generalized Anxiety Disorder. Since then, he has primarily utilized medication management and had no hospitalizations for mental health reasons.

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, including PTSD, at the time of the misconduct. There is insufficient evidence, beyond self-report, that he had a mental health condition while on active service, but he is service connected through the VA for Major Depressive Disorder and has received treatment for this condition since 2009. This diagnosis is secondary to tinnitus, but the applicant has demonstrated psychotic features over the course of his 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.

(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. The applicant has been diagnosed with Major Depressive Disorder secondary to tinnitus since 2009, but there is no clear nexus to his misconduct related to failure to repair and breaking restrictions and his mental health condition.

g. 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:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's request, supporting documentation and published DoD policy for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his dates and record of service, the frequency and nature of his misconduct and the reason for his separation. The Board considered the review and conclusions of the medical advising official to include the applicant's VA service-connected conditions and employability status. The Board concluded that the applicant stated he had an undiagnosed medical condition at the time of service that mitigated his misconduct. The Board concurred with the medical advising official that the review of military medical and mental health records revealed

no documentation of any mental health condition(s) while on active service. The applicant has been diagnosed with Major Depressive Disorder secondary to tinnitus since 2009, but there is no clear nexus to his misconduct related to failure to repair and breaking restrictions and his mental health condition. The Board applied liberal consideration to his contention that he had a mitigating condition at the time of service but, based on a preponderance of evidence, 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.

█

█ █

█

█

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 (Armed Forces), 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 15-185 (Army Board for Correction of Military Records), currently in effect, 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

3. Army Regulation AR 635-200 (Personnel Separations Enlisted Personnel), in effect at the time, sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

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. Chapter 13, provides A member may be separated per this chapter when it is determined that he or she is unqualified for further military service because of unsatisfactory performance.

4. Army Regulation 635-5-1 (Separation Program Designator Codes) states that the Separation Program Designator (SPD) codes are three-character alphabetic combinations which identify reasons for, and types of, separation from active duty. SPD code "JHJ" and RE code 3 are the appropriate codes to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200, Chapter 13, based on Unsatisfactory Performance.

5. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE code "1" applies to personnel who have completed their obligated term of active service and are considered qualified to reenter the U.S. Army if all other criteria are met
- RE code "2" Applies to persons not eligible for immediate reenlistment

- RE code “3” applies to personnel who are not considered fully qualified for reentry or continuous service at time of separation, but whose disqualification is waivable. They are ineligible unless a waiver is granted
- RE code “4” applies to personnel separated from last period of active-duty service with a nonwaivable disqualification

6. 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.

7. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

8. 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.

9. Section 1556 of Title 10, USC, 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//