

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 November 2024

DOCKET NUMBER: AR20240003043

APPLICANT REQUESTS: an upgrade of his other than under honorable conditions discharge.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Self-Authored Letter

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 that he enlisted in the Army in April 1985, leaving behind elderly parents with limited family support. The pressure of not being able to help them financially weighed on their mind, as they were on a fixed income. In 1989, while stationed at Schofield Barracks in Hawaii, the applicant was deployed to Thailand, where he witnessed the death of a close friend, Sergeant W---, in a truck accident. This traumatic event left a lasting impact. In 1992, the applicant's father passed away from prostate cancer, and the applicant was overwhelmed with anxiety over leaving his mother alone. Three years later, the applicant's cousin, through the American Red Cross, informed him of his mother's sudden death. This loss was devastating, and the applicant felt isolated with no family support. Amidst this turmoil, the applicant lost his career in the Army after failing a random drug test further compounding the emotional and personal losses he experienced in a single year.
3. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 2 April 1985. He reenlisted on 18 February 1988 and on 21 June 1993. He served in Germany and Hawaii and attained the rank of sergeant/E-5 on 1 June 1992.

b. On 31 August 1995, he accepted nonjudicial punishment for one specification of wrongful use of cocaine, between on or about 7 June 1995 and 7 July 1995. His punishment included reduction from sergeant/E-5 to specialist (SPC)/E-4 and forfeiture of \$661.00 per month for one months, suspended for 6 months.

c. On 5 October 1995, the applicant underwent a mental evaluation. The DA Form 3822-R (Report of Mental Status Evaluation) shows he was psychiatrically cleared for any administrative action deemed appropriate by the command.

d. On 22 October 1995, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12c, for commission of a serious offense. The reason for his proposed action was as a result of a positive urinalysis test for cocaine.

e. Standard Form (SF) 88 (Report of Medical Examination) and SF 93 (Report of Medical History) both dated, 24 October 1995 for the purpose of administrative separation indicated the applicant was generally in good health.

f. On 20 April 2007, after consultation with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he requested consideration of his case by an administrative separation board
- he requested a personal appearance before an administrative board
- he requested to be consulting counsel and representation by counsel
- he may encounter substantial prejudice in civilian life if a character of service that is less than honorable was issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he will be ineligible to apply for enlistment for a period of 2 years after discharge

g. The immediate commander initiated separation action against the applicant under the provisions of AR 635-200, Chapter 14-12c, for commission of a serious offense and recommended the applicant to receive an under other than under honorable conditions discharge and the intermediate commander recommended approval.

h. On 16 November 1995, the separation authority approved the applicant's request to appear before an administrative elimination board.

i. On 14 December 1995, an administrative separation board convened and found that the applicant did commit an offense in accordance with AR 635-200, para 14-12c.

The administrative separation board recommendation the applicant receive an under other than honorable conditions discharge.

j. On 14 December 1995, the separation authority approved discharge recommendation for separation under the provisions of AR 635-200, Chapter 14, paragraph 14-12c for commission of a serious offense. He would be issued an under other than under honorable conditions characterization of service and reduction to the grade of private (E-1).

k. On 20 December 1995, the applicant was discharged from active duty. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of chapter 14-12c of AR 635-200 with a under than honorable conditions characterization of service. He completed 10 years, 8 months, and 19 days of net active service with no lost time. He was assigned separation code JKK and the narrative reason for separation listed as "Misconduct," with Reentry Code 4.

(1) He was awarded or authorized the:

- Army Commendation Medal (3rd award)
- Army Achievement Medal (4th award)
- Army Good Conduct Medal (3rd award)
- National Defense Service Medal
- Humanitarian Service Medal
- Noncommissioned Officer's Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon (2nd award)
- Marksman Marksmanship Qualification Badge with Rifle
- Driver and Mechanic Badge with Operator – S bar

(2) The Remarks Block listed his immediate reenlistments as well as his continuous honorable service.

4. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

5. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as commission of a serious offense, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

6. 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.

## 7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. On his DD Form 293, he indicated Posttraumatic Stress Disorder (PTSD) is related to his request. More specifically, he stated that in 1989 he witnessed the death of a close friend while deployed to Thailand. He also reported that his father died in 1992 due to cancer and he felt overwhelmed with anxiety about leaving his mother alone. Three years later, he was informed via a Red Cross message that his mother had died suddenly. 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 (RA) on 02 April 1985, 2) he accepted nonjudicial punishment on 31 August 1995 for wrongful use of cocaine, 3) he underwent a Mental Status Evaluation (MSE) on 05 October 1995 and was psychiatrically cleared for any administrative action deemed appropriate by the command, 4) on 22 October 1995, the applicant's commander notified him of his intent to separate him under the provisions of Army Regulation (AR) 635-200, Chapter 14-12c, for commission of a serious offense with the reason for the proposed action noted as the result of a positive urinalysis for cocaine, 5) his Report of Medical Examination and Report of Medical History dated 24 October 1995 for the purposes of separation showed he was generally in good health, 6) he was discharged on 20 December 1995 with an UOTHC characterization of service, a separation code of JDD, the narrative reason for separation listed as "Misconduct," and a reentry code of '4,' 7) the applicant's DD Form 214 shows he was awarded numerous Medals, Ribbons, and Badges throughout his career.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. The applicant did not provide any civilian BH records for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. A review of the in-service MSE dated 05 October 1995 shows the domains of his MSE were within normal limits (WNL). The provider indicated the applicant had the mental capacity to understand and participate in proceedings, was mentally responsible, and was psychiatrically cleared for administrative or disciplinary action deemed appropriate by command. His Report of Medical Examination dated 24 October 1995 for the purposes of separation shows item number 42, psychiatric, as 'normal' on clinical evaluation. The associated Report of Medical History shows the applicant reported a history of suicide attempt. He also marked 'yes' to the item regarding any history of treatment for a mental health condition and noted 'attempted suicide once. In the remarks section the provider noted 'family problems. Doing ok.' The date of the suicide

attempt was not documented.' On a Clinical Record Form (undated) which appears to be a continuation form for his Report of Medical History (SF 93), in response to the question "how long have you had the problem," noted '11 years, 88M (his MOS), short time, attempted suicide.' He indicated 'yes' that he was evaluated and noted the diagnosis was emotional stress. It also appeared that he noted 'attend marriage counseling.' Records regarding a BH evaluation surrounding the circumstances of these event(s) were not available for review nor detailed in the available records. There were two Report of Medical Examinations for the purposes of enlistment dated 17 January 1983 and 14 March 1985 showing item number 42, psychiatric, as 'normal' on clinical evaluation.

d. The applicant's available service records were reviewed. There were several NCO Evaluation Reports (NCOER) available for review from June 1992 through October 1994. Of note, his NCOER for period from June 1992 through May 1993 shows areas of special emphasis as 'Deployment to Thailand and Kauai.' Consistent amongst the available NCOER's, his performance ratings across the measured domains shows his rater rated his performance from 'success' to 'excellence,' with his overall potential rated as 'among the best.' His senior rater marked his overall performance as the highest rating of a '1' and potential for promotion and/or service as '1,' which fell in the superior range. He received an Army Commendation Medal (ARCOM) for service from 05 March 1989 through 01 September 1992. He received his second Army Achievement Medal (AAM) on 26 July 1988 for service from 06 September to 22 September 1988. He received his 3<sup>rd</sup> Army Good Conduct Medal for the period of service from 01 April 1991 to 31 March 1994. A Memorandum dated 13 March 1991 shows he was disapproved for the Good Conduct Medal from December 1987 through December 1990 due to receiving an Article 15 during the period of the award. Review of the available records show he received an Article 15 on 17 July 1990 and notes that he was apprehended on 14 September 1990 for simple assault, resulting in a reduction of rank from E4 to E3.

e. A review of JLV was void of medical information. He is not service-connected through the VA for any medical conditions. It is of note that his UOTHC discharge renders him ineligible for VA services.

f. The applicant is applying to the ABCMR requesting an upgrade of his UOTHC characterization of service. He indicated PTSD is related to his request. Review of the available in-service medical records were void of any BH diagnosis. An in-service MSE conducted at the time of his separation shows he was psychiatrically cleared for administrative separation and was not diagnosed with a BH condition. His records also indicate that he reported a history of one suicide attempt during his separation physical; however, the date of this event is unclear and there were no medical records associated with this event. Review of JLV shows the applicant is not service-connected for any conditions through the VA though it is of note that his UOTHC characterization of service renders him ineligible for VA services. Although the applicant's in-service

records indicate he reported a history of suicide attempt, there is insufficient information available that the applicant had a condition or event in-service that mitigates his misconduct. As such, BH mitigation is unclear.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to PTSD.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unclear. Review of the applicant's in-service medical records were void of any history of a BH diagnosis. However, the applicant contends his misconduct was related to PTSD and his self-assertion alone merits consideration by the Board. Although it is acknowledged that he reported a history of suicide attempt during his separation physical, the date(s) of the attempt were not documented and there was no associated medical documentation available for review regarding the circumstances that led to the attempt. An in-service MSE psychiatrically cleared him for separation and he was not diagnosed with a BH condition at the time of discharge. Review of VA records shows the applicant is not service-connected for any medical conditions. It is of note that his UOTHC discharge renders him ineligible for VA services. Review of the applicant's service records show that he received numerous accolades throughout his career and the available NCOERs revealed that he was consistently rated as 'among the best' in the years immediately preceding his discharge due to misconduct. It is acknowledged that, in accordance with Liberal Guidance, a change in behavior may be considered as evidence that a BH condition was present. However, while there are possible indicators, to include a change in behavior as evidenced by performing well followed by an episode of misconduct, in addition to reporting a history of suicide attempt, there is insufficient documentation available indicating the applicant had a BH condition in-service and therefore a nexus cannot be established between his misconduct and PTSD. As such, BH mitigation is unclear.

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 committed serious misconduct (positive test for cocaine). As a result, his chain of command initiated separation action against him. He was discharged with an under other than honorable conditions characterization of service.

The Board found no error or injustice in his separation processing. The Board considered the applicant's argument but did not find it supported by evidence. 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 insufficient evidence of any mitigating behavioral health condition in-service and therefore a nexus cannot be established between his misconduct and any behavioral health condition, making mitigation unclear. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant 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, 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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states 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. Paragraph 3-7b (General Discharge) states 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.

c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

3. 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 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.

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 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, 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, on 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 misconduct that led to the discharge.

5. 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.

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.

//NOTHING FOLLOWS//