

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 October 2024

DOCKET NUMBER: AR20240003375

APPLICANT REQUESTS: an upgrade of his character of service from under honorable conditions (general) to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 3 June 2023
- self-authored statement
- medical documentation, 1 May 2023
- VA Form 21-526EZ (Application for Disability Compensation and Related Compensation Benefits), 3 June 2023
- statement in support of claim, 3 June 2023
- character reference statement, from [REDACTED] date unknown
- character reference statement, from [REDACTED] date unknown

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 has learned the consequences of his actions and has grown to be a better example to others. If awarded the discharge upgrade, he plans to use the Montgomery GI Bill benefits to further his education.

a. He enlisted and loved the Army; he excelled and received many achievements all while believing he was too friendly in nature. While in jump school, he had his first encounter with racism. He was put on details which had nothing to do with him, he was put on jumps which were not with his platoon nor company, he was put in an absent without leave (AWOL) status for not being able to show up to formation due to being on bed rest for medical reasons. He states his commander was not understanding nor did the commander care too much for the opposite race. He believed his commander did not like him due to his athletic-ness, smarts, fast learning, and ease to get along with others, so he was punished.

b. After almost a year of details, he started to show his dislike for the Army. He had been demoted more than three times, placed in an AWOL status more than three times, and had his life almost taken because he was put on other platoons for jumps, Due to his rank he never felt like he had a voice. His car was stolen from a battle buddy of his who was discharged, after he pressed charges, he was claimed to have planned the robbery. He had lost all hope for the military and wanted to transfer. He was denied a transfer to a different installation, he then started hating the installation and started out-processing.

c. He is requesting help; he has been overlooked for jobs due to being "overqualified" and fired or let go due to others taking him as a threat. He has been put on medication which impairs him from being fully functional, he cannot drive with his high stress level due to his training that he cannot use it in his civilian life. Additionally, he cannot access care within the Department of Veterans Affairs (VA) nor receive benefits. He wants the opportunity to get his mental and physical health normal.

3. The applicant enlisted in the Regular Army on 11 February 2003, for a 4-year period. He was awarded the military occupational specialty of 92G (Food Service Specialist). The highest rank he attained was private first class/E-3.

4. The applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on 5 December 2003, for five charges of failing to go to his appointed places of duty, between on or about 27 October and 5 November 2003. His punishment imposed was 10 days of extra duty.

5. Four DA Forms 4187 (Personnel Action) show the applicant's duty status changed:

- from present for duty (PDY) to AWOL effective 4 May 2004
- from AWOL to PDY effective 10 May 2004
- from PDY to AWOL effective 14 May 2004
- from AWOL to PDY effective 19 May 2004

6. The applicant underwent a medical examination on 13 May 2004. His Standard Form 600 (Chronological Record of Medical Care) shows he was referred for psychiatric evaluation in conjunction with separation actions under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 14-12b (Acts or Patterns of Misconduct – a pattern of misconduct). He was found mentally responsible and cleared for any administrative action deemed appropriate by his command.

7. He accepted NJP, under the provisions of Article 15 of the UCMJ, on 25 May 2004, for seven charges of failing to be at his appointed place of duty, between on or about 19 April and 4 May 2004. His punishment imposed was reduction to the grade of E-2,

forfeiture of \$301.00 pay for one month, 45 days of extra duty, and 45 days of restriction.

8. On 4 June 2004, the applicant's immediate commander notified the applicant of the intent to initiate separation action against him under the provisions of AR 635-200, paragraph 14-12b, for patterns of misconduct. The commander's proposed reasoning was due to the applicant's summarized Article 15 for five charges of failing to be at his appointed places of duty and his field grade Article 15 for seven charges of failing to be at his appointed places of duty.

9. The applicant's acknowledged receipt of the notification and election of rights are absent from his service record.

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

11. The separation authority approved the recommended separation action and directed the issuance of an under honorable conditions (general) discharge.

12. The applicant was discharged on 1 July 2004, under the provisions of AR 635-200, paragraph 14-12b, by reason of misconduct. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he received an under honorable conditions (general) character of service, with separation code JKA, and reentry code 3. He was credited with 1 year, 4 months, and 10 days of net active service, with time lost from 4 May 2004 to 9 May 2004 and from 14 May 2004 to 18 May 2004. He was awarded or authorized the following decorations, medals, badges, citation, and campaign ribbons:

- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon
- Parachutist Badge

13. The applicant provides:

a. His application for disability compensation and related compensations benefits sent by himself to the VA. The form shows his claimed disabilities include but are not limited to tinnitus, headaches, lower and upper back pain, plantar fasciitis within the right and left, right and left knee strain, temporomandibular joint, gastroesophageal reflux disease, hypertension, anxiety, insomnia, and depression.

b. Medical documentation showing on 1 May 2023, he was diagnosed with complete tear, knee, anterior cruciate ligaments (right) and sprain of anterior cruciate ligament of right knee, initial encounter.

c. Two-character references statements, from his mother and spouse, in support of his request.

(1) His mother described an incident involving her son's car, describing him as a victim from vandalism and repossession due to the military allotments not being honored before his discharge. She additionally references the applicant's commanding officer reporting to her his status of being AWOL, she remembers informing the commander of her son being sick and on bed rest per his doctor's orders. She is a veteran and was hopeful to receive her son stronger mentally and physically when he enlisted; however, after his discharge he was worse than before he had left. She states her son has a short fuse, is difficult to have a productive conversation with due to his lack of focus and connection and lacks the capacity to focus on one task at a time.

(2) His spouse describes him as a brave person who is a remarkable man to his family. She witnesses him suffering due to experiences with his military service, stating he experiences as post-traumatic stress disorder (PTSD), anxiety, financial hardship, and daily health issues with limited resources. Due to his militant personality and mental issues, he finds it difficult to stay on tasks and his inability to connect with others has led him at times to losing his employment. She is truly concerned for his mental and physical because he is dealing with issues because of war.

14. Regulatory guidance provides when an individual is discharged under the provisions of Chapter 14, by reason of misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

15. In reaching its determination, the Board can consider the applicant's, service record, and statements in light of the published guidance on equity, injustice, or clemency.

16. 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.

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 11 February 2003.
- The applicant accepted NJP on 5 December 2003, for five charges of failing to go to his appointed places of duty, between on or about 27 October and 5 November 2003. He accepted NJP again on 25 May 2004 for seven charges of failing to be at his appointed place of duty between on or about 19 April and 4 May 2004. Separation action was initiated against him under the provisions of AR 635-200, paragraph 14-12b, for patterns of misconduct.
- The applicant was discharged on 1 July 2004 and credited with 1 year, 4 months, and 10 days of net active service. His DD 214 showed lost time from 4 to 9 May 2004 and from 14 to 18 May 2004.

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 asserts stress associated with racism as a mitigating factor in his misconduct, but he did not indicate any mental health conditions as part of his application. However, his wife's letter of support discussed concerns about her husband's mental health condition, nightmares, night sweats, and "intrusive reminders of war including panic attacks, uncontrollable shaking, and heart palpitations." However, his Enlisted Record Brief and DD Form 214 do not show any overseas duty. A medical record document dated 13 May 2004 showed a Mental Status Evaluation, which indicated the applicant met retention standards, was mentally responsible, and had capacity to understand and participate in proceedings, and he was psychiatrically cleared for administrative action. 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 no history of mental health related treatment or diagnoses.

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 at the time of the misconduct. However, there are no medical records available that document any mental health symptoms or diagnoses.

(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. He discussed the stress associated with racism 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. Avoidant behavior, such as going AWOL or not showing up for duty, can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Yet, the presence of misconduct alone is not sufficient evidence of a mitigating mental health condition during active service.

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 and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records, and medical review, the Board concurred with the assessment of the Agency Behavioral Health Advisor that there was insufficient evidence to demonstrate the applicant had a condition or experience that mitigated his misconduct.

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2. The Board found the applicant's record void of in-service mitigating factors sufficient to overcome the established pattern of misconduct. While it acknowledged the character references submitted by the applicant's spouse and mother—which attested to his integrity and personal struggles while serving, the Board concluded that these statements did not outweigh the documented disciplinary issues. The applicant's record reflects multiple instances of misconduct over his 1 year, 4 months, and 10 days of net active-duty service. He was discharged for misconduct and received a General (under honorable conditions) characterization of service. The Board determined that this characterization was appropriate, as the applicant did not meet the standards of conduct and performance expected of Army personnel for an Honorable discharge. As such, the Board denied relief.

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, 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 - Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. Paragraph 3-7b states 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 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. 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 merited by the Soldier's overall record.

3. 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 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 to 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.

4. 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//