

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 October 2024

DOCKET NUMBER: AR20240003608

APPLICANT REQUESTS: an upgrade of his characterization of service from under honorable conditions (general) to honorable and an appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record), 6 December 2023
- self-authored statement
- medical documentation, 29 August 2005
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 2 December 2005
- three Employee Performance Evaluations

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, his request is due to policy changes regarding liberal consideration for post-traumatic stress disorder (PTSD) and mental health issues. During his service, there was a period where he struggled with depression, anxiety, and other mental health issues, which regrettably led to incidents resulting in his discharge. He firmly believes his record warrants reconsideration, specifically addressing his award of the Army Good Conduct Medal during his time.

a. He states despite his ongoing mental health challenges, he maintained steady employment and earned outstanding ratings on the majority of his performance evaluations. His evaluations show his commitment to his responsibilities and demonstrates his ability to contribute positively in a professional setting.

b. He highlights that his current discharge has adversely affected him in his pursuit of employment as a police officer, which is a goal he aspires to achieve. His discharge

is a burden which does not reflect his capabilities and his commitment to service, especially due to his mental health issues leading to his discharge.

c. He is committed to addressing and managing his mental health issues and has demonstrated continuous employment and positive contributions to his community. He thanks the Board for their consideration.

3. On his DD Form 149, he annotates other mental health is related to his request.

4. The applicant enlisted in the Regular Army on 11 July 2001, for a 5-year period. He was awarded military occupational specialty 31B (Military Police). The highest rank he attained was private first class/E-3.

5. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing. However, his DD Form 214 shows he was discharged on 2 December 2005, under the provisions of Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), paragraph 14-12b, for a pattern of misconduct, in the grade of E-3. He received an under honorable conditions (general) characterization of service. He was credited with 4 years, 4 months, and 22 days of net active service. He was authorized or awarded the following decorations, medals, badges, citations, and campaign ribbons:

- Army Good Conduct Medal
- National Defense Service Ribbon
- Global War on Terrorism Service Medal

6. The applicant provides:

a. Medical documentation, showing on 19 August 2005 through 29 August 2005, while in service, he was hospitalized for 11 days stating his chief complaint upon admission was he was "depressed" and could not "take the Army anymore".

(1) He was diagnosed with adjustment disorder with mixed disturbance of emotions and conduct.

(2) He was discharged after he had reached maximum benefit of inpatient hospitalization, he was stable on psychotropic medication with no suicidal ideation/homicidal ideation and was not an imminent risk to harm himself or others at the time of the hospitalization discharge.

b. Three employee performance evaluations from his civilian positions, showing he received one above satisfactory rating and two outstanding ratings. He holds a position as courtroom clerk I/leadworker at the N\_\_ D\_\_ District Courthouse. His above

satisfactory rating showed his performance surpassed the job requirements and his outstanding rating showed he performed constantly conspicuous and distinguished performance. He displayed initiative and creativity and had substantially enhanced departmental efficiency and/or effectiveness. On each performance evaluation he was granted a merit increase.

7. 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 of such is merited by the Soldier's overall record.

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

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service to honorable. On his DD Form 149, the applicant indicated Other Mental Health Issues are related to his request. 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 11 July 2001 as a 31B (Military Police), 2) his record is void of the specific facts and circumstances surrounding his discharge processing. His DD Form 214 shows he was discharged on 02 December 2005 under the provisions of Army Regulation (AR) 635-200, paragraph 14-12b for a pattern of misconduct. His separation code was JKA and reentry code '3.' His records also show he was previously awarded the Army Good Conduct Medal. 3) the applicant provided a psychiatric discharge summary showing he was psychiatrically hospitalized in-service from 19 August 2005 through 29 August 2005 and was diagnosed with Adjustment Disorder with Mixed Disturbance of Emotions and Conduct.

b. The Army Review Boards 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. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. In-service medical records were available for review via JLV from 11 December 2002 through 16 November 2005. He presented for a BH intake on 28 June 2005 and reported experiencing symptoms of depression for one year to include loss of concentration, lack of motivation, inability to remain focused, anger, irritability, sleep problems and previous suicidal ideation (one week prior). The provider documented that the applicant had been previously treated for depression in Germany. The provider

noted that the applicant stated he had 'entertained going absent without leave (AWOL), has access to weapons, used marijuana one week ago, and is drinking more than usual lately.' He was diagnosed with Depression and was also referred to the Army Substance Abuse Program (ASAP) for treatment of marijuana and alcohol use. He was diagnosed with alcohol abuse and occupational problem through ASAP. It was noted that due to his moods he was fearful he might hurt someone, though denied any plans to do so, and as a result the ASAP provider recommended to his First Sergeant that he not have access to weapons until re-evaluated. The applicant was evaluated in the emergency room (ER) on 26 July 2005 following an attempted overdose and was admitted to the intensive care unit (ICU) for cardiac monitoring for 24 hours. A psychiatric consult was completed while he was in the hospital and the psychiatrist noted that the applicant did not require inpatient psychiatric hospitalization. The provider recommended a Chapter 5-17 separation to the applicant's commander and noted that he should follow-up with BH and ASAP upon discharge. He was diagnosed with Adjustment Disorder with Depressed Mood and Alcohol Abuse. His BH provider documented on 17 August 2005 that the applicant was given the impression his command would not initiate a Chapter 5-17 separation and that the applicant verbally 'went off' on his First Sergeant. He was psychiatrically admitted on 19 August 2005 due to suicidal ideation. It was noted that the applicant reported he went on leave for three weeks and had minimal depressive symptoms though upon returning from leave experienced acute depressive symptoms. It was noted that he did not report to work the first day he had returned from leave and upon reporting to the First sergeant he was allegedly told that his Chapter 5-17 was canceled due to his being a 'liar' and 'malingering.' The provider documented that the applicant had a history of one prior Article 15 due to disrespect, had a number of counseling statements for disrespect, being late, not in proper uniform, not shaving, etc. and that the applicant believed he may receive a second Article 15 for his most recent disrespect of his First Sergeant. Collateral documentation was provided by his Platoon Leader who stated that the applicant was a 'fine Soldier' prior to being notified the previous December (2004) that he was going to deploy (December 2005). Since that time, it was noted that he had reported depressive symptoms and family problems (it was documented his grandfather had medical issues). He was discharged from the hospital on 29 August 2005 and his diagnosis was documented as Adjustment Disorder with Mixed Disturbance of Emotions and Conduct. The provider recommended a Chapter 5-17 separation. His BH note dated 14 September 2005 shows his diagnoses as Adjustment Disorder with Depressed Mood, Depression, and Occupational Problem. The applicant's final in-service BH note dated 16 November 2005 documented the applicant was being separated due to Chapter 14 but did not specify the reason. His diagnoses were noted as Adjustment Disorder with Depressed Mood and Occupational Problem. Review of his problem list in JLV also shows in-service diagnoses of Cannabis Abuse and Alcohol Abuse.

d. A review of JLV shows the applicant is 70% service-connected through the VA for Major Depressive Disorder (MDD). He completed a Compensation and Pension (C&P)

evaluation on 09 January 2024 through the VA and was diagnosed with Major Depressive Disorder, Recurrent, Moderate. The provider noted while in-service he received an Article 15 and was recommended for separation from service due to disrespectful behavior (01 September 2004), insubordinate conduct toward a commissioned officer (04 November 2004), and failure to be at his appointed place at the appointed time (*Advisor's Note*: no date was specified by the evaluator).

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant had a condition or experience in-service that is potentially mitigating. Review of in-service records show the applicant was diagnosed with the following BH conditions: Depression, Adjustment Disorder with Depressed Mood, Adjustment Disorder with Mixed Disturbance of Emotions and Conduct, Alcohol Abuse, Cannabis Abuse, and Occupational Problem. His Adjustment Disorder diagnoses are subsumed by his diagnosis of Depression. It is of note that Alcohol and Substance Use Disorders and psychosocial problems such as Occupational Problem do not constitute mitigating conditions. Following his discharge from the military, the applicant has been diagnosed and 70% service-connected through the VA with MDD. Although the applicant's diagnosis of Depression provides the foundation as a potentially mitigating BH condition, due to the lack of information regarding the specific facts and circumstances that led to his discharge, BH mitigation is unclear.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with Depression in-service and post-discharge has been diagnosed and 70% service-connected through the VA with MDD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with Depression in-service and post-discharge has been diagnosed and 70% service-connected through the VA with MDD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unclear. Review of in-service records show the applicant was diagnosed with several BH conditions to include Depression, Adjustment Disorder with Depressed Mood, Adjustment Disorder with Mixed Disturbance of Emotions and Conduct, Alcohol Abuse, Cannabis Abuse, and Occupational Problem. His Adjustment Disorder diagnoses are subsumed by his diagnosis of Depression. It is of note that Alcohol and Substance Use Disorders and psychosocial problems such as Occupational Problem do not constitute mitigating conditions. Since being discharged from the military he has been diagnosed and 70% service-connected through the VA with MDD. The specific facts and circumstances that led to his discharge were unavailable for review. The available in-

service medical documentation shows he reported two instances of possible misconduct to include disrespect to his First Sergeant and failure to report in August 2005. Although his VA C&P examination noted several instances of misconduct, it was documented to have occurred in September 2004, one year prior to the applicant's discharge, and it is unclear if this is a clerical error or representative of previous misconduct unrelated to the circumstances that led to his discharge. It is of note that, as there is an association between lack of motivation, irritability, disrespect, and failure to report, his diagnosis of Depression/MDD would provide the basis to support BH mitigation for these instances of misconduct. However, due to the lack of information regarding the specific facts and circumstances surrounding his discharge, BH mitigation is unclear.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record and published DoD policy for consideration of discharge upgrade requests, the Board found that relief was not warranted.
2. The applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation and his character of service. The Board considered the review and conclusions of the medical advising official and acknowledge the applicant's in-service medical records and his VA service-connected diagnosis (MDD). The Board acknowledges that this diagnosis provides a basis for mitigation of the misconduct shown in the record. However, the Board agrees with the medical review that due to the lack of information regarding the specific facts and circumstances surrounding his discharge, BH mitigation is unclear for application of liberal consideration. The Board also considered the applicant's evidence of post-service achievements, but absent evidence of the specific misconduct that led to separation, the Board found it insufficient to support a clemency determination. Based on a preponderance of evidence, the Board determined that the applicant's character of service was not in error or unjust.
3. 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. Section 1556 of Title 10, U.S. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

3. 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. prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides 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.

4. 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.

5. 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 post-traumatic stress



disorder; 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 sexual assault or sexual harassment was unreported, or 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.

6. 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//