

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 December 2024

DOCKET NUMBER: AR20240003676

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

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

DD Form 149 (Application for Correction of Military Record)

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 he did not receive a mental health evaluation prior to exiting the service. He needs to change his discharge status to receive medical care for post-traumatic stress disorder (PTSD).
3. The applicant enlisted in the Regular Army on 15 March 2001 for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty 11B (Infantryman). The highest rank he attained was private/E-2.
4. The applicant was reported absent without leave (AWOL) on 11 February 2002 and was subsequently dropped from the rolls on 13 March 2002. He surrendered to military authorities at Fort McCoy, WI, on 24 February 2003 and was transferred back to Fort Campbell, KY.
5. The applicant was formally counseled on three occasions between 23 April 2003 and 29 April 2003 for failure to report for formation, failure to report for duty, and for leaving his place of duty without notifying his chain of command.
6. An incident report from the Clarksville Police Department, dated 30 April 2003, named the applicant as a suspect for the offenses of breach of trust, forgery of a check in the amount of \$900.00, and the theft of a watch (\$750.00 in value) and miscellaneous

men's clothing (\$1,000.00 in value). The applicant's service record is void of any documentation detailing the adjudication of the incident.

7. The applicant underwent a medical examination on or about 22 July 2003. The relevant DD Form 2807-1 (Report of Medical History) and corresponding DD Form 2808 (Report of Medical Examination) show the applicant reported pain in his joints and knee trouble. The examining provider determined the applicant was medically qualified for service/chapter.

8. The applicant's immediate commander notified the applicant of the commander's intent to initiate separation action against him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12b, for a pattern of misconduct. The commander noted the applicant's three episodes of formal counseling and two episodes of AWOL, from 23 September 2001 to 24 February 2003 and 1 May 2003 to 11 June 2003, as specific reasons for the action.

9. On 25 July 2003, the applicant acknowledged receipt of the notification and subsequently consulted with counsel. He was advised of the basis for the contemplated action to separate him and its effect; of the rights available to him; and the effect of waiving his rights. He further acknowledged understanding that he may expect to encounter substantial prejudice in civilian life if he were issued a general discharge. He elected not to submit a statement in his own behalf.

10. The commander formally recommended the applicant's separation from service, prior to his expiration term of service, under the provisions of Army Regulation 635-200, paragraph 14-12b, by reason of patterns of misconduct. The commander further recommended rehabilitative attempts were not practical, and the applicant should receive an under honorable conditions (general) discharge.

11. On 28 July 2003, the separation authority approved the recommended separation action, noted there was no requirement for rehabilitative transfer, and directed the issuance of an under honorable conditions (general) discharge.

12. The applicant was discharged on 7 August 2003, under the provisions of Army Regulation 635-200, paragraph 14-12b, by reason of patterns of misconduct. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his character of service was under honorable conditions (general). He completed 1 year, 10 months, and 8 days of net active service, with lost time from 1 May 2003 to 10 June 2003 and 23 September 2001 to 23 February 2002.

13. 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.

14. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

15. 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 15 March 2001.
- The applicant was reported as AWOL on 11 February 2002 and surrendered to authorities on 24 February 2003. was formally counseled on three occasions between 23 April 2003 and 29 April 2003 for failure to report for formation, failure to report for duty, and for leaving his place of duty without notifying his chain of command.
- A police report showed that the applicant was a suspect in the forgery of a check in the amount of \$900, theft of a watch valued at \$750, and theft of clothing in the value of \$1,000.
- The applicant's immediate commander notified the applicant of the commander's intent to initiate separation action against him under the provisions of Army Regulation 635-200, paragraph 14-12b, for a pattern of misconduct. The commander noted the applicant's three episodes of formal counseling and two episodes of AWOL as specific reasons for the action.
- The applicant was discharged on 7 August 2003 and completed 1 year, 10 months, and 8 days of net active service.

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 he did not receive a mental health evaluation prior to his discharge, and PTSD was a mitigating factor in his misconduct. A Report of Medical History dated 15 September 2003 (signed by provider on 22 July 2003) showed that the applicant did not endorse any psychiatric symptoms, and a Report of Medical Examination dated 22 July 2003 showed the applicant did not report any mental health symptoms and that he was considered qualified for service. 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 initiated services through the VA for housing assistance in June 2023. The last contact was in December 2023, and there was no indication of any mental health symptoms or referrals.

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. Documentation from his discharge evaluation in July 2003 showed no indication of any mental health symptoms or diagnoses, and he has not received mental health treatment through the VA.

(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. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. However, the applicant contends he had a mental health condition or an experience that mitigated 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. 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 request, available military records and medical review, the Board concurred with the advising official finding insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. The opine noted that beyond the applicant's self-reporting his record is lack substantiating evidence to support his mental health condition.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the pattern of misconduct. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board found the applicant's service record exhibits numerous instances of misconduct during his second enlistment period for 1 year, 10 months, and 8 days of net active service and multiple periods of lost time. The Board agreed was discharged by reason of patterns of misconduct and was provided an under honorable conditions (General) characterization of service. The Board found that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Based on this, the Board denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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| : | : | : | 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 (USC), 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 Army Board for Correction of Military Records (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, 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 ABCMR applicants (and/or their counsel) prior to adjudication.
3. Army Regulation 635-200 (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.

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 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.

5. 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//