

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 November 2024

DOCKET NUMBER: AR20240003783

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show:

- his service was characterized as honorable in lieu of under honorable conditions (General)
- his separation date be changed to an unspecified date to show additional service credit

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214, for the period ending 22 October 2019

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 the above correction should be made because he chose to serve in the United States military, and he should be compensated. Being away from the military has allowed him to see the pros and cons of serving and he has learned from his mistakes and experiences. The things that he learned as a Soldier will remain with him for life. He does not believe things were appropriately explained to him. He tried to apply for education benefits and file a claim, but he could not because the time he served has been taken away from him. He just wants to move forward with life and obtain the recognition he deserves for himself. He did the best he could. The applicant marked "Other Mental Health" on his application.
3. On 3 April 2018, he enlisted in the Regular Army.
4. On 7 November 2018, he was notified of suspension of his installation driving privileges. He was operating a motor vehicle on Fort Carson, CO, more than 20 miles

per hour over the posted speed limit. Under the provisions of Army Regulation (AR) 190-5, Motor Vehicle Traffic Supervision, his installation privately owned vehicle (POV) driving privileges could be suspended for a period of 1 year. The suspension was effective 14 calendar days from receipt of the notice. He was advised of his rights. The available evidence contains no further disposition concerning this suspension.

5. DA Forms 4856 (Developmental Counseling Form), dated between 28 December 2018 and 8 May 2019 show the applicant was frequently counseled by his squad leader for various reasons to include for:

- failure to be at his appointed place of duty, morning formation, on 18 November 2018, 28 December 2018, 21 January 2019, 13 February 2019, 20 February 2019, and on 7 and 8 May 2019
- failure to be at the motor pool formation, on 28 January 2019
- missing a scheduled medical appointment, on 16 January 2019, and 20 February 2019
- failure to obey an order, on 31 January 2019, and on 19 February 2019
- allowing a friend to drive his car with an expired tag, on 20 February 2019

6. The applicant accepted nonjudicial punishment (NJP), on:

a. 5 April 2019, for failure to go to his appointed place of duty at the time prescribed on seven different occasions, and for making a false statement by indicating he was “still at an appointment,” which he knew to be false. His punishment consisted of reduction from private first class/E-3 to private/E-2, a forfeiture of \$439 pay (suspended), extra duty and restriction for 14 days, and an oral reprimand.

b. 25 June 2019, for failure to go to his appointed place of duty at the time prescribed on five different occasions. His punishment consisted of reduction to private/E-1, a forfeiture of \$840 pay for 2 months, and 45 days of extra duty and restriction.

7. On 12 August 2019, the applicant underwent a mental status evaluation by a Licensed Behavioral Health (BH) Provider. The applicant was assessed for post traumatic stress disorder (PTSD), depression, traumatic brain injury, substance misuse, and sexual trauma. During the evaluation it was noted the applicant was not cognitively impaired. His behavior was normal, his perception was not impaired, his impulsivity was normal, and his behavioral risk was not elevated for himself or others. A personal interview was conducted along with a comprehensive electronic health record review, and screening assessments. He was found not to endorse any symptoms of major psychiatric illness that would cause him to fall below medical retention standards in accordance with AR 40-501 (Standard of Medical Fitness). This document shows in “BH

Diagnosis,” “Other specified problems related to psychosocial circumstances.” “See Armed Forces Health Longitudinal Technology Application (AHLTA) record.” This form was also annotated to show no follow-up needed. It was determined he understood right from wrong, and he was cleared for any administrative action deemed appropriate by his chain of command.

8. Additionally, the BH Provider determined the applicant did not currently have a behavioral health condition that caused him to fail medical retention standards in accordance with AR 40-501. The medical record did not contain substantial evidence that he currently met the criteria for a condition requiring referral to IDES [Integrated Disability Evaluation System], “but has not yet received a diagnosis.”

9. A DA Form 2808 (Report of Medical Examination) shows on 23 August 2019, the applicant was examined prior to separation, and he was found qualified for service with the following levels of functional capacity in six factors known as PULHES:

- Physical Capacity or Stamina—1
- Upper Extremities—1
- Lower Extremities—1
- Hearing and Ears—1
- Eyes—1
- Psychiatric—1

10. On 10 September 2019, the applicant’s company commander informed him he was initiating action to separate him from the service under the provisions of AR 635-200 (Active Duty Enlisted Administrative Separations) paragraph 14-12b, for pattern of misconduct. The proposed reasons for this action were that the applicant failed to report to his appointed place of duty on eight separate occasions between 28 December 2018 and 21 May 2019; and he failed to obey a noncommissioned officer on two separate occasions between 31 January 2019 and 25 April 19. On 16 January 2019, he gave a false official statement to Sergeant JT; and on 19 February 2019, he failed to obey the suspension of installation driving privileges. His commander recommended the issuance of a General Discharge Certificate. The applicant was advised of his rights.

11. On 10 September 2019, the applicant acknowledged notification, he consulted with counsel and was advised of the contemplated action to separate him from service prior to his expiration of service date based on AR 635-200, paragraph 14-12b, pattern of misconduct. He was advised of the types of discharge he could receive, the possible effects of his discharge, and the rights available to him. He indicated he would not submit a statement to the separation authority. He acknowledged he understood:

- he could expect to encounter substantial prejudice in civilian life, if a general discharge under honorable conditions were issued to him

- understood he could be ineligible for many or all benefits as a Veteran under Federal and State laws as a result of the issuance of a discharge under other than honorable conditions
- understood if he received a discharge characterization of less than honorable, he could make an application to the Army Discharge Review Board or the ABCMR for an upgrade, he understood that an act of consideration by either board did not imply his discharge would be upgraded

12. On 12 September 2019, he waived further counsel.

13. On 24 September 2019, his immediate commander initiated/recommended separation action against him under AR 635-200, paragraph 14-12b, due to a pattern of misconduct.

14. On 30 September 2019, the separation authority approved the applicant's discharge under the provisions of AR 635-200, paragraph 14-12b, due to a pattern of misconduct with service characterized as under honorable conditions with a General Discharge Certificate.

15. Accordingly, on 22 October 2019, he was discharged. His DD Form 214 shows he completed 1 year, 6 months, and 20 days of active service this period. His DD Form 214 also shows in:

- Block 24 (Character of Service) – Under Honorable Conditions (General)
- Block 25 (Separation Authority) – AR 635-200, paragraph 14-12b
- Block 26 (Separation Code) – JKA
- Block 28 (Narrative Reason for Separation) – Pattern of Misconduct

17. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a correction of his DD Form 214 to show his service was characterized as honorable in lieu of under honorable conditions (general). 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) he enlisted in the Regular Army (RA) on 03 April 2018, 2) on 07 November 2018, he was notified of suspension of his installation driving privileges due to operating a motor vehicle more than 20 miles per hour over the posted speed limit, 3) the applicant was counseled 22 times between 28 December 2018 and 08 May 2019 for various reasons to include: failure to be at his appointed place of duty and morning formation, failure to be at the motor pool formation, missing a scheduled medical appointment, failure to obey an order, and allowing a friend to drive his car with an expired tag, 4) he accepted non judicial punishment (NJP) on 05 April 2019 for failure to

go to his appointed place of duty at the time prescribed on seven different occasions and for making a false statement, and on 25 June 2019 for failure to go to his appointed place of duty at the time prescribed on five different occasions, 5) the applicant underwent a Mental Status Evaluation (MSE) on 12 August 2019 and was psychiatrically cleared for any administrative action deemed appropriate by command, 6) a Report of Medical Examination dated 23 August 2019 shows his PULHES as 111111, 7) on 10 September 2019, the applicant's commander notified him that he was initiating action to separate him from service under the provisions of AR 635-200, paragraph 14-12b, for pattern of misconduct. The proposed reasons for this action were noted as failure to report to his appointed place of duty on eight separate occasions between 28 December 2018 and 21 May 2019, failing to obey an NCO on two separate occasions between 31 January 2019 and 25 April 2019, giving a false official statement, and failing to obey the suspension of installation driving privileges, 8) he was discharged on 22 October 2019 under the provisions of AR 635-200, paragraph 14-12b, with a separation code of JKA and reason for separation noted as Pattern of Misconduct.

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. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. A Report of Medical History for the purposes of enlistment dated 21 March 2018 shows the applicant did not endorse any history of BH-related items (17a-i). A Report of Medical History dated 10 June 2019 for the purposes of separation shows he endorsed item 17f (depression or excessive worry). As an explanation the applicant noted, "I feel like I shouldn't be here I never wanna be here if I could run away I would I just don't wanna be here." The provider documented "no SI/HI" in the comments section. The applicant underwent an MSE for the purposes of Chapter 14 separation on 12 August 2019. Review of the DA 3822 shows that he did not require any duty limitations for behavioral health reasons and met retention standards IAW AR 40-501. The domains of the MSE were documented to be within normal limits. It was noted that he did not endorse symptoms of any major psychiatric illness that would cause him to fall below medical retention standards IAW AR 40-501. He was diagnosed with Other Specified Problems Related to Psychosocial Circumstances. The provider noted that the applicant was able to understand and participate in administrative proceedings and was able to appreciate the difference between right and wrong. The associated clinical note shows he reported he was diagnosed and treated with Concerta for Attention Deficit/Hyperactivity Disorder (ADHD) in childhood from age 7 through 12<sup>th</sup> grade. He was seen for BH out-processing on 16 October 2019, was not diagnosed with any BH conditions, and was cleared for out-processing.

d. A review of JLV shows the applicant is not service-connected for any conditions through the VA.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant was diagnosed with a mitigating BH condition in-service. Review of the available in-service medical records shows he was diagnosed with Other Specified Problems Related to Psychosocial Circumstances at the time of his Chapter 14 separation evaluation, which does not constitute a mitigating condition. Review of JLV shows that he is not service-connected through the VA for any conditions. Although there is insufficient evidence that the applicant's misconduct was related to Other Mental Health Issues, per Liberal Guidance, his assertion alone is sufficient to warrant the Board's consideration.

f. 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 Other Mental Health Issues.

(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? No. A review of records was void of any mitigating BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of Other Mental Health Issues. However, he contends that his misconduct was related to Other Mental Health Issues, and, per Liberal Guidance, his assertion alone is worthy of the Board's consideration. He was diagnosed with Other Specified Problems Related to Psychosocial Circumstances in service though it is of note that psychosocial issues do not constitute mitigating BH conditions. In absence of documentation supporting his assertion there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues. As such, BH mitigation is not supported.

#### 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 Department of Defense guidance for liberal consideration of discharge upgrade requests.

a. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation as misconduct for several infractions of the Uniform Code of Military Justice. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board reviewed and concurred with the medical advisor's review finding insufficient evidence that the applicant's misconduct was related to other mental health issues. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

b. The Board additionally considered the applicant's request to amend his separation date to reflect an unspecified date to show additional service credit. The Board found no error or injustice in his separation date and therefore 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 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR considers individual applications that are properly brought before it. In appropriate cases, it directs or recommends correction of military record(s) to remove an error or an injustice. The ABCMR will decide cases on the evidence of record. It is not an investigative body. It begins its consideration of each case with the presumption of administrative regularity meaning what Army personnel did at the time of the Soldier's or Veteran's area of service was administratively correct. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or absence without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Army policy states that an under other than honorable conditions discharge is normally considered appropriate for a Soldier discharged for misconduct.

b. 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.

c. 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.

4. 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.

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 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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

6. 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 on the basis of 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.

7. 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//