

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 December 2024

DOCKET NUMBER: AR20240003883

APPLICANT REQUESTS:

- an upgrade of his characterization of service from general, under honorable conditions to honorable
- a personal appearance before the Board via video/telephone.

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 was a good student with excellent grades and enlisted in the Army immediately after he graduated from high school. He had never been in any kind of trouble. He never smoked, drank nor did illegal drugs. However, once he was stationed in Germany he was encouraged to partake of these things by his supervisors. They pushed him to use the drugs and he became addicted. He is deeply ashamed and embarrassed by the behaviors listed in his military record, but he was under the influence that took him many years to overcome. It took him approximately three years to cease from drug usage, 12 years to quit smoking, and 25 years to become sober. It was not easy. He does believe and have been told that these substances also contributed to his health issues.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 18 August 1971. The highest grade he held was private first class (PFC)/E-3.
 - b. Summary Court-Martial Order Number 7, issued by Headquarters, 2nd Squadron, 4th Cavalry, APO on 28 March 1972, shows he was found guilty of:

- Charge I, one specification of on or about 26 January 1972, stealing a tape recorder and camera
- Charge II, one specification of on or about 26 January 1972, willfully damaging an automobile by prying open a vent window with a screwdriver

c. The court sentenced the applicant to reduction to the grade of private (PVT)/E-1, forfeiture of \$150.00 a month for a period of one month, and confinement at hard labor for a period of 30 days. The sentence was approved on 28 March 1972, except for the portion pertaining to confinement at hard labor for a period of 30 days which was suspended for a period of 60 days.

d. On 22 August 1972, he accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for on or about 14 August 1972, being derelict in the performance of his duties by willfully failing to walk his guard post, to wit: playing cards on the top of a track (A-20). His punishment included forfeiture of \$70.00 for one month, 14 days restriction, and 14 days extra duty.

e. On 24 August 1972, he received a bar to enlistment/reenlistment. His commander stated that the applicant was being eliminated under the Qualitative Management Program (QMP). His behavior was that of an immature child. He could not cope with the Army system and turned to drugs to escape reality. His appearance and his conduct and efficiency were marginal to unsatisfactory at the time. The commander stated the applicant was a liability to the U.S. Army in that he may commit an act in violation of the UCMJ.

f. On 24 August 1972, the applicant was read the bar to enlistment/reenlistment and refused to sign the form. On 26 September 1972, he still refused to sign.

g. On 22 November 1972, the applicant signed a statement which shows he was counseled by his commander, and he was informed of the conditions jeopardizing his promotion. He understood that if he was not promoted upon completion of four months' time in grade, he may be recommended for separation under general or honorable conditions as warranted by his character of service.

h. On 14 December 1972, the immediate commander recommended the applicant be separated under the provisions of Army Regulation (AR) 600-200 (Enlisted Personnel Management System), chapter 4, for failure to demonstrate potential for promotion. The applicant was not promoted to PFC/E-3 upon completion of four months' time in grade. His commander noted the applicant was not promoted due to the following reasons: he was unable to perform any job satisfactorily and had an extremely negative attitude. The commander recommended that the applicant be separated because of his unsatisfactory job performance and efficiency. The commander stated

the applicant had been counseled as to the reasons for non-promotion, to include those circumstances which clearly indicated that his attitude and performance did not measure up to the standards.

i. The applicant underwent a medical examination for the purpose of separation on 14 December 1972. The examining physician noted that the applicant's records were reviewed, and his health was essentially unchanged since his previous examination.

j. On 15 December 1972, the intermediate commander recommended approval of the separation and that the applicant be furnished a General Discharge Certificate, under the provisions of AR 600-200 and Department of the Army (DA) Message 242110Z September 1971, subject: Extension of QMP to Grades E-1 and E-2.

k. On 27 December 1972, the separation authority approved the separation for failure to demonstrate adequate potential for promotion advancement and directed that a General Discharge Certificate be issued. He noted the authority for separation was DA Message 242110Z September 1971.

l. The applicant was discharged on 9 January 1973. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged in the rank/grade of private (PV2)/E-2, and his service was characterized as under honorable conditions. He completed 1 year, 4 months, and 22 days of net service this period. This form also shows in:

- Item 11c (Reason and Authority): "AR 635-200 (Personnel Separations - Enlisted Personnel), chapter 4, Separation Program Number (SPN) 21U, Enlisted Personnel – Separation for failure to demonstrate adequate potential for promotion advancement.
- Item 15 (Reenlistment Code): RE-3C
- Item 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized): National Defense Service Medal and the Expert Marksmanship Qualification Badge (M60)

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

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

6. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his characterization of service from general, under honorable conditions to honorable. He selected OMH on his

application as 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:

- The applicant enlisted in the Regular Army on 18 August 1971.
- Summary Court-Martial Order Number 7, issued by Headquarters, 2nd Squadron, 4th Cavalry, APO on 28 March 1972, shows he was found guilty of:
- Charge I, one specification of on or about 26 January 1972, stealing a tape recorder and camera
- Charge II, one specification of on or about 26 January 1972, willfully damaging an automobile by prying open a vent window with a screwdriver
- On 22 August 1972, he accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for on or about 14 August 1972, being derelict in the performance of his duties by willfully failing to walk his guard post, to wit: playing cards on the top of a track (A-20).
- On 24 August 1972, the applicant was read the bar to enlistment/reenlistment and refused to sign the form. On 26 September 1972, he still refused to sign.
- On 22 November 1972, the applicant signed a statement which shows he was counseled by his commander, and he was informed of the conditions jeopardizing his promotion. He understood that if he was not promoted upon completion of four months' time in grade, he may be recommended for separation under general or honorable conditions as warranted by his character of service.
- On 14 December 1972, the immediate commander recommended the applicant be separated under the provisions of Army Regulation (AR) 600-200 (Enlisted Personnel Management System), chapter 4, for failure to demonstrate potential for promotion. The applicant was not promoted to PFC/E-3 upon completion of four months' time in grade. His commander noted the applicant was not promoted due to the following reasons: he was unable to perform any job satisfactorily and had an extremely negative attitude. The commander recommended that the applicant be separated because of his unsatisfactory job performance and efficiency. The commander stated the applicant had been counseled as to the reasons for non-promotion, to include those circumstances which clearly indicated that his attitude and performance did not measure up to the standards.
- The applicant was discharged on 9 January 1973. His DD Form 214 shows he was discharged under the provision of AR 635-200 (Personnel Separations - Enlisted Personnel), chapter 4, and his service was characterized as under honorable conditions. He was assigned Separation Program Number (SPN) 21U, the narrative reason for separation listed as for failure to demonstrate adequate potential for promotion advancement, with RE-3C. He completed 1 year, 4 months, and 22 days of net service this period.

b. 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 states, he was a good student with excellent grades and enlisted in the Army immediately after he graduated from high school. He had never been in any kind of trouble. He never smoked, drank nor did illegal drugs. However, once he was stationed in Germany he was encouraged to partake of these things by his supervisors. They pushed him to use the drugs and he became addicted. He is deeply ashamed and embarrassed by the behaviors listed in his military record, but he was under the influence that took him many years to overcome. It took him approximately three years to cease from drug usage, 12 years to quit smoking, and 25 years to become sober. It was not easy. He does believe and have been told that these substances also contributed to his health issues.

c. Due to the period of service no active-duty electronic medical records were available for review. The applicant underwent a medical examination for the purpose of separation on 14 December 1972. The examining physician noted that the applicant's records were reviewed, and his health was essentially unchanged since his previous examination.

d. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. The electronic medical record shows on 1 April 2014 the applicant presented to the VA to establish mental health care. He was in need of medication for mood stabilization and reported a history of chronic mental illness and treatment for Bipolar Disorder. At the time, he reported his most recent episode of major depression had occurred in 2007. Per the available note, his mood was described as stable, he was prescribed Lithium, and diagnosed with Bipolar Disorder, most recent episode depressive (2007). The record shows he continued to receive care via the VA for his Bipolar Disorder primarily in the form of medication management until 2019. On 29 March 2022, after an extended pause in service, the applicant presented once again for treatment. The note indicates his long history of Bipolar Affective Disorder. He had not been seen by a mental health provider since 2019 but reported refilling his medications. The provider did a thorough assessment of his mental health history and symptoms and diagnosed him with Bipolar II Disorder, current episode depressed. The provider noted the applicant had never had an episode of full-blown mania per DSM-V criteria. He denied ever having psychotic symptoms, grandiosity, impulsive or risky financial and sexual behavior, rapid thoughts, reduced need for sleep, or excessive energy. The applicant's symptoms were primarily depression, and consistent with the clinician's assessment, he was under the impression that his diagnosis was of Bipolar II Disorder.

e. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition 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 selected OMH on his application as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was court-martialed due to stealing a tape recorder and camera and willfully damaging an automobile by prying open a vent window with a screwdriver. The applicant states that his misconduct was due to his being under the influence of illegal drugs. The use of illegal substances, in the absence of a potentially mitigating behavioral health condition, does not provide mitigation. The record shows the applicant is not service-connected for any behavioral health condition. The applicant has been treated for Bipolar II Disorder via the VA. However, his symptoms appeared to have started in 2007, nearly 35 years post-military service and after an extensive history of alcohol and substance abuse. His symptoms likely resulted from his extensive history of polysubstance abuse since it is a risk factor for mental health symptoms. However, regardless of BH condition, the applicant's misconduct of theft and willful destruction of property would not be mitigated by his BH condition. His Bipolar II Disorder presents primarily with symptoms of depression and the applicant has never had an episode of full-blown mania per DSM-V criteria. Overall, theft and destruction of property are not part of the history or natural sequelae of the applicant's BH conditions and even if depressive symptoms were present at the time of his misconduct, they do not affect the ability to distinguish right from wrong and act in accordance with the right.

BOARD DISCUSSION:

1. The Board determined 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.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that 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

applicant displayed a pattern of misconduct in the form of a summary court-martial and NJP, which led to his failure to demonstrate adequate potential for promotion advancement. As a result, his chain of command initiated separation action against him. The applicant was discharged with an under honorable conditions (general) characterization of service. The Board found no error or injustice in his available separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board agreed with the medical reviewer's finding that based on available information/evidence, there is insufficient evidence to support the applicant had a behavioral health condition during military service that could potentially mitigate his discharge. Also, the applicant provided insufficient evidence of post-service achievements or letters of reference in support of a clemency determination. Therefore, based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 (AR) 600-200 (Enlisted Personnel Management System), chapter 4, set forth policy and prescribed procedures for denying reenlistment under the Qualitative Management Program (QMP). That program was based on the premise that reenlistment was a privilege for those whose performance, conduct, attitude, and potential for advancement met Army standards. It was designed to enhance the quality of the career enlisted force, selectively retain the best qualified Soldiers to 30 years of active duty, deny reenlistment to non-progressive and nonproductive Soldiers. DA Message 242110Z 1971, extended the provisions of the QMP to allow for the early separation of Soldiers in the grades of E-1 and E-2 who failed to demonstrate adequate potential for promotion advancement.
3. AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. An honorable discharge is a separation with honor. Issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability and has been cooperative and conscientious in doing his assigned tasks, he may be furnished an honorable discharge.
 - b. A general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
4. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of Department of the Army Message DAPE-MPP 242110Z September 71, would receive a separation code of "21U."
5. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

6. 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.

7. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

8. 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.

9. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 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.

//NOTHING FOLLOWS//