

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 November 2024

DOCKET NUMBER: AR20240003927

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) discharge.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Self-Authored Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 31 January 1983
- Medical Records (226 pages)

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:

a. He had prior trauma while he was growing up. His father was a World War II veteran who suffered from shell shock, at which his father mentally and physically abused him, his brothers, and their mother. He enlisted to get away from the abusive environment. Then while in the service his mental health started to get worse, and he started drinking heavily while in Germany. His drinking to drown his pain is the main reason he was separated. He was diagnosed with paranoid schizophrenia.

b. He was young and dumb. He was drinking while he was in the service, and it caused big troubles. He is sorry and he has trust in God now. He has not had a drink of alcohol in over 36 years. He tries to help people and the scriptures help him tremendously; he finds peace in them. If he cannot have benefits, he would like to have an honorable discharge. He was told that his discharge would turn honorable if he did

not get into any trouble for six months, and he did not get in any trouble during that time. He got mentally sick in service, but he does not remember when.

3. The applicant provides 226 pages of mental health records which show he is being treated for paranoid schizophrenia, generalized anxiety disorder, mixed obsessional thoughts and acts, depression, and obsessive-compulsive disorder (OCD).

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 19 August 1980.

b. On 18 March 1981, he accepted nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ), for on or about 16 March 1981, disobeying a lawful order to clean his room and the latrine. His punishment included reduction to private/E-1 (suspended for 90 days), 14 days restriction (suspended for 90 days), 14 days extra duty, and forfeiture of \$116.00 per month for one month (\$66.00 of which was suspended for 90 days).

c. On 4 May 1981, he accepted NJP under Article 15, UCMJ, for on or about 29 April 1981, failing to go to his appointed place of duty. His punishment included 14 days extra duty and forfeiture of \$116.00 for one month.

d. On 10 June 1982, he accepted NJP under Article 15, UCMJ, for dereliction in the performance of his duties in that he failed to properly secure his weapon by placing it in his wall locker inside his room, on or about 24 September 1982. His punishment included forfeiture of \$150.00 for one month, 14 days extra duty, and reduction to private first class (PFC)/E-3 (suspended 90 days).

e. He received an informal counseling on 2 August 1982 from the Assistant Dining Facility Manager, which states the applicant was late on several different occasions and his job performance had been less than satisfactory.

f. Statements from nine Soldiers in the applicant's unit, to include the Dining Facility Manager, from August 1982, all attesting to the applicant's behavior, unsatisfactory job performance, and tardiness.

g. A Report of Psychiatric Evaluation dated 2 November 1982, which shows the applicant underwent an examination on various dates. The examining psychiatrist did not diagnose the applicant with a mental disorder. He cleared the applicant for any administrative action deemed appropriate by the command.

h. On 16 December 1982, he accepted NJP under Article 15, UCMJ, for on or about 13 December 1982, as a result of previous indulgence in intoxicating liquor,

incapacitated for the performance of his duties, i.e. reporting for duty at 1600 hours the same day. His punishment included reduction to private (PVT)/E-1, forfeiture of \$150.00, restriction for 14 days, and 14 days of extra duty.

i. On 3 January 1983, the applicant's immediate commander notified him of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 13-2, by reason of unsatisfactory performance and he advised the applicant of his rights. The commander listed the following reasons for the proposed separation: he demonstrated lack of discipline, failure to follow directives and instructions from his superiors, failure to be at his appointed places of duty, lack of motivation and his attitude towards the Army was of the lowest caliber.

j. A report of medical examination and a report of medical history were completed on 4 January 1983. It was determined that the applicant met retention standards and was cleared for separation.

k. 6 January 1983, the applicant acknowledged notification of the proposed separation under the provisions of AR 635-200, Chapter 13, for unsatisfactory performance, and its effects; of the rights available to him. He understood the following:

(1) He acknowledged that he was provided the opportunity to consult with legal counsel.

(2) He elected not to submit statements in his own behalf.

(3) He requested consulting counsel.

(4) He understood he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him.

(5) He understood that if he received a discharge certificate/character of service which was less than honorable, he may make application to the Army Discharge Review Board (ADRB) or the ABCMR for upgrading; however, the act of consideration by either Board did not imply that his discharge would be upgraded.

(6) He further understood that he would be ineligible to apply for enlistment in the U.S. Army for a period of 2 years after discharge.

l. On 11 January 1983, his immediate commander recommended approval of the separation under the provisions of AR 635-200, paragraph 13-2, for unsatisfactory performance.

m. The separation authority approved the discharge, directed the applicant be issued an under honorable conditions (General) discharge, and waived the counseling requirements and rehabilitative requirements.

n. The applicant was discharged on 31 January 1983. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 13, in the rank/grade of PVT/E-1 and his service was characterized as under honorable conditions (General). He completed 2 years, 5 months, and 12 days of active service. His DD Form 214 also shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon and the Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- Item 26 (Separation Code): JHJ (JKJ)
- Item 27 (Reenlistment Code): RE-3

5. 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.

6. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his general, under honorable conditions discharge. He contends mental health conditions 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 on 19 August 1980; 2) The applicant accepted multiple nonjudicial punishments (NJP) between March 1981-November 1982 for various minor incidents of misconduct. In December 1982, he also accepted NJP for previous indulgence in alcohol and incapacitation for performance of duties; 3) On 03 January 1983, the applicant's immediate commander notified him of his intent to initiate separation action against him, by reason of unsatisfactory performance. The commander listed the following reasons for the proposed separation: The applicant demonstrated lack of discipline, failure to follow directives and instructions from his superiors, failure to be at his appointed places of duty, lack of motivation and his attitude towards the Army; 4) The applicant was discharged on 31 January 1983, Chapter 13-2, for unsatisfactory performance. His service was characterized as under honorable conditions.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) and civilian medical records provided by the applicant were also examined.

c. The applicant asserts he was experienced mental health conditions while on active service, which mitigates his misconduct. A Report of Psychiatric Evaluation was completed for the applicant on 02 November 1982 by a military behavioral health provider. He was reported to be seen by mental health services initially on 25 October 1982. The applicant was experiencing occupational and interpersonal problems at his previous unit and newly transferred unit. He was interested in being discharged from the Army. The applicant was not diagnosed with a mental health disorder, and he was cleared for administrative action as deemed appropriate by command. A report of medical examination and a report of medical history were completed on 4 January 1983. It was determined that the applicant met retention standards and was cleared for separation.

d. A review of JLV provided evidence the applicant was seen on one occasion by the VA on 27 November 1995. The applicant was not provided any psychological testing and there was no review of records. The applicant was diagnosed with schizophrenia at that time, but it was not determined to be service connected. The applicant does not receive any service-connected disability. He also provided hardcopy civilian medical records from a physician from 2017-2023. He has been diagnosed with and treated for paranoid schizophrenia, generalized anxiety disorder, depression, and obsessive-compulsive disorder. However, there was insufficient evidence provided on the onset of these mental health conditions or if they were related to his military experience.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support 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 misconduct? Yes, the applicant asserts he experienced mental health conditions which mitigates his misconduct. The applicant was diagnosed by the VA with non-service-connected schizophrenia in 1995 and a civilian provider diagnosed the applicant with paranoid schizophrenia, generalized anxiety disorder, depression, and obsessive-compulsive disorder starting in 2017.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions while on active service, which mitigates his misconduct.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant experienced a mental health condition, while he was on active service. There was sufficient evidence the applicant was diagnosed with mental health conditions over a decade after his discharge. However, during his active service, he was seen by mental health services on more than one occasion, and he was not found to meet criteria for a mental health condition. The applicant did engage in various minor misconduct during his active service, which could be a natural sequelae to some of his later diagnosed mental health conditions. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition during the applicant's military active service. Yet, the applicant contends he was experiencing a mental health condition on active service that mitigates his misconduct, and per Liberal Consideration his contention alone 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 review based on law, policy, regulation, and published Department of Defense guidance for liberal and clemency determination requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board found no error or injustice existed to warrant an upgrade to honorable. The Board noted and concurred with the medical advisor's review finding insufficient evidence to support the applicant had a condition or experience that mitigated his misconduct. Based on a preponderance of evidence, the Board determined that the characterization of service the applicant received upon separation was not in error or unjust.

2. The Board found the applicant's service record exhibits numerous instances of unsatisfactory job performance and conduct. Evidence shows he failed to meet the standards required to be a productive member of the United States Army. The applicant accepted nonjudicial punishment on several occasions and was discharged for unsatisfactory performance. The Board agreed 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 characterization of service. Therefore, 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.

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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) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 13 provided procedures and guidance for eliminating enlisted personnel determined unqualified for further military service because of unsatisfactory performance. Paragraph 13-2 states, commanders will separate a member for unsatisfactory performance when it is clearly established that:

(1) In the commander's judgment, the member will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier.

(2) The seriousness of the circumstances is such that the member's retention would have an adverse impact on military discipline, good order, and morale.

(3) It is likely that the member will be a disruptive influence in present or future duty assignments.

(4) It is likely that the circumstances forming the basis for initiation of separation proceedings will continue or recur.

(5) The ability of the member to perform duties effectively in the future, including potential for advancement or leadership, is unlikely.

(6) The member meets retention medical standards (Army Regulation 40-501).

b. 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 there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. 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.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, chapter 13, for unsatisfactory performance would receive a separation code of "JHJ (JKJ)."

4. Army Regulation 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.

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 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.

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//