

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 December 2024

DOCKET NUMBER: AR20240003955

APPLICANT REQUESTS: an upgrade of his general under honorable conditions discharge to honorable.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, United States 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, he has been diagnosed by a psychiatrist with a mental health condition known as schizo-affective disorder. This diagnosis was made after he left his period of service in the U.S. Army. He believes he likely had this condition while in the military and it went undetected. He feels this should be taken into account in regard to upgrading his discharge status. As of note, the applicant did not provide medical documents in support of his behavioral health claim.

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

- a. He enlisted in the Regular Army on 2 March 1993 for three years.
- b. The applicant accepted nonjudicial punishment (NJP) on 3 December 1993 for wrongfully use marijuana on or between 8 August 1993 and 8 September 1993.
- c. It is unclear the exact date in which the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), paragraph 14-12c, misconduct (commission of a serious offense).
- d. The applicant acknowledged receipt of the commander's intent to separate him on 11 January 1994. He consulted with legal counsel and was advised of the basis for

the contemplated separation action for misconduct, the type of discharge he could receive and its effect on further enlistment or reenlistment, the possible effects of this discharge, and of the procedures/rights available to him. He elected not to submit a statement in his own behalf. 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 (ADRB) or the ABCMR for an upgrade, but he understood that an act of consideration by either board did not imply his discharge would be upgraded

e. It is unclear the exact date in which the separation authority approved the applicant's discharge under the provisions of AR 635-200, paragraph 14-12c, commission of serious offense, with his service characterized as general under honorable conditions.

f. His DD Form 214 reflects he was discharged on 14 April 1994 for misconduct under the provisions of AR 635-200, paragraph 14-12c, misconduct, separation code JKQ, reentry code of 3, with his service characterized as general under honorable conditions. He completed 1 year, 1 month, and 13 days of net active service this period.

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

5. A medical advisory will be conducted during the Board proceedings.

6. Hagel Memorandum, dated 3 September 2014, states liberal consideration will be given in petitions for changes in characterization of service to service treatment records entries which document one or more symptoms which meet the diagnostic criteria of PTSD or related conditions. Special consideration will be given to VA determinations which documents PTSD or PTSD related conditions connected to military service. In cases in which PTSD or PTSD related conditions may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the under other than honorable conditions characterization of service.

7. AR 635-200 states, action will be taken to separate a member for misconduct such as commission of a serious offense. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. Soldiers separated

under Army Regulation (AR) 635-200, paragraph 14-12c, misconduct – commission of serious offense, are assigned the Separation Code JKQ. The RE Code associated with this Separation Code is RE-3.

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

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his general, under honorable conditions discharge to honorable. On his DD Form 149, the applicant indicated that he has been diagnosed with Schizoaffective Disorder since being discharged from the military and believes he had this condition while in service that went undetected. 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 02 March 1993, 2) he accepted nonjudicial punishment on 03 December 1993 for wrongful use of marijuana, 3) he was discharged on 14 April 1994 for misconduct under the provisions of AR 635-200, paragraph 14-12c, with a separation code of JKQ, and reentry code of 3.

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) and Veterans Benefits Management System (VBMS) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. An in-service Report of Medical Examination dated 08 February 1994 for the purposes of separation shows item number 42, psychiatric, as 'normal' on clinical evaluation. The associated Report of Medical History showed the applicant's statement of health indicating he reported "I am in good health." He did not endorse any items indicative of BH-related concerns (i.e., depression or excessive worry, nervous trouble of any sort, etc.). A Report of Mental Status Evaluation (MSE) dated 08 February 1994 conducted for the purposes of chapter separation shows the domains of the MSE were within normal limits (WNL). The provider noted that he had the mental capacity to understand and participate in the proceedings, was mentally responsible, and met retention requirements of Chapter 3, AR 40-501. An MSE dated 20 August 1993 was conducted at the request of the Commander. The associated Request for Mental Health Consultation signed 12 August 1993 noted the applicant had spoken with the Chaplain and Chain of Command regarding his intention to separate from the military and often refused to train. The commander checked the following items indicating reasons the

applicant was a concern to the unit: refusal to put forth effort, awkward in carrying out duties, difficulty with officers and/or NCOs, excessive desire to be discharged, continuous infractions of rules, and resentment towards discipline. The commander marked the following items as evidence of emotional/adjustment difficulty: constant nervousness, feelings of persecution, depression (blues), fearfulness, unusual behavior, strange ideas, and loner. It was further indicated that the applicant had spoken to other Soldiers within the Platoon about intentions to kill himself. It was noted that the applicant had been counseled by his squad leader following a violent blow up on 12 August 1993. The domains of the MSE were WNL. The provider further noted that there was no evidence of an emotional or mental disorder of psychiatric significant or sufficient severity to warrant disposition through medical channels. The provider noted that he was mentally responsible for his behavior, was able to distinguish between right and wrong, and possessed sufficient mental capacity to participate in administrative or judicial proceedings. Furthermore, the provider described the applicant as apathetic, immature, and unmotivated to become a productive Soldier and noted that the problems presented by the applicant were not amenable to hospitalization, brief treatment, rehabilitative transfer, disciplinary action, retraining, or MOS reclassification and that it was unlikely that any rehabilitative measures would result in him being an effective Soldier.

d. The applicant's service records provided as part of his application were reviewed. An undated memorandum regarding the Separation under the provisions of AR 635-200, Chapter 14-12c noted the specific factual reason for action recommended as one field grade article 15 for use of marijuana. A counseling statement dated 12 August 1993 shows that when he was told to do push-ups, he started bouncing his head off of the floor of the lanai, and as, such, this was grounds for a referral to 'mental hygiene for an evaluation.'

e. A review of JLV shows the applicant is 10% service-connected through the VA for Tinnitus. He is not service-connected for any BH conditions. The applicant underwent a BH Compensation and Pension (C&P) examination through the VA on 03 July 2003. Regarding his BH history, it was noted that the applicant reported a history of treatment in a psychiatric ward that lasted for 45 days in childhood wherein he stated he was diagnosed with Major Depression and was trialed on various medications (e.g., Tofranil, Elavil, and Norpramin) until insurance ran out. It also noted that he was admitted to the same facility at age 17 for substance abuse (alcohol and marijuana). It was also documented that the applicant reported a history of childhood abuse and a familial history of Schizophrenia and Psychosis. The provider noted that he said he saw a psychiatrist once while on active duty but noted the records were not in his C-file. He reported being depressed since age 13, paranoid since age 17, and experiencing auditory hallucinations since age 21. At the time of the evaluation he was diagnosed with Schizophrenia, Paranoid Type with Depression, Cannabis Abuse, and Alcohol Abuse. It was also noted that since his discharge from the Army he has been

hospitalized several times for psychiatric treatment in 2001 and 2002 for Schizoaffective Disorder with Depression. It was also noted he had undergone substance use treatment related to alcohol and marijuana. The VA Rating Decision letter dated 08 September 2003 shows his request for service connection for Schizophrenia, Paranoid Type with Depression (claimed as depression with psychotic features) was denied 'presumptive service connection because you were not diagnosed within one year from the date of your discharge.' Review of his VA records shows that he initiated BH treatment through the VA on 13 May 2003 noting he had a history of Schizoaffective Disorder and his medications at the time of the visit were Risperdal (antipsychotic) and Effexor (antidepressant). He had been brought in by his father due to expressing suicidal ideation with plan. VA clinical records show he has engaged in BH, to include substance use disorder treatment through the VA on-and-off since starting treatment there in 2003. His VA medication list shows previous prescriptions for Quetiapine (antipsychotic), Olanzapine (antipsychotic), and Mirtazapine (antidepressant).

f. The applicant is applying to the ABCMR requesting an upgrade of his general under honorable conditions discharge to honorable. The applicant contends Schizoaffective Disorder was related to his misconduct. Review of available in-service records were void of any BH diagnosis or treatment history. Since being discharged from the military, the review of VA records shows the applicant has been diagnosed with Schizophrenia, Paranoid Type with Depression via C&P examination and Schizoaffective Disorder. His diagnosis of Schizoaffective Disorder is subsumed by his diagnosis of Schizophrenia, Paranoid Type. However, his request for service connection was denied by the VA as he was not diagnosed with the condition within 1 year of his discharge from the military. Although the applicant was not formally diagnosed with a BH condition in-service and is not service connected through the VA for a BH condition, this Advisor would contend that some of his documented behaviors in-service in the context of his post-discharge diagnosis are indicative of an underlying BH condition and provide support for BH mitigation.

g. 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 Schizoaffective Disorder. VA records show he has been diagnosed and treated for Schizophrenia, Paranoid Type/Schizoaffective Disorder since being discharged from the military.

(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? Yes. Review of the applicant's in-service medical records were void of any BH diagnosis or

treatment history and he was psychiatrically cleared by BH in-service; however, the available service records are indicative of behaviors that are signs of possible underlying BH-related symptoms. The referral for a BH evaluation submitted by the applicant's Commander in-service noted the applicant exhibited several emotional/adjustment-related issues including constant nervousness, feelings of persecution, depression, unusual behavior, strange ideas, and a loner in addition to a statement that he had expressed suicidal ideation to fellow Soldiers. Furthermore, a counseling statement documented that while being told to do push-ups, he was bouncing his head on the lanai which, contextually, may constitute bizarre behavior. While the applicant's constellation of symptoms at the time of his in-service BH evaluation(s) may not have constituted a fully diagnosable condition, the signs and symptoms in the context of his post-discharge diagnosis of Schizoaffective Disorder are indicative of possible underlying BH symptoms while in service. As there is an association between self-medicating with substances in order to cope with BH-related symptoms, there is a nexus between his one-time drug use and underlying BH symptoms. As such, BH mitigation is supported.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the short term of honorable service completed prior to the misconduct leading to the applicant's separation and the evidence showing the applicant had the same misconduct prior to any military service, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

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, USC, section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a states 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, of the version in effect at the time, established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. It provided that action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable

conditions was normally appropriate for a Soldier discharged under this chapter. However, the separation authority could direct an honorable discharge if merited by the Soldier's overall record.

3. 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.

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 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.

5. 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 based on 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.

6. 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//