

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 November 2024

DOCKET NUMBER: AR20240004142

APPLICANT REQUESTS:

- an upgrade to his character of service
- personal appearance before the Board via telephonic conference

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 18 June 1982
- General Discharge Certificate

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 was stationed in Germany and ended up drinking. He became a heavy drinker. His drinking started when he was in the service when his brother and relative passed away. This was a very difficult time for him. When he was off post, he got into a fight because a person was trying to steal his vehicle. He was trying to defend himself and his vehicle.

b. He was in the alcohol rehabilitation program; the loss of his family member really affected his job duties. He ended up going absent without leave (AWOL) for a week and turned himself in.

c. He was diagnosed with schizophrenia while he was in the service, stationed at Fort Hood. He was also going through post-traumatic stress disorder (PTSD), so he did not realize what was going on with him. His service records has his medical treatments.

3. The applicant provides a copy of his DD Form 214 and his General Discharge Certificate. He does not provide any supporting documentation regarding his claim of PTSD and other mental health issues.

4. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document) shows he enlisted in the Regular Army on 11 July 1978.

b. His DA Form 2-1 (Personnel Qualification Record) reflects in:

- Item 4 (Assignment Considerations): he was not recommended for further service
- Item 21 (Time Lost): he was AWOL for six days from 26 November 1981 to 1 December 1981
- Item 27 (Remarks): Character of Service: General

c. DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice) shows he received nonjudicial punishment on 14 December 1981 for being absent from his unit from 26 November 1981 to 2 December 1981. He did not provide any matters in his defense. He received a reduction in pay grade to E-4 and forfeitures of pay of \$200.00 per month for one month. He did not appeal.

d. On 4 May 1982, the applicant received an administrative letter of reprimand for his conviction on 1 May 1982 for public intoxication. This letter was administrative in nature and was placed in his Military Personnel Records Jacket.

e. On 10 May 1982, the applicant's command initiating separation processing under the provisions of Chapter 9, Army Regulation 635-200, and recommended he receive a general discharge. The decision was made in part due to being initially admitted to the Fort Hood Alcohol/Drug Abuse Prevention and Control Program (ADAPCP) on 23 July 1981 and was determined to be a rehabilitation failure. The applicant had the opportunity to rebut the command's recommendation and had the right to speak to military legal counsel. He was also required to undergo a complete medical examination in accordance with Army Regulation 40-5[0]1.

f. Memorandum, 11 May 1982, reflects that the applicant's commander, in consultation with, and upon the recommendation of the ADAPCP staff, determined that the applicant had been declared a rehabilitation failure, under the provisions of Chapter 9, AR 635-200.

g. Memorandum, undated, reflects the applicant acknowledged receipt of the letter

of notification concerning the command's proposed action for him to be discharge from service due to personal abuse of alcohol. The applicant was aware of his right to consult legal counsel and he right to submit matters in rebuttal. He did not.

h. In a letter from the Department of the Army, Headquarters, 27th Maintenance Battalion, 1st Cavalry Division, Fort Hood, Texas, shows the applicant was recommended to be discharged due to alcohol abuse. He completed his separation physical examination on 21 May 1982.

i. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under honorable conditions (general) pursuant to Army Regulation 635-200, Chapter 9. He completed 3 years and 11 months of net active service this period. This document also reflects in:

- Item 4a/b (Grade/Rate or Rank/Pay Grade): "SP4/E4"
- Item 13 (Decorations, Medals, Badges, Citation and Campaign Ribbons Awarded or Authorized): Expert Badge (Rifle), Overseas Service Ribbon, and Army Service Ribbon
- Item 25 (Separation Authority): "Chapter 9, AR 635-200"
- Item 26 (Separation Code): "JPB"
- Item 27 (Reenlistment Code): "RE-3 and 3B"
- Item 28 (Narrative Reason for Separation): "Alcohol or other drug abuse."
- Item 29 (Dates of Time Lost During This Period): "811126-811201"

5. Chapter 9 contains the authority and outlines the procedures for discharging Soldiers because of alcohol or other drug abuse. A member who has been referred to the ADAPCP for alcohol/drug abuse may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there is a lack of potential for continued Army service and rehabilitation efforts are no longer practical. Initiation of separation proceedings is required for Soldiers designated as alcohol/drug rehabilitation failures.

6. Army Regulation 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 will decide cases on the evidence of record. It is not an investigative body. 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. Additionally, applicants may be represented by counsel at their own expense.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his general, under honorable conditions discharge. He contends he experienced mental health

conditions including PTSD, which 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 11 July 1978; 2) The applicant received nonjudicial punishment on 14 December 1981 for being AWOL from 26 November-2 December 1981; 3) On 4 May 1982, the applicant received an administrative letter of reprimand for his conviction on 1 May 1982 for public intoxication; 4) On 10 May 1982, the applicant's command initiating separation processing under Chapter 9, Army Regulation 635-200, and recommended he receive a general discharge. The decision was made in part due to being initially admitted to the Fort Hood Alcohol/Drug Abuse Prevention and Control Program (ADAPCP) on 23 July 1981 and was determined to be a rehabilitation failure; 5) The applicant was discharged on 18 June 1982 under honorable conditions (general) pursuant to Army Regulation 635-200, Chapter 9- Alcohol or other drug abuse.

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) was also examined. No additional medical documentation was provided for review.

c. The applicant asserts he was experiencing mental health conditions including PTSD while on active service, which is related to his request. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD, while on active service. The applicant was enrolled in military substance abuse treatment (ADAPCP) on 23 July 1981, and he was engaged in treatment till April 1982. There was evidence the applicant was engaged in both outpatient and inpatient substance abuse programs, but there is insufficient evidence he was diagnosed with a mental health condition beyond alcohol abuse/dependence.

d. A review of JLV provided evidence the applicant has received extensive outpatient and inpatient treatment for polysubstance abuse/dependence starting in 1992. There is insufficient evidence the applicant has been diagnosed with a service-connected mental health condition including PTSD. He does receive service-connected disability for physical concerns.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his discharge.

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 including PTSD, which mitigates his discharge.

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

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD, while he was on active service. The applicant did demonstrate alcohol abuse while on active service, which could be a natural sequelae to mental health conditions including PTSD. However, the presence of continued alcohol abuse is not sufficient evidence of the presence of a mental health condition. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for the board's consideration.

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 misconduct leading to the applicant's separation and the findings of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR.
 - a. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body
 - b. 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. Additionally, applicants may be represented by counsel at their own expense.
3. Army Regulation 600-85 (The Army Substance Abuse Program (ASAP)), previously titled ADAPCP, prescribed the policies and procedures needed to implement, operate, and evaluate the ADAPCP.
 - a. Paragraph 3-4 provided that command identification occurred when a commander observed, suspected, or otherwise became aware of an individual whose job performance, social conduct, interpersonal relations, physical fitness, or health appeared to be adversely affected because of abuse of alcohol or other drugs (apparent

or suspected). When abusers or suspected abusers were identified, they were to be interviewed by their unit commander or designated representative. If appropriate, they were to be referred to the ADAPCP for an initial screening interview.

b. Paragraph 3-5 provided that when a service member had a positive urinalysis as a result of drug screen testing, mandatory referral for ADAPCP screening and medical evaluation was required to determine whether the positive urinalysis was the result of administrative error, medically prescribed use of the substance, or actual drug abuse.

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

a. Paragraph 3-7a provides that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Chapter 9 contains the authority and outlines the procedures for discharging Soldiers because of alcohol or other drug abuse. A member who has been referred to the ADAPCP for alcohol/drug abuse may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there is a lack of potential for continued Army service and rehabilitation efforts are no longer practical. Initiation of separation proceedings is required for Soldiers designated as alcohol/drug rehabilitation failures. The service of Soldiers discharged under this chapter will be characterized as honorable or general under honorable conditions unless the Soldier is in entry-level status and an uncharacterized description of service is required.

5. 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-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

6. Army Regulation 635-5-1 (Separation Program Designator Codes) states that the Separation Program Designator (SPD) codes are three-character alphabetic combinations which identify reasons for, and types of, separation from active duty.

SPD code "JPB" is the appropriate code to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200, Chapter 9 (Alcohol/Drug Failure).

7. 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.

8. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

9. 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.

10. PTSD is unique among psychiatric diagnoses because of the great importance placed upon the etiological agent, the traumatic stressor. In fact, one cannot make a PTSD diagnosis unless the patient has actually met the "stressor criterion," which means he or she has been exposed to an event that is considered traumatic.

a. Clinical experience with the PTSD diagnosis has shown there are individual differences regarding the capacity to cope with catastrophic stress. Therefore, while most people exposed to traumatic events do not develop PTSD, others go on to develop the full-blown syndrome. Such observations have prompted the recognition that trauma, like pain, is not an external phenomenon that can be completely objectified.

b. Like pain, the traumatic experience is filtered through cognitive and emotional processes before it can be appraised as an extreme threat. Because of individual

differences in this appraisal process, different people appear to have different trauma thresholds, some more protected from, and some more vulnerable to developing clinical symptoms after exposure to extremely stressful situations.

11. The Fifth Revision of Diagnostic and Statistical Manual (DSM-5) was released in May 2013. This updated edition included changes to the diagnostic criteria for PTSD and acute stress disorder. The PTSD diagnostic criteria were revised to take into account things that have been learned from scientific research and clinical experience. The revised diagnostic criteria for PTSD include a history of exposure to a traumatic event that meets specific stipulations and symptoms from each of four symptom clusters: intrusion, avoidance, negative alterations in cognitions and mood, and alterations in arousal and reactivity. The sixth criterion concerns duration of symptoms; the seventh assesses functioning; and the eighth criterion clarifies symptoms as not attributable to a substance or co-occurring medical condition.

12. Title 10, U.S. Code, section 1556 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//