

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 October 2024

DOCKET NUMBER: AR20240004223

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

APPLICANT'S SUPPORTING DOCUMENT CONSIDERED BY THE BOARD:

DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, U.S. Code (USC), 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 released for medical disability, and as such he feels he should have received an honorable discharge. His company commander recommended him for an honorable discharge. However, his battalion commander recommended that he receive an under honorable conditions (general) discharge. He had never spoken to his battalion commander or ever had any bad conduct in his military career. He would like his discharge changed so he may receive Veterans benefits and schooling.
3. On 15 August 2001, the applicant enlisted in the Regular Army for a period of 4 years in the rank/grade of private (PV1)/E-1. Upon completion of training, he was awarded military occupational specialty 71L (Administrative Specialist) and assigned to a unit in Wiesbaden, Germany. He was advanced to private first class (PFC)/E-3 on 1 July 2002 the highest rank he held.
4. On 10 March 2003, the applicant was counseled regarding a conversation he had with a noncommissioned officer (NCO) wherein the applicant stated the medication he was taking for his mental health was not working and his urge to kill himself was strong. The applicant informed the NCO that he was not taking his medication properly while he was on leave and when he did take it, he did not feel any differently in his thoughts about committing suicide. When asked if he thought it was related to the fact that they

were preparing to deploy, he stated he did not know. The NCO informed him that as a preventive measure, the applicant had been found unfit to carry a weapon and that he was being admitted into Landstuhl Medical Center for treatment of his suicidal symptoms. The applicant was advised that if medical personnel were not successful in treating him and he could not carry a weapon, he could be recommended for separation.

5. On 23 April 2003, the applicant was counseled by the same NCO regarding a conversation wherein the applicant stated he still had some suicidal thoughts and that he did not think it was a good idea for him to carry a weapon at all. When asked why, he stated, "Because if I go downrange I would most likely shoot myself, not anyone else, just myself." The NCO directed the applicant see the chaplain as soon as possible.

6. The applicant underwent a mental status evaluation and pre-separation medical examination. His DA Form 3822 (Report of Mental Status Evaluation) is not legible. However, his DD Form 2807-1 (Report of Medical History) and DD Form 2808 (Report of Medical Examination) show he self-reported being treated for depression and was banned from carrying a weapon due to suicidal ideations.

7. On 11 June 2003, the applicant was counseled regarding his mental status evaluation conducted on 4 June 2003. The results returned to the unit command recommended the applicant be administratively separated under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), paragraph 5-17. On 11 June 2003, the applicant stated he would like to be discharged from active duty because if given the right circumstances while possessing a weapon he might harm himself. The applicant was advised this statement caused great concern about his morale and welfare. His mental state was not becoming of a U.S. Army Soldier and would not be tolerated. The applicant would be afforded the opportunity to receive help for his condition, but if attempts to help him failed, administrative action would be taken.

8. On 23 July 2003, the applicant's company commander notified him that he was initiating action to separate him under the provisions of Army Regulation 635-200, paragraph 5-17, for other designated physical or mental conditions. The reason for this decision was the applicant's diagnosis of a depressive disorder that potentially interfered with assignment or performance of military duty and his ability to function in the military environment was severely impaired. The commander advised the applicant he was recommending the applicant's service be characterized as honorable, but the intermediate commander and the separation authority were not bound by his recommendation. The separation authority could direct that his service be characterized as either honorable or under honorable conditions.

9. The applicant acknowledged receipt of the notification, consulted with counsel, and submitted his Election of Rights on the same date. He elected not to submit statements in his own behalf.

10. The applicant's company commander formally recommended his separation under the provisions of Army Regulation 635-200, paragraph 5-17, for other designated physical or mental conditions. It was noted that the applicant had no record of disciplinary action, but his commander believed that further duty of the applicant would:

- a. Create serious disciplinary problems or a hazard to the military mission or to himself; or
- b. Be inappropriate because he was resisting rehabilitation attempts; or
- c. Rehabilitation would not be in the best interest of the Army as it would not produce a quality Soldier.

11. The applicant's battalion commander recommended approval of his separation with the issuance of a General, Under Honorable Conditions Discharge Certificate.

12. The separation authority approved the applicant's the recommended separation and directed the applicant's service be characterized as Under Honorable Conditions (General).

13. Orders and the applicant's DD Form 214 show he was discharged in the rank of PFC on 21 August 2003, under the provisions of Army Regulation 635-200, paragraph 5-17, by reason of "Medical Condition, Not a Disability", with Separation code "JFV", and Reentry code "3." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 2 years and 7 days of net active service this period. He was awarded or authorized the National Defense Service Medal and Army Service Ribbon.

14. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided, in part, that commanders were to separate Soldiers under the provisions of paragraph 5-17 on the basis of physical or mental conditions not amounting to disability as prescribed by Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) and excluding conditions appropriate for separation processing under paragraph 5-11 (Separation of personnel who did not meet procurement medical fitness standards) or 5-13 (Separation because of personality disorder) that potentially interfered with assignment to or performance of duty.

15. 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 guidance.

16. 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 15 August 2001; 2) On 11 June 2003, the applicant was counseled regarding his mental status evaluation conducted on 4 June 2003. The results returned to the unit command recommended the applicant be administratively separated under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), paragraph 5-17, for other designated physical or mental conditions; 3) The applicant was discharged on 21 August 2003, Chapter 5-17, by reason of "Medical Condition, Not a Disability." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 2 years and 7 days of net active service.

b. The Army Review Boards 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 while on active service, which mitigates his discharge. There is sufficient evidence the applicant was experiencing depressive symptoms and reporting suicidal ideation related to the prospect of being deployed. He underwent a mental status evaluation on 04 June 2003, but the results of this evaluation (DA Form 3822-Report of Mental Status Evaluation) were not legible. However, he was counseled on 11 June 2003 on the results of the evaluation, and he was notified that he was recommended to be administratively separated with a Chapter 5-17. Also, during the applicant's Report of Medical History, the applicant stated he had been treated for depression and restricted from carrying a weapon due suicidal ideation.

d. A review of JLV provided evidence the applicant began to engage with the VA in 2007 for mental health concerns. He was reporting improvement, but he did report depressive symptoms and suicidal ideation during his active service. In 2007, the applicant expressed interest in enlisting again in the military, but he later underwent a Compensation and Pension Evaluation and was diagnosed with PTSD (SC 70%). There is insufficient evidence the applicant has been diagnosed or treated for PTSD by the VA beyond this evaluation, but he has been treated predominately for anxiety and depression.

e. Based on the available information, it is the opinion of the Agency Medical Advisor there is insufficient evidence to support the applicant had a condition or experience that mitigates his discharge. The applicant was experiencing difficulty with depressive symptoms and reported suicidal ideation during active service. He was identified, evaluated, and provided treatment. He was administratively separated for a mental health condition not a disability. There is insufficient evidence from a behavioral health perspective of a mitigating mental health condition or experience, at this time.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, there is insufficient evidence to support the applicant had a condition or experience that mitigates his discharge. The applicant was experiencing difficulty with depressive symptoms and reported suicidal ideation during active service. He was identified, evaluated, and provided treatment. He was administratively separated for a mental health condition not a disability. There is insufficient evidence from a behavioral health perspective of a mitigating mental health condition or experience, at this time. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his discharge, and per Liberal Consideration his contention alone is sufficient for the board's consideration.

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the misconduct?
N/A

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record and published DoD guidance for consideration of discharge upgrade requests, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's contentions, his record and length of service, the behaviors in the record and the character of service he received upon discharge. The Board considered the review and conclusions of the medical advising official as well as the evidence of in-service medical treatment and service-connected 70% rating for PTSD. The Board considered the "condition, not a Disability" reason for separation as well as the recommendation of the provided at the time that a personality disorder discharge may be considered as well. Additionally, the Board considered the opinion of the medical reviewer that he was experiencing a mental health condition or

an experience that mitigates his discharge, and per Liberal Consideration his contention alone is sufficient for the board's consideration. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was unjust and that an upgrade of his character of service was warranted as a matter of liberal consideration.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

████	████	████	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 21 August 2003 to show in item 24 (Character of Service): Honorable

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 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. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. 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 regulation provides that 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.

4. Army Regulation 40-501 (Standards of Medical Fitness), in effect at the time, provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Chapter 3 (Medical Fitness Standards for Retention and Separation, Including Retirement) shows in:

a. Paragraph 3-35 (Personality, psychosexual, or factitious disorders; disorders of impulse control not elsewhere classified; control not elsewhere classified; substance use psychoactive disorders), these conditions may render an individual administratively unfit rather than unfit because of physical disability. Interference with performance of effective duty in association with these conditions will be dealt with through appropriate administrative channels; and

b. Paragraph 3-36 (Adjustment disorders), situational maladjustments due to acute or chronic situational stress do not render an individual unfit because of physical disability but may be the basis for administrative separation if recurrent and causing interference with military duty.

5. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Paragraph 5-17, states commanders who are special court-martial convening authorities may approve separation under this paragraph based on other physical or mental conditions not amounting to disability that potentially interfere with assignment to or performance of duty. A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition. Members may be separated for physical or mental conditions not amounting to disability, which is sufficiently severe that

the Soldier's ability to effectively perform military duties is significantly impaired. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier was in an entry-level status.

6. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. It states that the separation code "JFV" is an appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 5, by reason of Condition - Not a disability. Additionally, the SPD/Reentry Eligibility (RE) Code Cross Reference Table established that RE code "3" was the proper reentry code to assign to Soldiers separated under this authority and for this reason.

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 (BCM/NR) 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.

a. 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, 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.

//NOTHING FOLLOWS//