

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 November 2024

DOCKET NUMBER: AR20240004377

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

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

- DD Form 149 (Application for Correction of Military Record), 17 January 2024
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 10 May 1983

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 indicates on his DD Form 149 that post-traumatic stress disorder (PTSD) is an issue or condition related to his request. He states, in effect, he is a retired police officer of the New Orleans Police Department, he was a credit to his community, and he mentored children.
3. The applicant provides a copy of his DD Form 214.
4. A review of the applicant's service records show:
 - a. On 9 September 1980, he enlisted in the Regular Army for 3 years. He attained the rank of private first class (PFC). Following Basic Combat Training and Advanced Individual Training, he was assigned to 411th Military Police Company, Fort Hood.
 - b. On 29 November 1982, he was counseled by his senior noncommissioned officer for failing to clean his room prior to leaving for work.
 - c. On 9 December 1982, he accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for being

incapacitated for duties by reason of intoxicating liquor on 9 December 1982. His punishment consisted of reduction to private 2/E-2, forfeiture of \$100.00 pay for 1 month (suspended for 60 days), and 14 days of extra duty and 14 days of restriction. He did not appeal this punishment.

d. On 26 March 1983, he was counseled for a negative attitude towards his squad and his superiors when told to perform duties, for walking away when told to stand at ease, and for failing to clean his area on 26 March 1983.

e. On the same date, he was counseled for disrespect to his squad leader on 5 March 1983; for being out of uniform on 18 March 1983; failing to be dressed in time to report to the mess tent, thereby requiring a noncommissioned officer to take his place on 19 March 1983; for being out of uniform on 19 March 1983; for not working or cooperating with his squad members while assigned tasks on 20 March 1983; and for requesting a different job to NCOs in his platoon on multiple occasions.

f. On 31 March 1983, he was counseled for disobedience of a lawful order from his squad leader to turn in his sleeping bag and nuclear biological and chemical warfare suit for cleaning on 28 March 1983, but he failed to do so.

g. On 6 April 1983, his company commander notified him of his intent to recommend his discharge from the service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13, for unsatisfactory duty performance and notified him of his rights. The specific reasons for his proposed action were based upon: he had been counseled four times for failure to follow orders, contempt towards superiors, and disrespectful attitudes. He also received two instances of NJP. He understood the least favorable characterization he could receive was general, under honorable conditions. He further understood he had a right to consult with consulting counsel, to submit statements in his own behalf, to obtain copies of the documents that would be sent to the discharge authority, and to waive these rights in writing. Note: a second NJP is not contained in the available records.

h. On the same date, his company commander recommended his separation for unsatisfactory duty performance with a general, under honorable conditions characterization of service, and he forwarded his recommendation to the separation approval authority.

i. On an unspecified date, he acknowledged his company commander's notification memorandum and elected his rights. He understood the basis for the contemplated action to accomplish his separation for unsatisfactory duty performance, its effects, and the effect of any action taken by him to waive any of his rights. He further understood that he may expect to encounter substantial prejudice in civilian life if a general discharge were issued to him and he would be ineligible to apply for enlistment for a

period of 2 years after discharge. He elected not to waive his rights, he elected to submit statements in his own behalf, and he elected to received copies of the documents that would be sent to the separation authority. He indicated he retained a copy of the notification memorandum.

j. On 8 April 1983, the applicant provided three written statements in response to his company commander's notification memorandum. He joined the Army to be a police officer and completed 31 months of service. He joined to get away from the personal problems he had back home. His support came from his teacher and friend which he did not have anymore. He laughed and joked often to hide his problems, but his superior did not like his joking. The Army was not for him, but he would not forget the 31 months he served. He spoke to the Chaplain about his problems after receiving NJP and requested transfer to another company, but his sergeant said he was a good Soldier, and he would not let him leave to platoon. He just wanted to finish his last few months and leave. He deserved an honorable discharge.

k. On the same date, he underwent a medical examination for his chapter proceedings. The examining physician noted he was qualified for separation.

l. On the same date, he underwent a mental status evaluation. The examining psychologist noted he exhibited passive behavior; he was fully alert and fully orientated; his mood or affect was unremarkable and thinking process was clear with normal though content. He had the mental capacity to understand and participate in the proceedings. He met the retention standards of Army Regulation 40-501 (Physical Standards).

m. On 20 April 1983, the separation authority approved his discharge under the provisions of Army Regulation 635-200, paragraph 13-2, by reason of unsatisfactory performance, waived a rehabilitation transfer, and directed issuance of a General Discharge Certificate.

n. On 10 May 1983, the applicant was discharged. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 13, by reason of unsatisfactory performance, with an under honorable conditions (general) character of service, separation code JHJ, and a reenlistment code of 3. He completed 2 years, 8 months, and 2 days of net active service during this period. He was awarded or authorized:

- Army Service Ribbon
- Overseas Service Ribbon
- Sharpshooter Marksmanship Qualification Badge with Grenade Bar
- Marksman Marksmanship Qualification Badge with Rifle Badge (M-16) and Pistol Badge (.45 caliber)

5. On 16 March 1984, the Army Discharge Review Board determined his discharge was both proper and equitable and voted not to grant an upgrade of his discharge.
6. On 2 October 2024, the Director, Case Management Division, requested the applicant provide medical documents in response to his issue of PTSD, and gave him 30 days to respond, or request his case be withdrawn. He did not respond.
7. 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.

8. MEDICAL REVIEW:

- a. The applicant is applying to the ABCMR requesting an upgrade of his general, under honorable conditions discharge. He contends he experienced PTSD and the negative consequences of being a whistleblower that mitigates his misconduct. 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 9 September 1980; 2) On 9 December 1982, the applicant accepted nonjudicial punishment (NJP) for being incapacitated for duties by reason of intoxicating liquor; 3) On 6 April 1983, the applicant's company commander notified him of his intent to recommend his discharge from the service under a Chapter 13, for unsatisfactory duty performance and notified him of his rights. The specific reasons for his proposed action were based on: the applicant had been counseled four times for failure to follow orders, contempt towards superiors, and disrespectful attitudes. He also received two instances of NJP; 4) On 10 May 1983, the applicant was discharged, Chapter 13, by reason of unsatisfactory performance, with an under honorable conditions (general) character of service.
- 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 PTSD and the negative consequences of being a whistleblower while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with PTSD, while on active service. On 8 April 1983, he underwent a mental status evaluation. The applicant was not diagnosed with a mental health condition, and he demonstrated the mental capacity to understand and participate in the proceedings.

- d. A review of JLV was void of mental health documentation for the applicant, and the applicant does not receive any service-connected disability for a mental health condition including PTSD.
- 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 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 PTSD and the negative consequences of being a whistleblower which mitigates his misconduct.
- (2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD and the negative consequences of being a whistleblower that mitigates his misconduct while on active service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD, while he was on active service. There is also insufficient information provided about the event surrounding his report of experiencing negative consequences of being a whistleblower to provide an appropriate opine on potential mitigation for this reported experience. The applicant did engage in various minor misconduct which could be a natural sequela to PTSD. However, the presence of repeated misconduct is not sufficient evidence of the presence of a mental health condition. Yet, the applicant contends he was experiencing a mental health condition and an experience 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 and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's request, available military records and medical review, the Board concurred with the advising official finding insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. The opine noted there is

insufficient evidence beyond self-report the applicant was experiencing PTSD, while he was on active service.

2. The Board found insufficient evidence of in-service mitigating factors to overcome the pattern of misconduct. The Board weighed the applicant's post service achievements of serving in the police force and his character letters of support attesting to his integrity and character. The applicant was discharged for unsatisfactory performance and was provided an under honorable conditions (General) characterization of service. 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 discharge. As such, 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.

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. 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.
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), sets policies, standards, and procedures to insure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons.
 - a. An honorable discharge is a separation with honor. 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 13 provides 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; or
 - (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; and

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

4. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator "JHJ" corresponded to "Unsatisfactory Performance," and the authority, Army Regulation 635-200, chapter 13.

5. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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.

6. 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.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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.

8. Section 1556 of Title 10, U.S. 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//