

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 December 2024

DOCKET NUMBER: AR20240004447

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

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

- DD Form 149 (Application for Correction of Military Record)
- Various medical documents

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 his mental health has not been well and it was undiagnosed during his time in service. On his DD Form 149, the applicant notes other mental health issues are related to his request.
3. On 15 July 1987, the applicant enlisted in the Regular Army. The highest grade he attained was E-2.
4. The applicant received formal counseling on 2 June 1988, for missing formation and substandard military appearance.
5. On 2 August 1988, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military authorities on 13 August 1988.
6. On 24 August 1988, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for going AWOL. His punishment included reduction to E-1, forfeiture of \$156.00, and 14 days restriction and extra duty.

7. The applicant received additional counseling on 29 September 1988, for failing his skill qualification test.
8. On 7 December 1988, the applicant refused to accept NJP under Article 15 of the UCMJ, for sleeping upon his post, on or about 1 December 1988. He demanded trial by court-martial.
9. On 14 December 1988, the applicant tested positive for marijuana.
10. Court-martial charges were preferred against the applicant on 19 December 1989, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with one specification of wrongfully using marijuana; and one specification of sleeping upon his post.
11. On 30 January 1989, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation. Additionally, on 2 February 1989, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
12. Before a summary court-martial on 7 February 1989, at Fort Knox, KY, the applicant was found guilty of one specification of wrongfully using marijuana; one specification of sleeping on duty; and one specification of underage drinking. The court sentenced the applicant to reduction in grade to E-1, forfeiture of \$300.00, and confinement for 21 days. The sentence was approved, and the record of trial was forwarded for appellate review.
13. The applicant's commander notified the applicant that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13, for unsatisfactory performance.
14. On 22 March 1989, the applicant acknowledged he had been afforded the opportunity to consult with counsel for consultation; however, he declined the opportunity. He waived consideration of his case by a board of officers. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him. He declined to submit a statement in his own behalf.
15. The applicant's commander formally recommended his elimination from the Army under the provisions of Army Regulation 635-200, Chapter 13. As the specific reasons, the commander noted the applicant's conduct had been well below standards and he proved that he was no longer suited for military service.

16. The separation authority approved the recommended separation action and directed the applicant's discharge with issuance of an under honorable conditions (general) discharge.

17. The applicant was discharged on 7 April 1989. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 13, for unsatisfactory performance. His service was characterized as under honorable conditions (general). He was assigned Separation Code JHJ and Reentry Code 3. He completed 1 year, 7 months, and 10 days of net active service this period with 44 days of lost time.

18. The applicant provides numerous medical documents that detail his diagnosis and treatment for a generalized anxiety disorder and depression.

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

## 20. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under honorable conditions (general) to honorable. He contends he experienced an undiagnosed mental health condition 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:

- The applicant enlisted into the Regular Army on 15 July 1987.
- The applicant received formal counseling on 2 June 1988, for missing formation and substandard military appearance, and on 24 August 1988 he accepted NJP for going AWOL from 2 to 13 August 1988. He received additional counseling on 29 September 1988, for failing his skill qualification test.
- Court-martial charges were preferred against the applicant on 19 December 1989, for violations of the UCMJ. His Charge Sheet showed he was charged with one specification of wrongfully using marijuana and one specification of sleeping upon his post. Before a summary court-martial on 7 February 1989 the applicant was found guilty of one specification of wrongfully using marijuana; one specification of sleeping on duty; and one specification of underage drinking.
- The applicant was discharged on 7 April 1989 and completed 1 year, 7 months, and 10 days of net active service.

b. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The

applicant asserts his mental health has not been well, and it was a mitigating factor in his discharge. VA documentation was included in the application and will be summarized below. A Report of Medical Examination dated 30 January 1989 showed that the applicant did not endorse any psychiatric symptoms. A Report of Mental Status Evaluation dated 2 February 1989 showed that the applicant had mental capacity to understand and participate in the proceedings and was psychiatrically cleared for any administrative action deemed appropriate by command. There was insufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

c. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed the applicant engaged with the VA's homeless program in December 2023, and documentation noted homelessness over the past three years, a history of severe mental illness, and substance abuse. He had an initial mental health appointment on 13 February 2024, and he reported a history of military sexual trauma (MST) by a superior officer, as well as childhood physical and sexual abuse, and he endorsed symptoms of depression, anxiety, and PTSD. He was diagnosed with Adjustment Disorder with mixed anxiety and depressed mood, Trauma-Related Stressor Disorder, SUD Other Stimulant Abuse (methamphetamine) in early remission, and Nicotine Dependence. The focus of treatment was adjustment to living in a homeless shelter while awaiting an apartment, adjusting to sobriety, improving sleep, and developing coping skills, and in late March he was started on an antidepressant and a medication for sleep. He did not keep a follow up appointment, and documentation by social workers from the homeless program from June and July 2024 showed that the applicant was experiencing increased paranoid thoughts and delusions. His mental status appeared to have continued to deteriorate, he was evicted from the apartment, and he became suspicious of the VA social workers. His last contact was on 30 September 2024.

d. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a mental health condition while on active service. There is evidence that the applicant reported a history of MST, experienced substance abuse, and received mental health treatment through the VA, but the number of years between his misconduct and the only available treatment records makes it difficult to fully support a nexus. It is this Advisor's opinion that the reported trauma exposure while on active duty partially mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition at the time of the misconduct. Documentation from his time in service showed a Mental Status Evaluation, which indicated no psychiatric symptoms present and capacity to

understand and participate in proceedings. The applicant has received mental health services from the VA in 2024 and was diagnosed with Adjustment Disorder, Trauma-Related Stress Disorder, and substance use disorders. Documentation showed that he reported a history of MST, although the applicant did not indicate this as a mitigating factor in his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. However, the VA has documented a history of MST, substance abuse, and severe mental illness. The applicant's misconduct related to minor infractions, including sleeping on post and substandard military appearance, being AWOL, and substance use can be natural sequela to mental health conditions associated with exposure to traumatic or stressful events. Yet, the presence of misconduct alone is not sufficient evidence of a mitigating mental health condition during active service. However, the applicant contends he was experiencing a mental health condition that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

#### BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The evidence shows the applicant's commander determined that the applicant's performance fell below standards as evidenced by his NJP, AWOL, repeated counseling, and conviction by a court-martial. As a result, his chain of command initiated separation action against him for unsatisfactory performance and he received a general, under honorable conditions discharge. The Board found no error or injustice in his separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board agreed with the medical reviewer's finding that based on available information/evidence, there is insufficient evidence to support the applicant had a behavioral health condition during military service that could potentially mitigate his discharge. Also, the applicant provided insufficient evidence of a persuasive nature of post-service achievements or letters of reference in support of a clemency determination. Therefore, based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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.2.

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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. Title 10, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the requirements for the administrative separation of enlisted personnel. The version in effect at the time provided that:

a. 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 13 provided for separation due to unsatisfactory performance when in the commander's judgment the individual would not become a satisfactory Soldier; retention would have an adverse impact on military discipline, good order and morale; the service member would be a disruptive influence in the future; the basis for separation would continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, was unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation would be characterized as honorable or under honorable conditions.

4. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR), on 3 September 2014, to carefully consider the revised post-traumatic stress disorder (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.

5. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

6. 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.

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//