

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 December 2024

DOCKET NUMBER: AR20240004554

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

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)

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 he has mental health condition of major depressive disorder.
3. The applicant enlisted in the Regular Army on 25 February 1981.
4. He received non-judicial punishment (NJP) under the Uniform Code of Military Justice (UCMJ) on 20 November 1981, for on or about 7 November 1981, without authority, fail to go at the time prescribed to his appointed place of duty.
5. He received NJP under UCMJ on 26 January 1982, for on or about 24 January 1982, without authority, fail to go at the time prescribed to his appointed place of duty.
6. On 8 November 1982, his commander notified him of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 13. The applicant acknowledged the same day and wrote a request for honorable discharge.
7. On 8 November 1982, having been advised by consulting counsel of the basis for the contemplated action to separate him for unsatisfactory performance, under the

provisions of AR 635-200, chapter 13, and its effects; of the rights available to him; and the effect of any action taken by him in waiving his rights. He understood he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him.

8. His commander recommended that he be discharged prior to the expiration of his term of service under the provisions of AR 635-300, chapter 13.

9. On 9 November 1982, he underwent a mental evaluation which shows he had the mental capacity to understand and participate in the proceedings and was mentally responsible.

10. He received NJP under UCMJ on 22 November 1982, for on or about 7 November 1982, violate a lawful general regulation, by consuming an alcoholic beverage having more than 3.2% alcoholic content within the barracks. He was reduced to private/E-1.

11. On 30 November 1982, the separation authority approved discharge under the provisions of AR 635-200, chapter 13 and directed he be furnished a General Discharge Certificate.

12. Accordingly, he was discharged on 15 December 1982, under honorable conditions. His DD Form 214 shows he completed 1 year, 9 months, and 21 days net active service this period. It also shows:

- Item 25 (Separation Authority): AR 635-200, chapter 13
- Item 26 (Separation Code): JHJ (JKJ)
- Item 27 (Reenlistment Code): 3
- Item 28 (Narrative Reason for Separation): Unsatisfactory Performance

13. There is no evidence the applicant applied to the Army Discharge Review Board (ADRB) for review of his discharge within the ADRB's 15-year statute of limitations.

14. By regulation, (AR 635-200) sets forth the basic authority for the separation of enlisted personnel. Chapter 13 of this regulation, in effect at the time, provides for separation due to unsatisfactory performance when in the commander's judgment the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, is unlikely.

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 determination guidance.

16. 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.

b. 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 25 February 1981.
- The applicant received NJP for failing to be at his appointed place of duty on 20 November 1981 and again on 26 January 1982.
- On 8 November 1982, his commander notified him of his intent to separate him under the provisions of Army Regulation (AR) 635-200, chapter 13.
- The applicant received NJP on 22 November for violating a lawful general regulation by consuming an alcoholic beverage having more than 3.2% alcoholic content within the barracks.
- The applicant was discharged on 15 December 1982 and completed 1 year, 9 months, and 21 days net active service.

c. 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 a mental health condition, Major Depressive Disorder, as a mitigating factor in his misconduct. A Mental Status Evaluation dated 9 November 1982 showed that the applicant met retention standards and had the mental capacity to understand and participate in the proceedings. There was insufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed that the applicant entered a residential program for homeless veterans in October 2019, and he was discharged in June 2021 after it was determined that he was using illegal substances. Documentation showed he had a suicide attempt in August 2021, and he was routinely followed by VA's suicide prevention team through June 2023 when he reengaged with the homeless program.

e. 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 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 discharge? Yes. The applicant asserts he had an undiagnosed mental health condition at the time of the 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? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service, and VA documentation only showed utilization of the housing program and suicide prevention services. No diagnosis was rendered. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. However, the applicant contends he had a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention 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 the medical review, the Board concurred with the advising official finding insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the pattern of misconduct. The Board found insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. The Board determined the applicant's service record exhibits numerous instances of misconduct during his enlistment period for 1 year, 9 months, and 21 days net active service. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. 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.

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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. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) sets forth the requirements and procedures for administrative discharge of enlisted personnel. Chapter 13 of this regulation, in effect at the time, provides for separation due to unsatisfactory performance when in the commander's judgment the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, is unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation will be characterized as honorable or under honorable conditions.

a. Paragraph 3-7a (1) states 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b (1) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

3. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

4. The Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta Memorandum]. 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 (TBI), 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 sexual assault or sexual harassment was unreported, or 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

a. Guidance documents are not limited to under other than honorable conditions discharge characterizations but rather apply to any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from general to honorable characterizations.

b. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.

c. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

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.

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 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.

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//