

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 November 2024

DOCKET NUMBER: AR20240005060

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

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Self-Authored Statement
- Character Reference Letter
- 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 been homeless for over 6 months. With the help and understanding of the [REDACTED] he has been working hard to put his life back together. He has worked part-time jobs to help provide for himself. He has gone from getting around by bike to owning a van with insurance and obtaining a driver's license. He is a recovering substance user. He is currently completing a residential drug and alcohol recovery program at a medical facility. He is requesting his discharge to be upgraded, so he can apply and receive the housing benefit from the Veteran Administration (VA) and continue to become a productive citizen.
3. The applicant provides a character reference letter from the [REDACTED] [REDACTED] that describes the applicant's huge improvement in his attitude, cleanliness, personal habits, and how he has become a great asset to their veterans' board.
4. A review of the applicant's service record shows:

- a. He enlisted in the Regular Army on 30 July 1979.
- b. On 12 September 1979, he accepted nonjudicial punishment for wrongful possession of marijuana and wrongful use of [of] a habit-forming narcotic drug, to wit: marijuana.
- c. On 14 October 1980, he accepted nonjudicial punishment for wrongful theft of two sledgehammer handles (\$6.80 of value).
- d. On 2 December 1980, a formal laboratory analysis test of suspected marijuana results showed positive for the controlled substance.
- e. An investigative report was provided regarding the applicant's suspected possession of marijuana dated 3 December 1980.
- f. On 5 December 1980, he accepted nonjudicial punishment for wrongful possession of marijuana.
- g. The immediate commander recommended the applicant be barred from reenlistment for recurring nonjudicial punishments.
- h. On 31 December 1980, an investigative report indicates the applicant was incarcerated for smoking a hand rolled cigarette that was believed to be marijuana.
- i. On 1 January 1981, a military police report was provided regarding the applicant's suspected use of marijuana.
- j. A DD Form 629 (Receipt for Prisoner or Detained person), dated 1 January 1981, indicates the applicant was detained.
- k. On 12 January 1981, the approving authority approved the immediate commander's recommendation for barring the applicants' reenlistment.
- l. On 31 December 1980, an investigative report indicates the applicant was arrested for possession of marijuana, littering and drunken disorderly.
- m. On 22 February 1981, a DD Form 629 indicates the applicant was detained for possession of marijuana, littering and drunken disorderly.
- n. On 9 March 1981, the applicant underwent a mental health evaluation that indicates his thinking process was clear and thought content was normal and had no significant mental illness.

o. The applicant elected to undergo a separation examination. He was medically cleared for a chapter 13 on 21 April 1981.

p. On 9 January 2003, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 13, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) for unsuitability. The specific reasons for his proposed recommendation were the applicant demonstrated a total unwillingness to adhere to military regulations manifested by frequent misconduct through use of marihuana indicating you have antisocial behavior/Personality disorder.

q. On 20 April 1981, he consulted with counsel and was advised of the basis for the contemplated action to accomplish his separation for unsuitability under the provisions of Chapter 13, Army Regulation 635-200, 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 the separation authority characterizes his service under honorable conditions.

r. The immediate commander initiated a request for the applicant to be eliminated from the service for unsuitability under the provisions of paragraph 13-4c, Chapter 13. The commander indicated the applicant is not the caliber of Soldier desired by the U.S. Army. His frequent use of controlled substances and larceny of government property indicated his deviant behavior. The applicant is a substandard performer with no potential for productive contribution to the unit mission or potential for advancement.

s. On 21 May 1981, consistent with the chain of command recommendations, the separation authority approved the applicant's elimination from the service under the provisions of paragraph 13-4c, Chapter 13, Army Regulation 635-200 for unsuitability. He would be issued an General Discharge Certificate.

t. On 4 June 1981, he was discharged from active duty with an under honorable conditions (General) characterization of service. His DD Form 214 shows he completed 1 year, 10 months, and 5 days of active service. It also shows he was awarded or authorized:

- Humanitarian Service Medal
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M16A1)
- First Class Marksmanship Qualification Hand Grenade

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

6. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his general under honorable conditions discharge to honorable. On his DD Form 293, the applicant indicated Other Mental Health Issues 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 30 July 1979, 2) he accepted nonjudicial punishment (NJP) on 12 September 1979 for wrongful possession and use of marijuana, 3) on 14 October 1980, he accepted nonjudicial punishment for wrongful theft of 2 sledgehammer handles, 4) on 02 December 1980, a formal laboratory analysis was positive for marijuana, 5) on 05 December 1980, he accepted NJP for wrongful possession of marijuana, 6) on 31 December 1980, an investigative report indicated the applicant was incarcerated for smoking a hand rolled cigarette that was believed to be marijuana. On 22 February 1981, the applicant was detained for possession of marijuana, littering and drunken disorderly, 7) an undated memorandum shows the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 13, Army Regulation (AR) 635-200 for unsuitability. The specific reasons for his proposed recommendation noted that the applicant "demonstrated a total unwillingness to adhere to military regulations manifested by frequent misconduct through use of marijuana indicating you have antisocial behavior/Personality Disorder." The applicant was discharged on 04 June 1981 under the provisions of AR 635-200, Chapter 13, paragraph 13-4c(2).

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. An in-service Report of Mental Status Evaluation (MSE) dated 09 March 1981 conducted for the purposes of Unsuitability shows that the domains of his MSE fell within normal limits (WNL). It was documented that he did not have significant mental illness, he was mentally responsible, able to distinguish between right and wrong, had the mental capacity to understand and participate in board proceedings, and met retention standards prescribed in Chapter 3, AR 40-501. A Report of Medical Examination dated 21 April 1981 for the purposes of Chapter 13 separation shows item number 42, psychiatric, as 'normal' on clinical evaluation.

d. A review of JLV shows the applicant is not service-connected for any conditions. Review of his VA records shows that he has sought treatment through the VA and Veterans Justice Outreach (VJO) program on-and-off since 2019 for problems related to alcohol and substance use, depression, insomnia, and problems related to homelessness/employment. His VA treatment records show he has been diagnosed Substance Use Disorders (SUD) (i.e., Polysubstance abuse, Other Stimulant Dependence, Uncomplicated), Alcohol Abuse (i.e., uncomplicated and disorder), Homelessness, Adjustment Disorder with Depressed Mood and Depression, none of which were associated with his military service.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a mitigating condition or experience in-service. Review of the applicant's in-service medical records were void of any BH diagnosis or treatment history and showed he was psychiatrically cleared for administrative separation. VA records show he has not been service-connected for any conditions. His VA treatment records show a history of treatment for Substance Use Disorders (SUD) (i.e., Polysubstance abuse, Other Stimulant Dependence, Uncomplicated), Alcohol Abuse (i.e., uncomplicated and disorder), and Homelessness, which do not constitute mitigating conditions in addition to Insomnia, Adjustment Disorder with Depressed Mood, and Depression, which were not associated with his military service. As such, BH mitigation is not supported.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant's in-service records were void of any BH diagnosis or treatment history and he is not service-connected through the VA for any conditions. VA records show he has not been service-connected for any conditions. However, he contends his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion alone is worthy of the Board's consideration. His VA treatment records show a history of treatment for Substance Use Disorders (SUD) (i.e., Polysubstance abuse, Other Stimulant Dependence, Uncomplicated), Alcohol Abuse (i.e., uncomplicated and disorder), and Homelessness, which do not constitute mitigating conditions in addition to Insomnia, Adjustment Disorder with Depressed Mood, and Depression, which were not associated with his military service. As such, BH mitigation is not supported.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for unsuitability. The Board majority noted the applicant's work with the veteran's council and voted to grant relief. The Board minority noted the medical advisor's review finding insufficient evidence to support the applicant had a mitigating condition or experienced in service and voted to deny relief. Based on a preponderance of the evidence, the Board majority concluded that an upgrade to honorable was warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

<input type="checkbox"/>	<input type="checkbox"/>	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	<input type="checkbox"/>	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 9 June 1981 to show an honorable characterization of service.

4/2/2025

X

CHAIRPERSON

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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - 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. 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.
3. 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.

4. Section 1556 of Title 10, United States 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//