

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 January 2025

DOCKET NUMBER: AR20240008094

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (General) discharge
- a video/telephonic appearance before the Board

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)
- Records Response to Applicant from the National Personnel Records Center (NPRC), 5 July 2023
- Medical Records (16 pages)
- [REDACTED] Department of Insurance License
- Associate Degree
- Four Certificates

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 as a young minority man, he had no mentor to guide him in his experience. As a result of racial harassment and the life threatening incident he endured from his platoon sergeant, he suffered a mental health condition known as depression or borderline post-traumatic stress disorder (PTSD). He sought help from a psychologist, a chaplain, the judge advocate office, and even his Congressman, but his attempts did not penetrate the unit culture that he was in. He was not treated justly. He has never been someone who engages in patterns of misconduct. He has no criminal background. He has had a great, successful, and progressive corporate career in the security/life/safety field.

3. The applicant provides his response from NRPC, including 16 pages of his service medical records. Due to the applicant's contention of depression and PTSD, his record and submission will be reviewed by the Army Review Boards Agency's medical staff.

4. The applicant also provides [REDACTED] Department of Insurance License, associate degree, and four certificates of training and accomplishment for the Board's review.

5. A review of the applicant's service record shows:

a. The applicant enlisted in the Regular Army on 5 October 1988.

b. His record contains 17 DA Forms 4856 (General Counseling Form) from the period 19 June 1989 to 15 February 1990. The counseling forms show the applicant was counseling for minor infractions, including, but not limited to: failure to obey a lawful order, dishonored checks, dereliction of duty, failure to be at appointed place of duty (FTR), substandard duty performance, disrespect to a senior noncommissioned officer (NCO), insubordination, and rehabilitation transfer.

c. On 1 November 1989, the applicant received nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice for dereliction in the performance of his duties by failing to report for duty in time and fail to go to the time prescribed to his appointed place of duty, to wit: company accountability formation.

(1) His punishment consisted of reduction to private (PVT)/E-2, suspended, to be automatically remitted if not vacated before 1 March 1990; forfeiture of \$391.00 pay per month for 2 months, suspended to be automatically remitted if not vacated before 1 March 1990; restriction to place of duty: billets area, dining facility, and place of worship for 45 days, suspended, to be automatically remitted if not vacated before 1 March 1990; and extra duty for 45 days.

(2) On 15 November 1989, the applicant appealed and did not submit additional matters.

(3) On 16 November 1989, the Chief, Criminal Law considered the appeal and found the proceedings were conducted in accordance with law and regulations and the punishments imposed were not unjust nor disproportionate to the offense committed.

(4) On 8 December 1989, the battalion commander denied the applicant's appeal.

d. On 10 January 1990, the applicant underwent a mental status evaluation for the purpose of administrative separation. The applicant's behavior was evaluated as normal, his mood was unremarkable, and thought content was normal. He had the

mental capacity to understand and participate in the proceedings and was mentally responsible. He met the retention requirements. There was no psychiatric disease or defect which warrants disposition through medical channels. He was able to distinguish right from wrong and to adhere to the right.

e. On 20 March 1990, the applicant was notified by his immediate commander he was initiating action to separate him for patterns of misconduct under Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b. The reason for his proposed action are: "You have established a pattern of misconduct to include writing dishonored checks, disrespect to a senior NCO, FTR, and dereliction of duty." He recommended the applicant received an under honorable conditions (General) discharge.

f. On 20 March 1990, the applicant consulted with counsel and was advised of the basis for the contemplated action to separate him for a pattern of misconduct under Army Regulation 635-200, paragraph 14-12b, its effects, of the rights available to him, and the effect of any action taken by him in waiving his rights.

(1) He requested consideration of his case by an administrative separation board and requested a personal appearance before an administrative separation board. Additionally, he requested representation. *Note: The applicant has less than 6 years of service and was not being recommended for consideration for an under other than honorable conditions characterization of service.*

(2) He understood he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him. He also understood he may be ineligible for many or all benefits as a veteran under both Federal and state laws.

g. On 29 March 1990, consistent with the chain of command recommendations, the separation authority approved the applicant's discharge under the provisions of Army Regulation 635-200, paragraph 14-12b and issued a general discharge.

h. On 13 April 1990, he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12b, misconduct – pattern of misconduct with an under honorable conditions (General) characterization of service. His DD Form 214 shows he completed 1 year, 6 months, and 9 days of active service. It also shows he was awarded or authorized the Army Service Ribbon, Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16), Sharpshooter Marksmanship Qualification Badge with Pistol Bar (8 mm), Expert Marksmanship Qualification Badge with Hand Grenade Bar, and Expert Marksmanship Qualification Badge with Pistol Bar (.45 cal).

6. By regulation, members are subject to separation for a pattern of misconduct consisting of conduct prejudicial to good order and discipline, including conduct violative of the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army regulations, the civil law, and time-honor customs and traditions of the Army.

7. 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.

8. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (General) discharge. He contends OMH as related to his request.

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:

- Applicant enlisted in the Regular Army on 5 October 1988.
- His record contains 17 DA Forms 4856 (General Counseling Form) from the period of 19 June 1989 to 15 February 1990. The counseling forms show the applicant was counseled for minor infractions, including, but not limited to: failure to obey a lawful order, dishonored checks, dereliction of duty, failure to be at appointed place of duty (FTR), substandard duty performance, disrespect to a senior noncommissioned officer (NCO), insubordination, and rehabilitation transfer.
- On 1 November 1989, the applicant received nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice for dereliction in the performance of his duties by failing to report for duty on time and failing to go at the time prescribed to his appointed place of duty, to wit: company accountability formation.
- On 20 March 1990, the applicant was notified by his immediate commander he was initiating action to separate him for patterns of misconduct under Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b. The reason for his proposed action: "You have established a pattern of misconduct to include writing dishonored checks, disrespect to a senior NCO, FTR, and dereliction of duty." He recommended the applicant received an under honorable conditions (General) discharge.
- On 13 April 1990, he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12b, misconduct – pattern of misconduct with an under honorable conditions (General) characterization of service. His DD Form 214

shows he completed 1 year, 6 months, and 9 days of active service. He was assigned separation code JKM and reentry code 3.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, as a young minority man, he had no mentor to guide him in his experience. As a result of racial harassment and the life-threatening incident he endured from his platoon sergeant, he suffered a mental health condition known as depression or borderline post-traumatic stress disorder (PTSD). He sought help from a psychologist, a chaplain, the judge advocate office, and even his congressman, but his attempts did not penetrate the unit culture that he was in. He was not treated justly. The current discharge is unjust and a mischaracterization since he is not and has never been someone who engages in patterns of misconduct. He has no criminal background and has been successful in a corporate career in the security/life/safety field, which includes maintaining professional licenses. He further states he was given this characterization of discharge in retribution for going outside the unit in seeking assistance.

d. Due to the period of service, no active-duty electronic medical records were available for review. Hardcopy documentation submitted by the applicant for review show on 10 January 1990, the applicant participated in a mental status evaluation for the purpose of separation. He was found to have no mental health condition, met retention standards, was mentally responsible and able to participate in the proceedings. The applicant was cleared for any administrative action deemed appropriate by command.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 90% service connected for various medical conditions but not for any mental health/psychiatric condition. The applicant initially sought medical services via the VA in July 2024, and he requested assessment for PTSD. He participated in a consult on 10 September 2024 and an intake session on 4 December 2024. The applicant started therapy on 7 January 2025 to address his symptoms of depression, the clinician states in the note, "he had a heart attack in 2016 which seem to cause symptoms of depression". During his intake session, the applicant reported being physically assaulted as an MP while responding to a domestic incident as well as experiencing racism/discrimination by senior officers while in military service.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant contends OMH/depression as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and the applicant only recently sought BH services, with a clinical note indicating his depressive symptoms may be due to a heart attack the applicant suffered in 2016.

h. Per Liberal Consideration guidelines, his assertion of OMH on his application is sufficient to warrant consideration by the Board.

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 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 misconduct with the commander citing writing dishonored checks, disrespect to a senior NCO, FTR, and dereliction of duty. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant contends OMH/depression as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any

BH condition, and the applicant only recently sought BH services, with a clinical note indicating his depressive symptoms may be due to a heart attack the applicant suffered in 2016.

The Board determined relief was not warranted.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

5/5/2025

 

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, set forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7 (Honorable Discharge) 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.
 - b. Paragraph 14-12b (Acts or Patterns of Misconduct) states members are subject to separation for a pattern of misconduct consisting of conduct prejudicial to good order and discipline, including conduct violative of the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army regulations, the civil law, and time-honor customs and traditions of the Army.
3. Army Regulation (AR) 15-185 (ABCMR) 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, which is that what the Army did was correct.
 - a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
 - b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
4. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) 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. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. 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.

6. 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//