

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 March 2025

DOCKET NUMBER: AR20240009565

APPLICANT REQUESTS:

- an upgrade of his characterization of service from under other than honorable conditions to general, under honorable conditions
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant Statement
- Letter from A\_B\_, Veterans Service Officer, stating policies and procedures were not followed in the arrest of the applicant for Driving While Intoxicated and when barring him from reenlistment
- Personal Information Report, which shows he completed the Basic Peace Officer course on 16 October 1992
- A document which contains a photo and states the applicant was the "Best T-38 Crew Chief"
- Honorable Discharge Certificate, which shows he was honorably discharged on 29 June 1989
- Honorable Discharge Certificate, which shows he was honorably discharged on 1 August 1990
- A Certificate of Service, dated 2 February 2003, recognizing him for 10 years of service in the Government of the U.S. of America
- Department of Veterans Affairs Rating Decision, dated 14 February 2024, showing he was service connected for treatment purposes only, for major depressive disorder, recurrent, moderate, with anxious distress

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 believes there are discrepancies in the way he was discharged from the military service and ask that the Board take into consideration his honorable discharges and reenlistments that occurred before he broke the Uniform Code of Military Justice (UCMJ) on 1 September 1991. He self-corrected his mistakes and believes that he has atoned for them. The applicant explains in his statement, which is available for the Board's review in the supporting documents:

- Growing up in Brackettville, TX and racial discrimination
- Discrimination in the Army
- Awards he received and his post service accomplishments

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

a. He enlisted in the Regular Army on 15 October 1985.

b. He accepted nonjudicial punishment on:

- 24 July 1991, for on or about 18 May 1991, operating a vehicle while drunk; he was reduced to private first class/E-3 (suspended to be automatically remitted if not vacated before 24 January 1992)
- 30 September 1991, for on or about 1 September 1991, unlawfully pulling M\_B\_ down to the third step, then pushing her to the ground, and striking her on the right cheek; he was reduced to private/E-1
- On 30 September 1991, the suspension of the punishment of reduction to the grade of private first class/E-3, imposed on 24 Jul 1991 was vacated; the unexecuted portion of the punishment was duly executed

c. The applicant's service record does not contain a copy of his DD Form 458 (Charge Sheet).

d. On 15 April 1992, he requested separation under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, for the good of the service in lieu of trial by court-martial. He understood that he may request discharge for the good of the service because of the charges which had been preferred against him under the UCMJ, which authorized the imposition of a punitive discharge, namely: altering a military ID card, conspiracy to steal, and larceny.

e. On 16 April 1992, the separation authority approved the discharge and directed he be issued an under other than honorable conditions discharge.

f. Accordingly, he was discharged under other than honorable conditions on 5 May 1992. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows in:

- Item 12c (Net Active Service This Period) – 6 years, 6 months, and 21 days
- Item 18 (Remarks) – Immediate reenlistments this period: 851015 – 890629; 890630 – 900801

4. On 8 October 2004, the Army Discharge Review Board determined that the applicant was properly and equitably discharged and denied the applicant's request for a change in the character and/or reason for his discharge.

5. 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.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to under honorable conditions (general). On his DD Form 149, 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 15 October 1985, 2) he received nonjudicial punishment on two occasions: 24 July 1991 for operating a vehicle while drunk and on 30 September 1991 for unlawfully pulling a person down to the third step, pushing her to the ground, and striking her on the right cheek, 3) The applicant's service record does not contain a copy of his DD Form 458 (Charge Sheet), 4) On 15 April 1992, he requested separation under the provisions of AR 635-200, chapter 10, for the good of the service in lieu of trial by court-martial, 4) he was discharged on 05 May 1992 under the provisions of AR 635-200, Chapter 10, In Lieu of Trial by Court-Martial, 5) On 8 October 2004, the ADRB Board determined that the applicant was properly and equitably discharged and denied the applicant's previous request for relief.

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. There were no in-service medical records available for review.

d. The applicant provided a VA Rating Decision Letter dated 14 February 2024 showing he was granted service-connection for treatment purposes only for Major Depressive Disorder, Recurrent, Moderate, with Anxious Distress. Review of the

applicant's VA Compensation and Pension (C&P) examination which was completed on 04 November 2023 documented that his in-service medical records from 17 October 1991 show he had a mental health diagnosis, and that he reported depression on Standard Form 93 dated 05 November 1991.

e. The applicant's case summary from his previous petition to the ADRB in Docket Number AR2004104175 was reviewed. The applicant's previous history of NJP as referenced in the ROP was noted. Under the 'Facts and Circumstances' section, the analyst documented that the applicant was charged with altering a military ID card, conspiracy to steal, and larceny [*Advisor's Note*: the date(s) were not specified]. It was further noted that on 15 April 1992, he consulted with legal counsel and voluntarily requested discharge under the provisions of Chapter 10, AR 635-200, in lieu of trial by court-martial.

f. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant has been diagnosed with MDD, which is a potentially mitigating BH condition. However, as the specific facts and circumstances that led to the applicant's discharge are unavailable for review, BH mitigation is unclear.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed and service-connected for treatment purposes only through the VA with Major Depressive Disorder, Recurrent, Moderate, with Anxious Distress.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed and service-connected for treatment purposes only through the VA Major Depressive Disorder, Recurrent, Moderate, with Anxious Distress. Service-connection establishes that the condition existed in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unclear. The applicant has been diagnosed and service-connected through the VA for treatment purposes only for Major Depressive Disorder, Recurrent, Moderate, with Anxious Distress, which is a potentially mitigating BH condition. The applicant's charge sheet was not available for review; however, his previous ADRB case summary documented that the applicant was charged with altering a military ID, conspiracy to steal, and larceny (dates were not specified). His service records also show a history of NJP for operating a vehicle while drunk and, in effect, assault, which occurred in 1991. While the specific circumstances that led to his discharge were not available for review, there was some documentation of misconduct available for review. It is of note that his diagnosis of MDD would provide a basis of support for mitigating his misconduct of

operating a vehicle while drunk as there is an association between excessive drinking and depression. However, as altering a military ID, conspiracy to steal, larceny, and assault are not part of the natural history and sequelae of MDD, BH mitigation would not be supported for these episodes of misconduct. Thus, for the documented misconduct, partial mitigation would otherwise be supported. However, as the specific facts and circumstances that led to his discharge are unavailable for review, a nexus cannot be established between his diagnosis and the basis for separation and thus BH mitigation is unclear.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. One potential outcome discussed was to grant relief based upon the lengthy period of honorable service completed prior to any misconduct and the guidance received related to clemency. However, based upon the available documentation, the violent nature of some of the misconduct and the following unclear findings of mitigation based upon the lack of the misconduct from the applicant's charge sheet, the Board concluded there was sufficient evidence to only recognize the continuous honorable service completed prior to the misconduct. The Board found no error or injustice which would warrant a change to the applicant's characterization of service.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

|      |      |      |                      |
|------|------|------|----------------------|
| :    | :    | :XXX | GRANT FULL RELIEF    |
| :XXX | :XXX | :    | GRANT PARTIAL RELIEF |
| :    | :    | :    | GRANT FORMAL HEARING |
| :    | :    | :    | DENY APPLICATION     |

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending block 18 (REMARKS) of his DD Form 214 by adding "Continuous Honorable Service for the period 851015-890629" and "SM has completed first term of service".
2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading the applicant's characterization of service.

//SIGNED//

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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 (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.
  - a. Chapter 10 provided that a Soldier who committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other

than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

3. 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; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to 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 that misconduct which led to the discharge.

4. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance

does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

5. 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.

6. Army Regulation 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.

//NOTHING FOLLOWS//