

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 March 2025

DOCKET NUMBER: AR20240009774

APPLICANT REQUESTS:

- an upgrade of his characterization of service from under honorable conditions (General) to honorable
- personal appearance before the Board

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

DD Form 149 (Application for Correction of Military Record)

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 platoon was deployed to Korea for "Team Spirit 84" and he was the platoon captain's driver at the time. He was instructed by his platoon sergeant to sign for all the items that they took with them on the deployment. He was a specialist and 19 years old at the time and should not have been the one to sign for those items. While in Korea, his captain broke a tent pole and when they returned one PRC-77 radio was missing. He was made to pay \$1,400 for those items. After these events, he started using pot on a regular basis, which led to his discharge. He is completely sober now and states these events have created significant mental issues for him to deal with throughout his life.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 17 June 1982.
 - b. He served in Hawaii from 26 October 1982 to 17 September 1984.

c. He accepted nonjudicial punishment on 27 April 1984 for knowingly and wrongfully using marihuana on or about 21 February 1984. He was reduced to private/E-3, which was suspended until 1 October 1984.

d. On 27 August 1984, his commander notified him of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 9, due to failure to successfully complete the rehabilitation program provided him by the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP). He acknowledged on 27 August 1984.

e. He was advised by consulting counsel of the basis for the contemplated action to separate him and its effects; of the rights available to him; and the effect of any action he took in waiving his rights.

f. On 28 August 1984, the immediate commander recommended approval. The commander stated the applicant was a self-referral to the ADAPCP on 6 January 1984 and after 193 days enrolled in the program, it was recommended that he be declared a rehabilitative failure by the Chief, Personnel and Community Activities.

g. On 30 August 1984, the separation authority approved the separation and directed a General Discharge Certificate be issued. The applicant showed no potential for further service under conditions of full mobilization because of his unsatisfactory performance.

h. Accordingly, he was discharged on 19 September 1984. He completed 2 years, 3 months, and 3 days of net active service this period.

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

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. Background: The applicant is requesting an upgrade of his under honorable conditions (general) discharge to honorable. He selected OMH on his application 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 into the Regular Army on 17 June 1982.
- Applicant served in Hawaii from 26 October 1982 to 17 September 1984.
- Applicant accepted nonjudicial punishment on 27 April 1984 for knowingly and wrongfully using marihuana on or about 21 February 1984. He was reduced to private/E-3, which was suspended until 1 October 1984.
- On 27 August 1984, his commander notified him of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 9, due to failure to successfully complete the rehabilitation program provided him by the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP). He acknowledged on 27 August 1984.
- Applicant was discharged on 19 September 1984. His DD Form 214 (Report of Separation from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 9, Drug Abuse – Rehabilitation Failure. His service was characterized as under honorable conditions (general) with separation code JPC, and RE 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 his platoon was deployed to Korea for "Team Spirit 84" and he was the platoon captain's driver at the time. He was instructed by his platoon sergeant to sign for all the items that they took with them on the deployment. He was a specialist and 19 years old at the time and should not have been the one to sign for those items. While in Korea, his captain broke a tent pole and when they returned one PRC-77 radio was missing. He was made to pay \$1,400 for those items. After these events, he started using pot on a regular basis, which led to his discharge. He is completely sober now and states these events have created significant mental issues for him to deal with throughout his life.

d. Due to the period of service no active-duty electronic medical records were available for review. The applicant submitted hardcopy documentation of a memo dated 24 August 1984 providing recommendations to command, based on the applicant's participation in the Alcohol and Drug Abuse Rehabilitation Program (ADAPCP). The memo states the applicant self-referred on 6 January 1984 and his treatment consisted of initial screening, individual counseling, urinalysis testing, command consultation, and medical referral. The applicant was enrolled in ADAPCP on 18 April 1984 and the memo states he continuously engaged in drug abuse and did not appear motivated to stop its usage. The applicant tested positive on 29 June 1984, and a second memo dated 27 August 1984 shows he also tested positive on 9 August 1984. The separation memo dated 27 August 1984; clearly informs the applicant he may request treatment in a VA medical center.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and there is no evidence he has been diagnosed with or has

participated in treatment for any behavioral health condition. On 19 November 2024, a member of the ARBA Case Management Division requested the applicant provide medical documentation in support of his contention of OMH. No response was provided by the applicant.

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 asserted OMH on his application 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 or post-discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant selected OMH on his application as related to his request, there is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. And while the applicant selected OMH on his application as related to his request, he did not provide any medical documentation substantiating any BH diagnosis.

h. Per Liberal Consideration guidelines, his selection 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 applicant was enrolled in the Army Substance Abuse Program. His commander declared him an alcohol rehabilitation failure and he was discharged from active duty due to alcohol rehabilitation failure with an under honorable conditions (General) discharge. The Board found no error or injustice in his separation

processing. The applicant provided no evidence of post-service achievements or letters in support of a clemency determination.

2. Based upon the conduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration, the Board determined relief was not warranted.

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserted OMH on his application 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 or post-discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant selected OMH on his application as related to his request, there is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. And while the applicant selected OMH on his application as related to his request, he did not provide any medical documentation substantiating any BH diagnosis.

3. 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
:XX	:XX	:XX	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.

X //SIGNED//

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. Chapter 9 contained the authority and outlined the procedures for discharging Soldiers because of alcohol or other drug abuse. A member who had been referred to the ADAPCP for alcohol/drug abuse may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program in the following circumstances:

- There is a lack of potential for continued Army service and rehabilitation efforts are no longer practical.
- Long-term rehabilitation is necessary, and the Soldier is transferred to a civilian medical facility for rehabilitation.

b. The service of Soldiers discharged under this chapter would be characterized as honorable or under honorable conditions (general) unless the Soldier was in an entry-level status.

c. 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.

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 (BCM/NR) 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.

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//