

in a mental fog a state of depression. He has been reliving it over and over going back and forth with the VA. He would greatly appreciate the Boards corrective action on this matter so that he can try and move on with his life.

d. He indicated PTSD and MST on his application as contributing and mitigating factors in the circumstances that resulted in his separation.

3. The applicant enlisted in the Army National Guard (ARNG) on 15 December 2001. He completed training with award of the military occupational specialty 14M (Manportable Air Defense System Crewmember) and was released from active duty to his ARNG unit. A DD Form 214 for his period initial active duty for training is not of record.

4. The applicant was mobilized in support of Operation Mobile Eagle on 27 January 2003.

5. The available record is void of a separation packet containing the specific facts and circumstances surrounding the applicant's discharge processing.

6. The applicant's DD Form 214 shows he was discharged on 22 January 2004, 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 was discharged in the grade of E-2, and his service was characterized as under honorable conditions (Separation Code KFS and Reentry Code 4). He completed 11 months and 26 days of net active service this period, 3 months and 26 days of prior active duty, and 9 months and 11 days of prior inactive service.

8. NGB Orders 084-137, dated 24 March 2004, show he was discharged and would be issued a Under Other Than Honorable Conditions Certificate. His separation orders were amended on 14 April 2004 to show his character of service as under honorable conditions (general).

9. The applicant's NGB Form 22 (Report of Separation and Record of Service) shows he served in the ARNG from 15 December 2001 to 22 January 2004. He was discharged under provisions of National Guard Regulation 600-200, paragraph 8-27d (Request for Discharge in Lieu of Court-Martial authorized to adjudge a punitive discharge) with an under honorable conditions (general) characterization of service. His NGB Form 22 shows two periods of active Federal service from 8 October 2002 to 3 May 2003 and from 27 January 2003 to 22 January 2004.

10. The applicant provided 3 pages of a 331-page medical report showing admission on 9 October 2019 at the Hampton Medical Center with diagnoses of alcohol use disorder; severe stimulant use disorder; Opioid use disorder, in sustained remission;

Cannabis use disorder, in sustained remission; PTSD; and MST. He received Individual Psychotherapy for these conditions. Other than the mentioning of the PTSD and MST on page 59 in reference to an interview a local newspaper on the Hampton Medical Center's Equine Therapy Program, there was no other information provided on the rational for these diagnoses.

11. The VA rendered an administrative decision that for VA purposes his last period of active duty was not honorable for VA purposes. The reason cited was his DD Form 214 "In lieu of trial by court-martial". The separation authority is AR 635-200, Chap 10. In order to initiate a discharge under this paragraph, a referral to a General Court Martial is required. It is states that he was discharged Under Honorable Conditions (General) in lieu of a trial by General Court Martial on January 22, 2004, per Orders 084-137, dated March 24, 2004, he was originally discharged Under Other Than Honorable Conditions, but Orders 105-081, dated April 14, 2004, amended this to a General Discharge Certificate.

12. The VA cites his NGB separation Orders Number 105-081 that corrected an erroneous entry of his characterization of service on the NGB Form 22 based on his receipt of a general discharge from the active component.

13. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

14. In determining whether to grant relief the Boards for Correction of Military/Navy Records (BCM/NR) can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

15. MEDICAL REVIEW:

a. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents, integrated Personnel Electronic Records Management System (iPERMS), and the applicant's medical records in the Armed Forces Health Longitudinal Technology Application (AHLTA) and Joint Legacy Viewer (JLV) and made the following findings and recommendations: The applicant holds VA diagnoses of Anxiety Disorder NOS, Unspecified Depressive Disorder, Persistent Depressive Disorder with Anxious Distress, various Substance Use Disorders, and history of PTSD secondary to childhood trauma. The applicant is not service connected for any conditions, medical or psychological, but has reported a MST. While the asserted MST is acknowledged, without the charges serving as the basis for separation, mitigation cannot be

determined; there are acts of misconduct MST would not mitigate or outweigh. However, based on liberal consideration, the Board has the discretion to apply the MST without knowledge of the misconduct and offer relief.

b. The applicant was discharged on 22 January 2004 under AR 635-200, Chapter 10, for the Good of the Service In Lieu of Trial by Court-Martial, with a General characterization. The charges serving as the basis for separation are unknown. The applicant asserts his misconduct was the result of a MST and resulting PTSD.

c. Due to the period of service, active-duty medical records are void.

d. The VA records indicate the applicant is not service connected for any conditions, medical or behavioral health. From December 2006 to March 2007, the applicant engaged in substance treatment. In April 2012, the applicant reported panic attacks with a year sobriety from alcohol and opiates. The applicant was diagnosed with Anxiety Disorder NOS and medication prescribed. In November, the applicant was referred for Suboxone treatment after relapse, transitioning from opiate prescriptions to intravenously heroin. The Veteran's Justice Outreach (VJO) program was contacted after the applicant pled guilty to three Grand Larceny charges and one Larceny charge; he indicated the theft was secondary to funding substance use. In December, the applicant enrolled into residential substance treatment.

e. In February 2014, the applicant requested stimulant medication indicating unemployment due to inattention. Given the applicant's substance history, he was given a non-stimulant. In August, the applicant was readmitted to residential substance treatment after relapse. In September, he was discharged from the treatment program after a positive UA. He enrolled into a substance Intensive Outpatient Program (IOP). In December, he was hospitalized and discharged with diagnoses of Unspecified Depressive Disorder, Opioid Use Disorder, and Alcohol Use Disorder with PTSD by history secondary to childhood trauma. The applicant continued seeking various residential substance programs through June 2015.

f. In December 2015, the applicant had a Compensation and Pension (C&P) exam diagnosing Alcohol Dependence, Persistent Depressive Disorder with Anxious Distress, and Opioid Use Disorder (heroin). The applicant denied any disciplinary issues in-service, noting an honorable discharge with good work performance; he did not divulge the basis for separation. The applicant denied trauma symptoms, although the provider indicated "the traumatic events (childhood abuse) represent components for his symptoms of depression." The provider indicated the applicant did "not experience mental health issues in the Army." Rather, "his mental health problems began after his military service" with the applicant reporting depressive symptoms began in 2012 secondary to personal stressors. The provider determined the diagnosed conditions were not aggravated or caused by in-service events.

g. In March 2018, the VJO was contacted after the applicant was involved in drug court due to relapses. In October 2019, he was enrolled into residential substance treatment after relapse the month prior while still on probation for larceny. In November, the applicant endorsed a MST; he was at a NCO club where a 1SG brought him drinks and grabbed his genitals before he blacked out, waking the next day in his barracks. The provider reiterated any PTSD diagnosis or symptoms were secondary to childhood. In December, the applicant was incarcerated for probation violations, discharged from drug court, and returned to the judicial system for positive UAs. As of his last VA contact, February 2020, he was still incarcerated.

h. The applicant provided two partial VA notes, cut and pasted onto a Word document; they were not printouts of the original notes. The advisor was able to access the full notes and file via the VA electronic medical record which was incorporated above.

Kurta Questions:

(1) Does the applicant have a condition or experience that may excuse or mitigate the discharge? YES. The applicant reported a MST.

(2) Did the condition exist or experience occur during military service? YES. The applicant reported MST.

(3) Does the condition or experience actually excuse or mitigate the discharge? UNKNOWN. The charges serving as the basis for separation are absent hindering any mitigation determination; there are acts of misconduct that would not be mitigated or outweighed by an MST.

(4) Does the condition or experience outweigh the discharge? UNKNOWN. The charges serving as the basis for separation are absent hindering any mitigation determination; there are acts of misconduct that would not be mitigated or outweighed by an MST.

BOARD DISCUSSION:

1. 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.

2. After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents available for review and evidence in the records. The Board

considered the frequency and nature of the misconduct, the reason for separation and whether to apply clemency. Based on the available documentation and the multiple offenses leading to the applicant's separation, the Board concluded that any mitigation for the offenses was outweighed and the evidence presented does not meet the burden of proof in determining the existence of an error or injustice and a recommendation for relief is not warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined 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 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Additionally, the ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, 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.
3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at that time provided that:
 - a. 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.
 - b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.
 - c. Chapter 10 of that regulation provided, in pertinent part, that a member who had committed an offense or offenses for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, an under other than honorable conditions discharge was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an undesirable discharge certificate.

4. 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 Discharge Review Boards (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 a 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 misconduct that led to the discharge.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to DRBs and BCM/NR on 25 July 2018, 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 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 grounds.

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.

6. 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//