

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: Allen, Cody William

BOARD DATE: [REDACTED]

DOCKET NUMBER: AR20230004508

APPLICANT REQUESTS:

- Remove Bar to Reenlistment
- Change his reentry code (RE) from “3” to “1”

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)

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, in effect:

a. He would like to have his bar to reenlistment lifted. He was given a Noncommissioned Officer Evaluation Report (NCOER) that would not bar him to reenlist. His Team Sergeant informed him a few weeks later that he needed to make a minor change to the NCOER and asked if the applicant could log in and sign it. He did not review the NCOER after the change because his Team Sergeant stated it was just a minor change.

b. The Team Sergeant left a bullet statement that ultimately barred him to reenlist, which he found out months later when he tried to reenlist. He thinks the correction should be made because he would like to have the possibility of reenlisting without requiring a waiver and the fact is, his Team Sergeant did not state after he changed the NCOER that it would lead to the bar to reenlistment.

c. The applicant indicated with an “X” on DD Form 149, item 14 (Are any of the following issues/conditions related to your request), “PTSD” and “TBI.” The applicant

was asked, via letter from Case Management Division, dated 9 June 2023, to provide a copy of the medical documents that support his mental health issues (PTSD and TBI). As of the date of this writing, medical documents were not submitted.

3. The applicant provides a copy of his DD Form 214.

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

a. He enlisted in the Regular Army on 11 March 2009 as a 11B, Infantryman.

b. Cincinnati/Northern KY Airport Police Incident/Offense Report, dated 24 February 2015, states the following:

(1) On Sunday, 01/25/2015, at approximately 2031 hours, I made contact with an intoxicated subject in the gate area of 818/20. The subject was struggling to keep his balance and tripped several times. I had him sit down and asked him several questions. He responded with very slurred speech and a strong odor of an alcoholic beverage. The subject also thought he was in Nashville. At this time I determined he was a danger to himself and others. He continued to be loud and cause an annoyance to others in the area. A Delta Representative stated she would not be allowing him to fly and would be rebooking him for a flight tomorrow. He was asked several times to stop being loud and using profanity. After he said "what the fuck am I supposed to do" in front of several children and an elderly woman I placed the subject under arrest at approximately 2041 hours.

(2) The subject name is [REDACTED] [the applicant] born [REDACTED]. He was transported to the Boone County Jail, where he is lodged under Citation# [REDACTED] violation codes 02304 and 02370. Deputy [REDACTED] signed the Prisoner Description Release Form at 2200 hours. Corporal B photographed the prisoner. All paperwork will be placed in the case jacket.

c. The applicant accepted nonjudicial punishment (NJP) on 16 April 2015 for violation of Article 134, UCMJ, in that he was at or near Cincinnati-Norther Kentucky International Airport, Hebron, Kentucky, on or about 25 January 2015, drunk and disorderly which conduct was of a nature to bring discredit upon the Armed Forces. His punishment imposed was extra duty for 7 days.

d. DA Form 2166-9-2 (NCO Evaluation Report (SSG-1SG/MSG)), period covered from 10 September 2016 thru 1 August 2017, reflects the applicant's principal duty title as "Special Forces Junior Engineer Sergeant." It also shows in:

(1) Part IV (Performance Evaluation, Professionalism, Attributes, and Competencies (Rater))

Item 9 (Presence): “Did Not Meet Standard”

(Comments): “lacks the ability to adapt to stress and adversity; his actions affected the detachments capability to perform” and fails to display military bearing; does not respond to counseling”

(2) Part V (Senior Rater Overall Potential)

Item b (Comments) “[Applicant] is 6 of 7 SSGs that I currently rate. After additional training and experience, he should be considered for promotion. Send to his next level NCOES when ready. [Applicant] will be able to handle positions of higher responsibility after more mentorship and schooling.”

e. The complete facts and circumstances surrounding his separation are not available for review. His DD Form 214 shows he was honorably discharged on 16 December 2018, under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 4, non-retention on active duty (separation code JGH, reentry code 3). It also shows the following:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized):

Bronze Star Medal	Afghanistan Campaign Medal w/2
Army Commendation Medal	campaign stars
Army Achievement Medal (4th Award)	Armed Forces Service Medal
Meritorious Unit Commendation	Humanitarian Service Medal
Valorous Unit Award	Iraq Campaign Medal w/campaign star
Army Good Conduct Medal (3rd Award)	Noncommissioned Officer Professional
National Defense Service Medal	Development Ribbon (2nd Award)
Global War on Terrorism Expeditionary Medal	NATO Medal (2nd Award)
Global War on Terrorism Service Medal	Combat Infantryman Badge
	Expert Infantryman Badge

- Item 18 (Remarks): Served in a designated imminent danger pay area:

Afghanistan, 27 April 2010 – 1 August 2010
 Iraq, 12 June 2011 – 27 November 2011
 Afghanistan, 21 January 2016 – 22 June 2016

f. Due to the absence of documents that led to the applicant’s discharge, it is unclear if a Bar to Reenlistment was imposed or if the applicant’s discharge was the result of the Qualitative Management Program (QMP).

5. AR 601-280 (Total Army Retention Program) prescribes the criteria for the Army Retention Program. For those soldiers serving in the active Army, it outlines procedures

for immediate reenlistment or extension of enlistment. Chapter 8 prescribes procedures to deny reenlistment to soldiers whose immediate separation under administrative procedures is not warranted, but whose reentry into or service beyond ETS with the Active Army is not in the best interest of the military service. Policies and procedures prescribed herein apply to the field commander's Bars to Reenlistment. Soldiers may not be reenlisted without the recommendation of the unit commander.

6. AR 601-210 (Active and Reserve Components Enlistment Program) governs eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Chapter 3 prescribes the basic eligibility for prior-service applicants for enlistment and includes a list of Armed Forces RE codes used for administrative purposes.

7. AR 635-5-1 (Separation Program Designator (SPD) Codes), Table 2-3 (Separation program designator codes applicable to enlisted personnel) reflects the separation code of JGH is assigned for Non-Retention on Active Duty, with the reentry code of RE-3 or -4.

- RE Code 3 is used when Soldier's record indicates (for current enlistment period) that Soldier is ineligible for or otherwise denied immediate reenlistment
- RE Code 4 is used when the Soldier is discharged under Qualitative Management Program (QMP)

8. 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.

9. MEDICAL REVIEW:

a. Background: The applicant is requesting a removal of his bar to reenlistment and a change in his reentry code (RE) from "3" to "1". The applicant indicated in his application PTSD and TBI are conditions related to his request.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- Applicant enlisted in the RA on 11 March 2009.
- Applicant accepted nonjudicial punishment (NJP) on 16 April 2015 for violation of Article 134, UCMJ, in that he was at or near Cincinnati-Norther Kentucky International Airport, Hebron, Kentucky, on or about 25 January 2015, drunk and disorderly which conduct was of a nature to bring discredit upon the Armed Forces. His punishment imposed was extra duty for 7 days.

- The complete facts and circumstances surrounding his separation are not available for review. His DD Form 214 shows he was honorably discharged on 16 December 2018, under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 4, non-retention on active duty (separation code JGH, reentry code 3).

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, his ABCMR Record of Proceedings (ROP), Noncommissioned Officer Evaluation Report (NCOER), and DD Form 214. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant states, he would like to have his bar to reenlistment lifted. He was given a Noncommissioned Officer Evaluation Report (NCOER) that would not bar him to reenlist. His Team Sergeant informed him a few weeks later that he needed to make a minor change to the NCOER and asked if the applicant could log in and sign it. He did not review the NCOER after the change because his Team Sergeant stated it was just a minor change. The Team Sergeant left a bullet statement that ultimately barred him from reenlistment, which he found out months later when he tried to reenlist. He thinks the correction should be made because he would like to have the possibility of reenlisting without requiring a waiver and the fact is, his Team Sergeant did not state after he changed the NCOER that it would lead to the bar to reenlistment

e. The applicant had areas of concern, regarding his performance, prior to his discharge from military service. An NCOER covering the period from 10 September 2016 thru 1 August 2017, indicates in the area of Professionalism, Attributes, and Competencies the applicant "Did Not Meet Standard". The report states, the applicant, "lacks the ability to adapt to stress and adversity; his actions affected the detachments capability to perform and fails to display military bearing; does not respond to counseling".

f. While in military service the applicant was assessed on 16 March 2010 and 30 November 2011 post deployment. He evidenced no symptoms of concussion, was not experiencing neurological difficulties, and he denied any head injury while deployed. The applicant was found negative for TBI, contradictory to his contention. On 02 February 2015, the applicant self-referred and was seen for an initial assessment for substance use after a civilian charge was filed of drunk & disorderly at the Cincinnati, OH airport on 1/25/15. The clinician determined the applicant did not require services at the time. However, on 06 February 2015, the applicant was command enrolled into the ASAP program. He was discharged from the program on 23 March 2015. On 14 July 2016, the applicant self-referred to ADAPT and he participated in outpatient treatment with a focus on alcohol abuse prevention. He participated in the program until 29 August 2016.

g. On 31 Aug 2018, the applicant contacted ADAPT and self-referred, at the advice of his lawyer, due to an alcohol related incident in which he was charged with “criminal mischief and property damage.” Per the record, the applicant reported during the intake process, that on 21 July 18 he and his roommate went to a local bar and left via taxi. He believes he blacked out while in the taxi, because his next memory is of being put into the back of a police car and he had no memory of the events leading up to his encounter with police. At the time, the applicant stated he believes he was unable to give the taxi driver an accurate address to drive to and was dropped off in the general vicinity of his neighborhood. He went to the nearest house and started “banging” on a door to try asking someone about his location. The residents contacted the police who later arrested the applicant. Based on the information provided, the applicant was diagnosed with Alcohol Use Disorder (AUD).

h. Applicant is 90% disabled, per VA electronic medical records, including 70% for Post-Traumatic Stress Disorder. There is no indication in the VA electronic medical record of the applicant being diagnosed with a TBI. A C and P evaluation, dated 1 February 2023, indicates that the applicant did not meet criteria for PTSD. However, at his request, he was reevaluated on 21 March 2023 and was diagnosed with PTSD and Alcohol Use Disorder. Based on the applicant’s reported symptoms, the evaluation indicates the applicant has “occupational and social impairment with deficiencies in most areas, such as work, school, family relations, judgment, thinking and/or mood”. In addition, he has “difficulty in adapting to stressful circumstances, including work or work-like settings”.

i. Based on the available information and his service connection via the VA, it is the opinion of the Agency Behavioral Health Advisor that the applicant has significant disabilities, with some of his conditions barring him from reenlistment, and any consideration for reenlistment should be carefully reviewed. The removal of his bar to reenlistment is not recommended since based on the available information the applicant is unable to function in a work-like setting.

Kurta Questions:

- (1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? N/A
- (2) Did the condition exist or experience occur during military service? N/A
- (3) Does the condition or experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

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 contentions, the military record, and regulatory guidance. The Board considered the applicant's statement, record of service, the frequency and nature of the misconduct and the reason for separation. After review of Board documentation of record and that otherwise available, the Board agreed that the applicant's performance and conduct disallowed continued service and resulted in the bar to reenlistment. The Board noted his diagnosis of PTSD and Alcohol Disorder and the resulting disabilities. After due consideration of the case, the Board determined a recommendation for relief is not warranted.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 and removing the bar to Reenlistment or changing the reentry code (RE) from "3" to "1" is not warranted.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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 601-280 (Total Army Retention Program), paragraph 4d, states, Soldiers against whom a Bar to Reenlistment may be initiated. Soldiers may be barred from reenlistment for one or a combination of the below listed infractions or reasons. This listing provides examples of the rationale for the imposition of a bar and is not intended to be all-inclusive. Examples are—

- a. Lateness to formations, details, or assigned duties.
- b. AWOL for 1- to 24-hour periods.
- c. Losses of clothing and equipment.
- d. Substandard personal appearance.
- e. Substandard personal hygiene.
- f. Continuous indebtedness, reluctance to repay, or late payments.
- g. Article 15(s).
- h. Frequent traffic violations.
- i. An excessive number of sick calls without medical justification.
- j. Lateness returning from pass or leave
- k. Cannot follow orders; shirks responsibilities; takes too much time; is recalcitrant.
- l. Cannot train for a job; apathetic; disinterested.
- m. Cannot adapt to military life; uncooperative; involved in frequent difficulties with fellow soldiers.
- n. Failure to manage personal, marital, or family affairs. This includes failure to respond to duty requirements
 - b. because of parenthood or custody of dependents (minor or adult).
 - a. Causes trouble in the civilian community.
 - b. Involvement in immoral acts.
 - c. Personal behavior brings discredit upon his unit or the Army.
 - d. Failure to achieve individual weapons qualification.
 - e. Failure to pass the Army's Physical Fitness Test for record.
 - f. Loss of qualification in PMOS when HRC-Alexandria (AHRC-EPR-F) has determined that reclassification is not appropriate because the soldier can not be retrained into a new MOS.
 - g. Noncompetitive for promotion.
 - (1) Slow rank progression resulting from a pattern of marginal conduct or performance.

(2) No demonstrated potential for future service (repeated counseling statements or other indicators).

(3) No demonstrated ability to keep pace with others of the same Career Management Field.

(4) Declines attendance in professional development courses such as PLDC, BNCOC, ANCOG, and so on.

(5) Not recommended for promotion by unit commander.

(6) Lack of potential to become a supervisor or senior technician.

3. AR 601-210 (Active and Reserve Components Enlistment Program) governs eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Chapter 3 prescribes the basic eligibility for prior-service applicants for enlistment and includes a list of Armed Forces RE codes used for administrative purposes and applicants should be advised that these codes are not to be considered derogatory in nature; they simply are codes used for identification of an enlistment processing procedure.

a. RE-1 applies to persons completing their term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3 applies to persons who are not qualified for reentry or continuous service at the time of separation, but the disqualification is waivable. Soldiers in this category who desire to reenter military service, should contact a local recruiter who can best advise a Soldier on his/her eligibility for returning to military service. Those individuals can best advise a former service member as to the needs of the service at the time and are responsible for processing requests for enlistment waivers.

c. RE-4 applies to persons who are separated from last period of service with a nonwaivable disqualification. This includes anyone with a Department of the Army imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years AFS.

4. R 635-5-1 (Separation Program Designator (SPD) Codes), Table 2-3 (Separation program designator codes applicable to enlisted personnel) reflects the separation code of JGH is assigned for Non-Retention on Active Duty, with the reentry code of RE-3 or -4.

5. 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. 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. 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. 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 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.

7. 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.

8. 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. 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. 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//