

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 January 2024

DOCKET NUMBER: AR20230005050

APPLICANT REQUESTS:

- an upgrade of his general under honorable conditions discharge to honorable
- an appearance before the Board via video/telephone

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)
- Department of Veterans Affairs (VA) Benefits dated 1 December 2022
- My HealtheVet Personal Information Report dated 26 January 2023

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 would like his under honorable discharge upgraded to an honorable, and that he was mentally and physical abused.
3. The applicant provides:
 - a copy of his VA letter dated 1 December 2022, which shows he is rated 100% permanent and totally disabled, with an effective date of 25 April 2022
 - pages of his My HealtheVet dated 26 January 2023, shows various problems concerning his health
4. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 22 March 2005.

b. On 18 January 2006, the applicant accepted nonjudicial punishment for being drunk while on duty, as an Initial Entry Soldier and for unlawfully striking Privates B__ and C__ with closed fists on their heads. He received the following:

- reduced to the grade of E-2
- forfeiture of \$713.00 per month for two months, except one month suspended
- 45 days extra duty and 45 days restriction

c. On 15 March 2006, the applicant accepted nonjudicial punishment for willfully and unlawfully altering a public record, to wit: Individual sick Slip, DD Form 689, by writing light duty, no run, no lifting in the Remarks section. He received the following:

- reduced to the grade of E-1, suspended, to be automatically remitted if not vacated before 14 May 2006
- 12 days extra duty and 12 days restriction

d. On 27 March 2006, the applicant's commander advised the applicant in writing of his intent to separate the applicant under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 14 (Separation for Misconduct), paragraph 14-12a (Minor Disciplinary Infractions).

e. On 28 March 2006, the applicant acknowledged receipt and consulted with counsel. Following consultation with legal counsel, he understood his rights and acknowledged the following:

- he understood if he had less than 6 years of total active and reserve military service at the time of separation, that he was not entitled to have his case heard by an administrative separation board.
- he understood that he may expect to encounter substantial prejudices in civilian life if a general discharge under honorable conditions is issued
- he also understands that if he receives a discharge which is less than honorable, he may apply to the Army Discharge Review Board and/or the ABCMR to upgrade his discharge; however, he realizes that consideration by either board does not imply that his discharge would be upgraded
- he requested a copy of the documents that would be sent to the separation authority supporting the proposed separation
- he understood that he will be ineligible to apply for enlistment in the United States Army for a period of 2 years
- he requested a copy of the entire file

f. On 29 March 2006, consistent with the chain of command recommendations,

the separation authority approved the discharge and directed he be issued a General Discharge Certificate Under Honorable Conditions.

g. The applicant was discharged on 31 March 2006. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 14-12a with under honorable conditions characterization of service with separation code JKN (Misconduct Minor Infractions). He completed 1 year and 9 days of net active service with no time lost.

5. By regulation, separations under the provisions of AR 635-200, chapter 14 provides policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave.

6. 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.

7. In regards to the applicant's request for an appearance before the Board, AR 15-185 (Army Board for Correction of Military Records (ABCMR)) states ABCMR members will review all applications that are properly before them to determine the existence of an error. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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.

8. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 31 March 2006 under honorable conditions (general) discharge. He notes on his DD 149 that PTSD and Other Mental Health conditions are related to his request. He states:

"I was mentally and physically abused."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows he entered the regular Army on 22 March 2005 and was discharged 31 March 2006 under provisions in paragraph 14-12a of AR 635-200, Active Duty Enlisted Administrative Separations (6 June 2005): Minor disciplinary infractions. The DD 214 shows no periods of Service in a hazardous duty pay area.

d. The applicant underwent a pre-separation mental health evaluation on 23 March 2006. The provider documented a normal examination and wrote:

"Service member was seen at Outpatient Behavioral Health Clinic for a Chapter Evaluation. A clinical interview, review of medical records, and mental status evaluation were conducted. No disqualifying condition or information was discovered. No situational or motivational factors that may impede his performance were discovered."

e. On 27 March 2006, his company commander informed him of the initiation of separation action under paragraph 14-12a of AR 635-200:

"You have demonstrated disruptive behavior numerous times by violating the Uniform Code of Military Justice (UCMJ) and Army regulations. The reasons for my proposed action are:

(a) On 3 Dec 05, you were found drunk while on duty as an IET [Initial Entry Training] Soldier, and you unlawfully struck two Soldiers on their head with closed fists, in violation of Articles 112 and 128, UCMJ. You received a field grade Article 15, UCMJ for these offenses.

(b) On 11 Feb 2006, you disobeyed the A Company SOP, paragraph 9-11, by wrongfully possessing tobacco while in IET status, in violation of Article 92, UCMJ. You received a summarized Art 15, UCMJ for this offense.

(c) On 15 Mar 06 you willfully and unlawfully altered a public record, by forging your DD Form 689, Individual Sick Slip, a violation of Article 134, UCMJ. You received a company grade Art 15, UCMJ for this offense.

You have displayed poor Soldier characteristics and a negative attitude toward training to become a satisfactory Soldier. You continue to perform unsatisfactorily and display an "I don't care" attitude around other good Soldiers.

Your disregard for rules and regulations, poor self-discipline and apathetic attitude is not conducive to becoming a satisfactory Soldier. Your disruptive behavior characteristics are not compatible with standards of the US Army and affect other good Soldiers. You were rehabilitatively transferred to another platoon, given three Article 15s, UCMJ and counseled formally and verbally many times.

Your continued disruptive behavior adversely affects the morale and discipline of other Soldiers in the unit. Your behavior is indicative of an individual who either cannot or will not develop to become a satisfactory Soldier. It is clear that you will continue to be a drain on unit resources until you are discharged.”

f. On 28 March 2006, the applicant’s battalion commander recommended approval on the applicant’s separation from the Army:

“Strongly recommend approval of PVT [Applicant]’s discharge. Despite the efforts of this command, this Soldier continues to disobey rules and regulations.

Further recommend PVT [Applicant] receive a general under honorable conditions discharge. His continued disciplinary infractions clearly warrant separation. He should not be placed in the Individual Ready Reserve.”

g. The applicant’s discharge under paragraph 14-12a of AR 635-200 was approved by the brigade commander on 29 March 2006.

h. There are no probative AHLTA encounters. Review of his records in JLV show he has a 70% service-connected disability rating for Major Depressive Disorder.

i. It is the opinion of the ARBA Medical Advisor that a discharge upgrade is unwarranted.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, Major Depressive Disorder.

(2) Did the condition exist or experience occur during military service? Yes

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially: As this condition is associated with resistance to authority and self-medicating with drugs and/or alcohol, it mitigates his failure to obey an SOP and his drinking while on duty. However, as the condition does not interfere with one’s ability to differentiate

right from wrong and here to the right, it cannot mitigate his assaulting fellow Soldiers or falsification of an official document.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with the commission of multiple offenses punishable under the UCMJ with a punitive discharge. The Board recognized that the applicant has a disability rating for a service-connected behavioral health condition which partially mitigates the misconduct. However, the condition does not interfere with his ability to differentiate right from wrong and adhere to the right and; therefore, it does not mitigate assaulting a fellow Soldier or falsifying an official document. After due consideration of the case, the Board determined the evidence presented insufficient to warrant a recommendation for relief.

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 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states 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.

b. Paragraph 3-7b (General Discharge) states 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.

c. Paragraph 14-12a states members are subject to separation for minor disciplinary infractions if a pattern of misconduct consisting solely of minor military disciplinary infractions. Except as provided in paragraph 11-3c, if separation of a soldier in entry-level status is warranted solely by reason of minor disciplinary infractions, the action will be processed under chapter 11.

3. PTSD can occur after someone goes through a traumatic event like combat, assault, or disaster. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is published by the American Psychiatric Association (APA) and provides standard criteria and common language for the classification of mental disorders. In 1980, the APA added PTSD to the third edition of its DSM nosologic classification scheme. Although controversial when first introduced, the PTSD diagnosis has filled an important gap in psychiatric theory and practice. From a historical perspective, the significant change ushered in by the PTSD concept was the stipulation that the etiological agent was outside the individual (i.e., a traumatic event) rather than an inherent individual weakness (i.e., a traumatic neurosis). The key to understanding the scientific basis and clinical expression of PTSD is the concept of "trauma."

4. PTSD is unique among psychiatric diagnoses because of the great importance placed upon the etiological agent, the traumatic stressor. In fact, one cannot make a

PTSD diagnosis unless the patient has actually met the "stressor criterion," which means that he or she has been exposed to an event that is considered traumatic. Clinical experience with the PTSD diagnosis has shown, however, that there are individual differences regarding the capacity to cope with catastrophic stress. Therefore, while most people exposed to traumatic events do not develop PTSD, others go on to develop the full-blown syndrome. Such observations have prompted the recognition that trauma, like pain, is not an external phenomenon that can be completely objectified. Like pain, the traumatic experience is filtered through cognitive and emotional processes before it can be appraised as an extreme threat. Because of individual differences in this appraisal process, different people appear to have different trauma thresholds, some more protected from and some more vulnerable to developing clinical symptoms after exposure to extremely stressful situations.

5. The fifth edition of the DSM was released in May 2013. This revision includes changes to the diagnostic criteria for PTSD and acute stress disorder. The PTSD diagnostic criteria were revised to take into account things that have been learned from scientific research and clinical experience. The revised diagnostic criteria for PTSD include a history of exposure to a traumatic event that meets specific stipulations and symptoms from each of four symptom clusters: intrusion, avoidance, negative alterations in cognitions and mood, and alterations in arousal and reactivity. The sixth criterion concerns duration of symptoms, the seventh criterion assesses functioning, and the eighth criterion clarifies symptoms as not attributable to a substance or co-occurring medical condition.

6. As a result of the extensive research conducted by the medical community and the relatively recent issuance of revised criteria regarding the causes, diagnosis, and treatment of PTSD, the Department of Defense (DOD) acknowledges that some Soldiers who were administratively discharged under other than honorable conditions may have had an undiagnosed condition of PTSD at the time of their discharge. It is also acknowledged that in some cases this undiagnosed condition of PTSD may have been a mitigating factor in the Soldiers' misconduct which served as a catalyst for their discharge. Research has also shown that misconduct stemming from PTSD is typically based upon a spur of the moment decision resulting from a temporary lapse in judgment; therefore, PTSD is not a likely cause for either premeditated misconduct or misconduct that continues for an extended period of time.

7. On 3 September 2014 in view of the foregoing information, 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 UOTHC 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 applicants' service.

8. BCM/NRs are not courts, nor are they investigative agencies. Therefore, the determinations will be based upon a thorough review of the available military records and the evidence provided by each applicant on a case-by-case basis. When determining if PTSD was the causative factor for an applicant's misconduct and whether an upgrade is warranted, the following factors must be carefully considered:

- Is it reasonable to determine that PTSD or PTSD-related conditions existed at the time of discharge?
- Does the applicant's record contain documentation of the occurrence of a traumatic event during the period of service?
- Does the applicant's military record contain documentation of a diagnosis of PTSD or PTSD-related symptoms?
- Did the applicant provide documentation of a diagnosis of PTSD or PTSD-related symptoms rendered by a competent mental health professional representing a civilian healthcare provider?
- Was the applicant's condition determined to have existed prior to military service?
- Was the applicant's condition determined to be incurred during or aggravated by military service?
- Do mitigating factors exist in the applicant's case?
- Did the applicant have a history of misconduct prior to the occurrence of the traumatic event?
- Was the applicant's misconduct premeditated?
- How serious was the misconduct?

9. Although DOD acknowledges that some Soldiers who were administratively discharged UOTHC may have had an undiagnosed condition of PTSD at the time of their discharge, it is presumed that they were properly discharged based upon the evidence that was available at the time. Conditions documented in the records that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which PTSD or PTSD-related conditions may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the UOTHC characterization of service. BCM/NRs will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a characterization of service of UOTHC. Potentially mitigating evidence of the existence of undiagnosed combat-related PTSD or PTSD-related conditions as a causative factor in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. BCM/NRs will also exercise caution in weighing evidence of mitigation in

all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

10. 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 (TBI), 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.

//NOTHING FOLLOWS//