

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 January 2024

DOCKET NUMBER: AR20230006894

APPLICANT REQUESTS: through counsel, reconsideration of his previous requests to change of his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 18 February 2011 to show in:

- block 24 (Character of Service), upgrade bad conduct to under honorable conditions (general)
- block 25 (Separation Authority), from Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 3 (Character of Service/Description of Separation) to a more favorable designation
- block 28 (Narrative Reason for Separation) from court-martial, other to Secretarial Authority
- block 27 (Reentry Code) from RE 4 to RE 3
- an in-person appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Legal Brief, 22 March 2023
- Exhibit 1: Personal Statement of Applicant
- Exhibit 2: Summary of Treatment
- Exhibit 3: Letter of Clinical Impression
- Exhibit 4: Unofficial Transcript, (University)
- Exhibit 5: Emergency Medical Technician Certification, National Registry  
Emergency Medical Technician
- Exhibit 6: DD Form 214, 18 February 2011
- Exhibit 7: Letter from J\_ G\_
- Exhibit 8: Letter from D\_ S\_ R\_
- Exhibit 9: Letter from H\_ L\_
- Exhibit 10: Enlisted Record Brief (ERB)
- Exhibit 11: Letter from R\_ K\_
- Exhibit 12: Letter from J\_ M\_
- Exhibit 13: Letter from C\_ P\_

- Exhibit 14: Secretary of Defense, Memorandum for Secretaries of the Military Departments, 3 September 2014
- Exhibit 15: Acting Secretary of Defense, Memorandum for Secretaries to the Military Departments, 24 February 2016
- Exhibit 16: Acting Secretary of Defense, Memorandum for Secretaries of the Military Departments, 25 August 2017
- Exhibit 17: Under Secretary of Defense, Guidance to Military Discharge Review Boards and Board for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations, 25 July 2018
- Exhibit 18: (University) Nomination to the National Society of Leadership and Success, 2023
- Exhibit 19: Award of President's List Badge from (University), 12 September 2022
- Exhibit 20: Advanced Cardiac Life Support Certification, (State University) Emergency Medical Services (EMS), 4 February 2022
- Exhibit 21: Alabama Smoke Diver Certification, 1 February 2019
- Exhibit 22: Rapid Intervention Teams Certification, 27 February 2017
- Exhibit 23: Apparatus Operator: Pumper Certification, 16 March 2018
- Exhibit 24: Apparatus Operator: Aerial, 13 April 2018
- Exhibit 25: Marine Firefighter Certification, 29 March 2019
- Exhibit 26: Hazardous Materials/WMD- Technician Certification, 5 November 2022
- Exhibit 27: Driver's Badge Award, 7 July 2005
- Exhibit 28: Chronological Record of Medical Care, 19 January 2005
- Exhibit 29: General Court-Martial Order Number 74, 13 May 2010

#### FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20110021914 on 1 May 2012 and in Docket Number AR20160004869 on 12 December 2017.

2. The applicant's legal representative provided a 14-page brief in support of the applicant's request (entire legal brief is available to the Board) wherein counsel made the following arguments and statements:

a. Under Department of Defense (DOD) guidance, the Board must give liberal consideration to the applicant's petition because he was suffering from undiagnosed post-traumatic stress disorder (PTSD) during his period of service. Pursuant this guidance, his mental conditions substantially mitigate the misconduct that led to his bad conduct discharge. Further, the Board should grant the applicant's petition on grounds

of clemency considering his quality of service and the totality of his life circumstances. Since leaving the military he has become an Emergency Medical Technician and firefighter, nearly completed a bachelor's degree program in Fire Science Administration from (University), remarried, and has two children.

b. The applicant applied to the Board in 2017 for a discharge upgrade and was denied. His current application should be considered because a memorandum published on 24 February 2016, by the Acting Secretary of Defense, instructs the Board to waive any statute of limitations which would otherwise bar petitioners for discharge upgrades based on the veteran's mental health condition. In addition, the applicant is now presented by counsel and has provided new evidence of his PTSD diagnosis that was not available in 2017.

c. While the applicant regrets his decision to leave without authorization and takes responsibility for his actions, the military also failed to provide him and his family with the resources and care that could have easily led to this entire situation being avoided. His undiagnosed PTSD, and the lack of treatment in relation thereto, was a substantial mitigating factor in his misconduct and a bad conduct discharge is not warranted when the totality of the circumstances is taken into account. His decision to leave Fort Sill was the result of impaired decision making, a condition typical of someone with a serious mental health issue. The applicant returned to his unit under his own volition and still seeks to serve in the National Guard in his home state. Therefore, a bad conduct discharge is outweighed by his mental injuries, the failure of the military to adequately address his condition, his behavior before and after the event, and the non-violent and temporary nature of his misconduct.

3. Counsel provides the following documents:

a. A personal statement from the applicant, which states, in effect:

1) He is currently 41 years old and lives in (City), Alabama with his wife and two children. He entered the U.S. Army on 7 October 2003 and in 2004 he was stationed at Fort Sill, OK with the 15th Transportation Company, 19th Maintenance Battalion, III Corps Artillery. In December of 2004 he received orders to deploy to Iraq and while in Iraq he was at Log Base Seitz, an old Republican Guard motor pool located in Baghdad. He was a part of a gun truck detail in charge of protecting convoys. On their missions they frequently engaged in firefights and reacted to vehicle improvised explosive devices (IED), roadside IEDs, and were frequently attacked with mortars and rockets. On one particular mission, they had an IED explode next to the Humvee that he was riding in. He was in the turret at the time and was thrown down into the Humvee. The Humvee was damaged, but they were not hurt.

2) One night, after an attack on their camp, three Iraqi civilians were brought to the medical building on post because they had been injured during an attack. As a combat lifesaver, he was called to the medical building to assist, but despite their best efforts they were unable to save their lives. Constantly being on such high alert, reacting to firefights and explosions, and seeing death for the first time in his life, had a greater impact on him than he realized at the time.

3) When they redeployed home in 2005, he was excited to be home and thought things would quickly go back to how they were before he left but unfortunately that was not the case. He returned home to find out that he would be getting a divorce from his wife, his parents needed help back in Alabama, and he could not adjust to being back stateside. He could not sleep at night and would lay awake for hours staring at the ceiling and wishing he could fall asleep. The lack of sleep began to affect him greatly, and one Saturday morning he had fallen asleep but was awakened by the sound of the training brigade at Fort Sill. It woke him up and sent him into a full-blown panic attack. He pulled the mattress from his bed and hid under it. He began to panic even more because he could not find his rifle. At that moment, he knew he needed help.

4) He referred himself to the mental health facility on Fort Sill. He was told that everything he said there would be confidential, but he quickly found out that it was not the case, and things he said to the mental health provider were repeated back to him by higher up members in his chain of command. He was told "I was making the company look bad. I was making them look weak." He was told to "suck it up and drive on." He found out that other members in his platoon were receiving the same treatment from their chain of command because they were going to mental health. Those of them that were seeking help for their issues were put on "special details." They were sent to the range at odd hours to pick up brass, given Class A inspections on moment's notice, and called at night and told to be at the battalion for random urinalysis screening at 0300 hours.

5) The punishment he was receiving from his company, coupled with his pending divorce, and constant pleas from his family back in Alabama was too much. He was put on medication that left him feeling like he was in a fog all day. Life had become very muted. He tried to quit going to mental health but was told he was required to attend until the mental health facility felt he was okay to be released.

6) His phone rang at 0130 hours one morning in 2006. He was told to be at the battalion for urinalysis screening at 0300 hours, and it was at that point he could not take it anymore. He packed his car, left Fort Sill, and drove home to Alabama. When he went home to Alabama, he had every intention of returning to Fort Sill, as soon as "I got my mind right." His father had been injured at work and required numerous surgeries. They could no longer take care of their home and they were living off his mother's income, so he began helping his family with tasks around the house and taking his

father to doctors' appointments. He got a job and began contributing money to the household.

7) Before he knew it two years had passed. His father was doing better and was able to work again, so he felt it was time to do the right thing and he drove back to Fort Sill to turn himself in. His unit told him to go the military police (MP) office because they wanted to chapter him out, but the MPs told his unit that because he still had time on his enlistment contract he had to return to the unit. He was given gear and uniforms, a barracks room, meal card, and retained his rank as a specialist (SPC)/E-4. He was put in charge of remedial PT, allowed to take leave, and told he would be going to the Warrior Leader Course (WLC) for possible promotion to sergeant (SGT)/E-5. His head was clear, and he was happy to be back.

8) He was called to the commander's office three months before his expiration term of service (ETS) and told he would be court-martialed, and the unit was seeking prison time for his absent without leave (AWOL) offense. His Judge Advocate General (JAG) attorney told him that they were seeking 5 years for each year he had been gone, so he was facing 10 years in prison. He felt he had been lied to and should have taken the option to be chaptered out when it was given to him, so once again he left Fort Sill and returned home to Alabama. He was gone for 30 days and was returned to custody by the U.S. Marshals Office. He was given pretrial confinement and on Christmas Eve, 2009, he was sentenced to 15 months of further confinement, reduction to the grade of E-1, and given a Bad Conduct Discharge. In October 2010, he was released and returned to Alabama.

9) When he first returned home, he worked odd jobs for several years. Due to the large gap in his employment history, many employers did not want to hire him. His military conviction has affected him in other ways besides employment. He has been barred from voting and he cannot own a firearm. In 2016 he was accepted to recruit school for Mobile Fire Rescue and graduated as the top recruit in his class. In his time with Mobile Fire Rescue, he made it a point to attend every certification class he could to further his career. He currently works for the Daphne Fire Department and will be testing for lieutenant in the Fall. He is only a few credit hours away from obtaining his bachelor's degree in Fire Science Administration.

10) Despite all his achievements, he still lives with the regret of what his military career turned into. Being a Soldier was all he ever wanted to do, and going AWOL was the absolute wrong thing to do. He wishes every day that he had found a better way to deal with his problems at that time. He has since sought out therapy to help deal with his problems. The problems at the time of his AWOL were PTSD/combat related and he was punished for having issues. If he had better support at the time, he would not have gone AWOL. It is his hope that with an upgrade to his discharge and separation code,

he can return to military service and regain the benefits he lost. He will always regret his decision but would cherish a second chance to make it right.

b. A summary of treatment, authored by H\_J\_, MS, LPC-S, (Private Practice Therapist) from 29 September 2022 to 9 February 2023, which shows the applicant presented for therapy to address anger issues as well as how his experience while in the military impacted him mentally, emotionally, and physically. He was diagnosed with PTSD. The therapist states that she truly believes that the applicant's actions were completely driven by his diagnosis of PTSD (undiagnosed at the time) and his ability to receive appropriate mental health treatment.

c. A letter of clinical impression from (Private Practice) Center, authored by T\_M\_, which states the applicant received counseling from February 2021 to March 2022 and met the criteria for PTSD related to his experience in the military and combat. Not only did the applicant witness and experience combat related traumas, the impact led to symptomology of PTSD.

d. An unofficial transcript from (University), dated 30 November 2022, which shows the applicant was enrolled in the Bachelor of Science Fire Administration Program.

e. National Registry Emergency Medical Technicians, certifying the applicant as an Emergency Medical Technician, dated 9 December 2016.

f. DD Form 214, for his period of service ending on 18 February 2011.

g. A letter from J\_G\_, the applicant's father, stating he was injured shortly after the applicant left for basic training, and had a total of 17 surgeries on his feet and legs. He did not realize how many issues his son was having at Fort Sill until he received a phone call one night and his son told him everything he was going through, so he encouraged him to come home because they needed him there. He states, looking back, that was probably the wrong thing to say because his son was overloaded and him giving his son "permission" to leave was all he needed. His son came home and was able to pick up the slack and help around the house and he is forever grateful. He feels responsible for what happened to his son. He feels he demanded too much of him when he was already struggling to come to terms with his experiences in Iraq.

h. Three letters from previous members of 1st Platoon, 15th Transportation Company, Fort Sill, OK, who served with the applicant. All the letters state they deployed to Log Base Seitz, Iraq from January 2005 to December 2005. They lived in a very austere environment and experienced multiple attacks to the base. Their mission was to haul various classes of supplies to other coalition bases within Iraq. Their platoon was much different than the rest of the company. They ran daily and nightly missions and had more encounters with the enemy. The stress and need to be on high

alert every day due to the rocket-propelled grenade and mortar attacks, took a toll on a lot of them. Even though the deployment ended, many of them were affected by unseen injuries. The applicant is among those of them suffering those injuries that cannot be seen by the naked eye.

i. The applicant's ERB, which shows he deployed to Iraq from 4 January 2005 to 12 December 2005.

j. A letter from J\_M\_, the applicant's friend of 27 years, which states they met at church back in 1995 and have remained friends. The letter states that the applicant is very levelheaded, determined, and finds a way to make things happen, but above all he is a loyal friend, whose word is his bond.

k. A letter from C\_P\_, which states he has known the applicant for six years. The letter states the applicant's main quality is his uncommon calmness. He does not shy away from hard work, and he is one of the very few genuinely good men he has ever known.

l. Memorandum from the Office of the Secretary of Defense dated 3 September 2014, which issued supplemental guidance to Military Boards for Correction of Military/Naval Records considering discharge upgrade requests by veterans claiming PTSD or related conditions, such as Traumatic Brain Injury (TBI).

m. Memorandum from the Office of the Undersecretary of Defense to Secretaries of the Military Departments, dated 24 February 2016, for consideration of discharge upgrade requests pursuant to supplemental guidance to Military Boards for Correction of Military/Naval Records by veterans claiming PTSD or TBI.

n. Memorandum from the Office of the Undersecretary of Defense for Personnel and Readiness dated 25 August 2017, which 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.

o. Memorandum from the Under Secretary of Defense for Personnel and Readiness dated 25 July 2018, which issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records regarding equity, injustice, or clemency determinations.

p. (University) Nomination to the National Society of Leadership and Success, Spring Semester 2023, and the Award of the President's List Badge for achieving academic excellence with a grade point average of 4.0 during the Summer of 2022.

q. He completed the following courses and certifications:

- Advanced Cardiovascular Life Support Program
- Alabama Smoke Diver
- Rapid Intervention Teams
- Apparatus Operator: Pumper
- Apparatus Operator: Aerial
- Marine Fire Fighter
- Hazardous Materials/WMD – Technician

r. Permanent Orders Number 188-002, issued by Headquarters, 19th Maintenance Battalion, Fort Sill, OK, dated 7 July 2005 awarding the applicant the driver's badge, wheeled vehicles.

s. A chronological record of medical care dated 19 January 2006, which shows the applicant self-referred to the mental health clinic at Reynolds Army Community Hospital, Fort Sill, OK after being deployed to Iraq for one year. He reported that he was getting angry for no reason, feeling tired all the time, and having trouble sleeping. He reported he wanted someone to talk to and he did not want to lose control.

t. A copy of General Court-Martial Order Number 74, issued on 13 May 2010.

u. In response to a Case Management Division letter requesting copies of medical documents in support of the applicant's issue of PTSD, dated 18 August 2023, counsel responded on 6 September 2023, and further provided:

- (1) a personal statement from the applicant which is outlined above;
- (2) a summary of treatment from H\_J\_, which is outlined above; and
- (3) a letter of clinical impression from T\_M\_, MS, LPC-S, which is outlined above.

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

a. The applicant enlisted in the Regular Army on 8 October 2003, for a period of 6 years. The highest grade he held was specialist (SPC)/E-4.



b. General Court-Martial Order Number 74, issued by Headquarters, U.S. Army Fires Center of Excellence and Fort Sill, Fort Sill, OK on 13 May 2010, shows the applicant was found guilty on 22 December 2009 of:

- Charge I, one specification of without authority, absenting himself from his unit, on or about 3 August 2009 to on or about 30 September 2009
- Charge II, one specification of without authority, absenting himself from his unit, on or about 26 March 2006 to on or about 6 April 2009

c. The court sentenced him to reduction to private/E-1, forfeiture of all pay and allowances, confinement for 15 months, and to be separated from the service with a bad conduct discharge.

d. DA Form 4187 (Personnel Action) shows the applicant completed his sentence to confinement on 21 September 2010.

e. On 22 September 2010, the applicant was placed on excess leave without pay and allowances.

f. General Court-Martial Order Number 270, issued by Headquarters, U.S. Army Fires Center of Excellence and Fort Sill, Fort Sill, OK on 24 November 2010, which shows the sentence to reduction to the grade of private/E-1, forfeiture of all pay and allowances, confinement for 15 months, and a Bad-Conduct Discharge was affirmed. The applicant was credited with 82 days confinement against the sentence to confinement. The provisions of Article 71(c) had been complied with; the bad conduct discharge would be duly executed.

g. The applicant was discharged on 18 February 2011. His DD Form 214 shows he was discharged under the provisions of AR 635-200, by reason of court-martial, other, in the rank/grade of private (PV1)/E-1, and his service was characterized as bad conduct. He completed 3 years, 5 months, and 3 days of net active service during the covered period. His DD Form 214 shows in:

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

- Army Commendation Medal
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal with campaign star
- Army Service Ribbon
- Driver and Mechanic Badge

## 2) Item 18 (Remarks):

- Service in Iraq from 4 January 2005 to 12 December 2005
- Member has not completed first full term of service

3) Item 29 (Dates of Lost Time During This Period): 26 March 2006 to 6 April 2009, 3 August 2009 to 30 September 2009, and from 22 December 2009 to 20 September 2010

5. The applicant previously applied to the ABCMR to request that his RE code be changed from "4" to "3." On 1 May 2012 and in ABCMR Docket Number AR20110021914, the Board determined that the evidence presented did not demonstrate the existence of a probable error or injustice.

6. The applicant requested an upgrade of his bad conduct discharge and amendment of his separation code and RE code. On 12 December 2017 and in ABCMR Docket Number AR20160004869, the Board considered his application and the evidence of record along with an Army Review Boards Agency (ARBA) medical advisory opinion. The Board determined that the evidence presented did not demonstrate the existence of a probable error or injustice and that the overall merits of the case were insufficient as a basis for correction of the records of the applicant.

7. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

8. By regulation AR 635-200, a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

9. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

10. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his bad conduct discharge to under honorable conditions (general) and a more favorable designation of both his separation description and narrative reason.

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 8 October 2003.
- General Court-Martial Order Number 74, issued by Headquarters, U.S. Army Fires Center of Excellence and Fort Sill, Fort Sill, OK on 13 May 2010, shows the applicant was found guilty on 22 December 2009 of:
- Charge I, one specification of without authority, absenting himself from his unit, on or about 3 August 2009 to on or about 30 September 2009
- Charge II, one specification of without authority, absenting himself from his unit, on or about 26 March 2006 to on or about 6 April 2009
- Applicant was discharged on 18 February 2011. His DD Form 214 shows he was discharged under the provisions of AR 635-200, by reason of court-martial, and his service was characterized as bad conduct.
- Applicant previously applied to the ABCMR to request his RE code be changed from "4" to "3." On 1 May 2012, in ABCMR Docket Number AR20110021914, the Board denied his request.
- Applicant requested an upgrade of his bad conduct discharge and amendment of his separation code and RE code. On 12 December 2017, in ABCMR Docket Number AR20160004869, the Board considered his application and denied his request.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, legal brief, personal statement, letters of support, letters from private providers, his ABCMR Record of Proceedings (ROP), and documents from his service record and separation packet. 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 regrets his decision to leave without authorization and takes responsibility for his actions. However, he believes the military failed to provide him and his family with the resources and care that could have led to this entire situation being avoided. His undiagnosed PTSD, and the lack of treatment in relation thereto, was a substantial mitigating factor in his misconduct and a bad conduct discharge is not warranted when the totality of the circumstances is considered. His decision to leave Fort Sill was the result of impaired decision making, a condition typical of someone with a serious mental health issue. The applicant states he returned to his unit under his own volition and still seeks to serve in the National Guard in his home state. Therefore, a bad conduct discharge is outweighed by his mental injuries, the failure of the military to

adequately address his condition, his behavior before and after the event, and the non-violent and temporary nature of his misconduct. The applicant reports, despite all his post-military achievements, he still lives with the regret of what his military career turned into. Being a Soldier was all he ever wanted to do, and going AWOL was the absolute wrong thing to do. He wishes every day that he had found a better way to deal with his problems at that time. He has since sought therapy to help deal with his problems. The problems at the time of his AWOL were PTSD/combat related and he was punished for having issues. If he had better support at the time, he would not have gone AWOL. It is his hope that with an upgrade to his discharge and separation code, he can return to military service and regain the benefits he lost. He will always regret his decision but would cherish a second chance to make it right.

e. Active-duty electronic medical records available for review indicate, on 19 January 2006 the applicant self-referred for mental health services due to anger issues and disrupted sleep. At the time, he reported having served one year in Iraq, from January to December 2005. His mission in Iraq was as a truck driver and he experienced IED's going off near his truck, his unit was shot at often, and was frequently under mortar attack with his barracks getting hit several times. During that encounter, he was diagnosed with Adjustment Disorder with Depressed Mood and was initially seen for weekly sessions. On 30 January 2006, another encounter indicates his diagnosis was updated to Primary Insomnia and Adjustment Disorder with Depressed Mood. He was prescribed medications to manage his symptoms and continued to be provided with therapy. In his sessions at that time, consistent with the applicant's reported concerns about his parents, he indicated issues with his parents' health and wanted to provide support. On 16 May 2006, the provider contacted the applicant via phone, and he reported he was no longer in the Army and his chart was closed. Applicant was once again treated while incarcerated following his AWOL, a note dated 31 August 2010, diagnosed him with Adjustment Disorder with Depressed Mood. The note indicates the applicant reported trouble concentrating, with his mind wandering, in addition to depressed mood and insomnia. He was started on antidepressant medication and Trazodone for sleep.

f. Applicant is not service connected, possibly due to the characterization of his discharge. However, two private civilian providers submitted letters in support of the applicant's request. A clinical impression letter, authored by a clinician with The Space: A Counseling Center, states the applicant received 14 individual counseling sessions from February 2021 to March 2022. He met criteria for PTSD related to his experience in the military and combat. The clinician indicates not only did the applicant witness and experience combat related traumas, but the impact also led to symptomology of PTSD. A summary of treatment, from a provider with A Better Way Counseling, LLC indicates the applicant was seen for 13 sessions from 29 September 2022 to 9 February 2023, to address anger issues as well as his experience while in the military. He was diagnosed

with PTSD and the therapist states she believes the applicant's AWOL was driven by his diagnosis of PTSD (undiagnosed at the time).

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is credible evidence the applicant had a behavioral health condition during military service that would mitigate his discharge.

**Kurta Questions:**

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant asserts a mitigating condition.

(2) Did the condition exist or experience occur during military service? Yes. The applicant self-asserts PTSD and his service record indicates having served in a combat zone.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The record indicates the applicant was seen while in service and diagnosed with Adjustment Disorder with Depressed Mood and Insomnia. There was an indication of PTSD symptoms, but he did not meet full criteria for PTSD at the time. Post military service, the applicant has been treated by private civilian providers. Medical documentation provided by the applicant, indicates he is diagnosed with combat related PTSD and is being treated for his condition. Given the nexus between PTSD and avoidance, the applicant's AWOL is mitigated by his BH condition.

**BOARD DISCUSSION:**

After reviewing the application and all supporting documents, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, applicable regulatory guidance and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, record of service, the frequency and nature of the misconduct and the reason for separation. The Board noted the applicant's post-service accomplishments and letters of support attesting to his character. After due consideration of the request, the Board determined the evidence presented sufficient 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 is sufficient to warrant amendment of the ABCMR's decision in Docket Number AR20160004869, dated 12 December 2017. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 18 February 2011 showing in:

- block 24 Characterization of Service: Under Honorable Conditions
- block 25 Separation Authority: Army Regulation (AR) 635-200
- block 28 Separation Code: JFF
- Reentry (Reentry Code) Code: 3
- Narrative Reason for Separation: Secretarial Authority



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. Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 3 states a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or a special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

b. 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.

c. 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.

d. An under other than honorable conditions discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial.

e. Paragraph 5-3 (Secretarial plenary authority) provided separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary authority is exercised sparingly and seldom delegated: Ordinarily it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee. Secretarial separation authority is normally exercised on a case-by-case basis but may be used for a specific class or category of soldiers. When used in the latter circumstance, it is announced by special HQDA directive that may, if appropriate, delegate blanket separation authority to field commanders for the class category of soldiers concerned. Unless the reason for separation requires a specific characterization, a soldier being separated for the convenience of the Government will be awarded a character of service of honorable, under honorable conditions, or an uncharacterized description of service if in entry-level status.

2. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the

court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

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. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification

7. Army Regulation 6 -5-1 (Separation Program Designator (SPD) Codes) prescribes the specific authorities (regulatory, statutory, or other directives), the reasons for the separation of members from active military service, and the SPD code to be used for these stated reasons. The regulation states the reason for a discharge based on SPD code JJD is court-martial, other, and the regulatory authority is AR 635-200, chapter 3

8. The SPD/RE Code Cross Reference Table, dated 15 June 2006, shows Soldiers assigned an SPD code of JJD will be assigned an RE code of 4.

9. 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//