



a. A memorandum from, U.S. Army Medical Department Center and School, Fort Sam Houston, TX, dated 22 June 2005, shows the Commanding General directed the applicant be separated under the provisions of Army Regulation 635-200, paragraph 14-12c(2), for commission of a serious offense. In accordance with the applicant waiving his right to an administrative separation board, he would be discharged with a characterization of UOTHC.

b. Orders 178-0101, issued by Headquarters, U.S. Army Medical Department Center and School, Fort Sam Houston, TX, on 27 June 2005 show he was to be discharged from the Regular Army in the rank/grade of private/E-1, effective 27 June 2005.

c. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was involuntarily discharged from active duty on 27 June 2005 in the rank/grade of private/E-1, under the provisions of Army Regulation 635-200, Paragraph 14-12c(2), due to misconduct. His service was characterized as UOTHC. He was credited with 1 year and 11 days of net active service. He did not complete his first full term of service. He was not awarded an MOS.

d. His available record is void of any indication that he served in an overseas area or that he was awarded or authorized to wear any awards or decorations typically associated with an overseas deployment.

5. Army Regulation 635-200, Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A UOTHC discharge is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

6. Army Regulation 15-185 (ABCMR) provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice has occurred by a preponderance of the evidence. It is not an investigative body. An applicant is not entitled to a hearing before the Board. Hearings may be authorized by a panel of the Board or by the Director of the ABCMR.

7. On 31 July 2023, a member of the Army Review Boards Agency staff requested the applicant provide a copy of medical documents in support of his PTSD and other mental health conditions and afforded him a 30-day window to respond. To date, the applicant has not responded.

8. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

9. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his Under Other Than Honorable Conditions (UOTHC) discharge to an Under Honorable Conditions (General) discharge. He contends PTSD mitigates his discharge.

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 17 June 2004.
- The applicant's record is void of complete documentation showing the facts and circumstances regarding his administrative separation under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, paragraph 14-12c(2), for misconduct.
- Applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was involuntarily discharged from active duty on 27 June 2005 in the rank/grade of private/E-1, under the provisions of Army Regulation 635-200, Paragraph 14-12c(2), due to Misconduct with Separation Code "JKK" and Reentry Eligibility Code "4." His service was characterized as UOTHC. He was not awarded an MOS.

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), DD Form 214, 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 was an outstanding soldier who withstood all the torment and tests. He was in the top percentage of soldiers until a single action at the end of his "on the job training" changed his entire life. He indicated on his DD Form 149 that post-traumatic stress disorder (PTSD) is related to his request.

e. Due to the period of service, limited active-duty electronic medical records were available for review. However, the applicant underwent a mental status evaluation on 07 March 2005 noting the applicant received three Article 15s and no longer wished to remain in the military. The evaluation indicated the applicant had no history of psychiatric therapy, his mental status was normal, and his behavior demonstrated no

abnormalities. There was no evidence of mental defect, emotional illness, or psychiatric disorder of sufficient severity to warrant disposition through military medical channels. The applicant was found mentally responsible, able to distinguish right from wrong, and possessed sufficient mental capacity to understand and participate intelligently as a respondent in any administrative proceedings. He was psychiatrically cleared for any administrative action deemed appropriate by command.

f. VA electronic medical records (JLV) available for review indicate the applicant is 30% service connected for Flat Foot Condition. An encounter in the record dated 27 October 2017 indicates the applicant was supported by the Homeless Veterans Grant program subsequent to being released from incarceration. The note further indicates the applicant worked and lived independently until 2015. However, in 2015 he was charged with burglary and had three probation violations resulting in incarceration. Another note dated 29 January 2018, shows the applicant was a participant in the Veterans Treatment Court program designed to assist veterans who have become involved with the criminal justice system and suffer from mental health issues and/or substance use disorder. However, the applicant missed three drug screenings and was not present for a required court appearance and a warrant was issued for his arrest. On 13 August 2022, he was assessed for transitional housing/residential treatment and discharged on 19 August 2022 when he was housed. Another transitional housing/residential treatment admission occurred on 20 March 2023 with a discharge on 27 March 2023. On 22 August 2023, he presented as a walk-in for mental health services and reported homelessness since being evicted from his apartment in March of 2023. The applicant also self-referred for therapy and medication management. He reported issues with nightmares and insomnia, as well as depressed mood, lack of interest in activities, and wetting the bed at night. The applicant was provided with therapy, medication, and case management services. In a note dated 31 October 2023, the applicant reported a traumatic incident while in military service, when he was in training in 2004, he witnessed a private being raped. The applicant's record indicates his therapy focuses on coping strategies to stay in the moment and calm his nerves when dealing with anxiety related to his PTSD. He is working on processing his past experiences and is provided with psychoeducation to help him better understand his PTSD.

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is evidence the applicant had an experience, witnessing an MST, during military service that potentially led to a behavioral health condition, PTSD. However, the Agency Behavioral Health Advisor is unable to opine regarding mitigation of the applicant's discharge since the specific facts and circumstances that led to his separation are unknown.

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 asserts PTSD as related to his request and there is evidence in the VA electronic record of the applicant being treated for this condition.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unable to opine regarding mitigation since the specific facts and circumstances that led to his discharged are unavailable.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
  
2. The Board carefully considered the applicant's request, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, and the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA BH Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding there being insufficient information in the available service records to determine if his misconduct may have been mitigated by PTSD. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

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 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.

5/6/2024

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CHAIRPERSON  


I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. 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 regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. 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.
4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. Paragraph 3-7b 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. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

5. 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 (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; traumatic brain injury; 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 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.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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.

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.

//NOTHING FOLLOWS//