

assigned to his unit. When he asked to speak to the company chaplain, his first sergeant (1SG) denied his request. When he was finally able to speak to the chaplain, he was told there was nothing wrong with him and he needed to quit faking all of this and go back to his company. Once all this took place, he started drinking to cope with what was going on. He was experiencing bad anxiety and depression over males yelling at him due to his childhood history. He explained all of this to them and they blew him off like it was all fake.

e. One day, the applicant was called into the 1SG's office. He was falsely accused a taking a compact disk (CD) from a Soldier who lived across the hall from him. He was told he had two days to return the CD or else. The applicant proved he did not take the Soldier's property.

f. The applicant got off work one day and someone had broken into his room and cut up his uniforms, to include his shoes and boots, and his civilian clothes. He went to his command and showed them what had happened. He then called the military police and made a report about someone breaking into his room. As soon as the 1SG heard about the incident, he accused the applicant of doing all of the stuff himself and blaming it on someone else. The applicant then broke down due to the stress and anxiety. He took a leave of absence but did not go back to his unit when he was supposed to due to him not wanting to deal with what was going on. He stayed at home in Texas since he was being ignored, pushed to the side, and not getting any help from his company.

g. While at home in 2001, the applicant got in trouble for stealing a truck and breaking into a building. When he was arrested, he explained to the law enforcement officers that he was military and asked that they inform the military about his situation, which never happened. He sat in jail and received probation. He was drinking and doing drugs due to him not wanting to deal with the things that he was running from. Once released from county, his girlfriend picked him up. He continued to be AWOL and stayed in [REDACTED] until he was arrested for a traffic violation. While in [REDACTED], he was told there was a hold on him for [REDACTED].

h. After sitting in Chatham for two weeks, he was sent to [REDACTED] County Jail in [REDACTED]. They said there was a Federal hold on him. He sat for two weeks in [REDACTED] County jail and was picked up and taken to a military installation in Fort Hood. He got his identification card back and they flew him to Fort Stewart, Georgia. Once he arrived, he told his 1SG that he was on probation and they said they did not care and it was his problem to deal with. The applicant believes if he had received the help he needed from the U.S. Army things would have turned out differently. He does not believe he would have had issues with his probation if the Army command staff had supported him. Since he was not helped, he went AWOL again and went back home. He needed legal and mental health assistance from his Army command staff to keep

from violating his probation. While back in ██████ in 2003, he was picked up for two charges of burglary of buildings. He was sent to state jail in ██████ for the probation violation. He was in ██████ and did a year in jail.

i. Once he was released in 2004, he had another military hold. The marshals were there to fly him back to Fort Stewart, Georgia. He arrived in Fort Stewart again and had to sleep in the captain's office because they wanted him behind locked doors. This time he stayed and went through the legal process to exit the military.

j. The Army gave him a chapter 8 [sic], bad-conduct discharge [sic] due to going AWOL twice. He had been dealing with mental health issues his whole life as he was sexually molested by his father from the ages of one to five years old. Then from the ages of 10 to 14 years of age, he was sexually molested by other people. He had tried to explain everything to the military chaplain but was denied services. He believes his military career would have ended differently had he received the mental health services he requested.

k. He would now like to seek a military discharge upgrade so he can receive the mental health services he needs. If he would have had the help he requested during his active duty service, he possibly would not be doing time today. He is currently serving a 12-year sentence with almost seven years already served. He thanks the Board for hearing him and wishes God to bless them.

3. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows on 2 March 2000, the applicant enlisted in the Regular Army.

b. DA Form 4187 (Personnel Action) shows on 24 April 2001, his duty status was changed from present for duty (PDY) to AWOL.

c. DA Form 4384 (Commander's Report of Inquiry/Unauthorized Absence), dated 24 April 2001 shows possible contributing factors causing the applicant's AWOL were indebtedness and trouble with superiors.

d. DA Forms 4187, shows the applicant's duty status was changed on:

- 24 May 2001 from AWOL to dropped from rolls (DFR)
- 16 November 2001 from DFR to Present for Duty (PDY)
- 1 December 2001 from PDY to AWOL
- 31 December 2001 from AWOL to DFR

e. DD Form 616 (Report of Return of Absentee), dated 6 September 2003 shows the applicant was apprehended by civil authorities and had possibly served a two-year sentence.

f. DA Form 4187, shows the applicant's duty status was changed from DFR to PDY on 18 February 2004.

g. DD Form 458 (Charge Sheet) shows on 29 March 2004, the applicant's commander from Company E, 703rd Main Support Battalion (MSB), Fort Stewart, GA preferred two charges of AWOL against him. He was AWOL from on or about 24 April 2001 through on or about 16 November 2001, and from on or about 1 December 2001 through on or about 17 February 2004. He was an E-2 at the time he was pending charges.

h. On 30 March 2004, the applicant, in the rank of private/E-2, he voluntarily requested a discharge in lieu of trial by court-martial under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) Chapter 10. He acknowledged the following:

- He was making the request of his own free will and had not be coerced
- He acknowledged he fully understood the elements of the offense he was charged with and was guilty of at least one of the charges against him
- He did not desire further rehabilitation under any circumstances and did not desire to perform further military service
- He had been afforded the opportunity to consult with appointed counsel and was fully advised of his rights
- He understood that he could be separated with an UOTHC discharge and understood the consequences of such a discharge

i. The applicant's chain of command and the Staff Judge Advocate recommended approval of the applicant's request for discharge. On 6 April 2004, the appropriate approval authority approved the applicant's request for discharge, directed he be reduced to the lowest enlisted grade, and that he be issued an UOTHC discharge.

j. On 26 April 2004, the applicant, in the rank of private/E-1, was discharged accordingly. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he had completed 1 year and 4 months of net active-duty service. He was discharged in lieu of trial by court-martial, his character of service was UOTHC, his separation code was KFS, and his reentry code was RE-4. He had lost time from 1 December 2001 through 17 February 2004 and from 24 April 2001 through 15 November 2001. He was awarded or authorized the:

- Presidential Unit Citation (Army)

- War on Terrorism Service Medal
- Army Service Ribbon

k. The applicant's service record was void of, and the applicant did not provide, documentation showing he suffered from PTSD or other mental health issues.

4. Based on the applicant's assertion he suffered from PTSD and other mental health issues, the ARBA Medical Section provided a medical review for the Board's consideration

5. MEDICAL REVIEW:

a. The applicant requests in effect, upgrade of his under other than honorable conditions (UOTHC) discharge so he can receive healthcare due to his mental health issues, including post-traumatic stress disorder (PTSD).

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted into the Regular Army on 2 March 2000; 2) DA Form 4187 (Personnel Action) shows on 24 April 2001, his duty status was changed from present for duty (PDY) to AWOL; 3) DD Form 616 (Report of Return of Absentee), dated 6 September 2003 shows the applicant was apprehended by civil authorities and had possibly served a two-year sentence; 4) . DD Form 458 (Charge Sheet) shows on 29 March 2004, the applicant's commander from Company E, 703rd Main Support Battalion (MSB), Fort Stewart, GA preferred two charges of AWOL against him. He was AWOL from on or about 24 April 2001 through on or about 16 November 2001, and from on or about 1 December 2001 through on or about 17 February 2004; 5) On 30 March 2004, the applicant voluntarily requested a discharge in lieu of trial by court-martial under the provisions of AR 635-200, Chapter 10; 6) The applicant's chain of command and the Staff Judge Advocate recommended approval of the applicant's request for discharge. On 6 April 2004, the appropriate approval authority approved the applicant's request for discharge and on 26 April 2004, the applicant was discharged accordingly.

c. The VA electronic medical record (JLV), ROP, and casefiles were reviewed. The military electronic medical records, AHLTA, was not reviewed as it was not used during the applicant period of service. No military BH-related records were provided for review. A review of JLV shows the applicant engaged with the VA Health Care for Reentry Veteran (HCRV), on 6 occasions between April 2022 and May 2023, while he was incarcerated at the [REDACTED]. He was seeking assistance with obtaining veterans benefits and homeless service upon release. The final encounter related to the applicant is date 18 May 2023 and reflected the applicant remained incarcerated. JLV was void of any BH treatment history of BH diagnosis for the

applicant and he does not have a service-connected disability. No civilian BH records were provided for review.

d. The applicant requests in effect, upgrade of his under other than honorable conditions (UOTHC) discharge so he can receive healthcare due to his mental health issues, including post-traumatic stress disorder (PTSD). A review of the records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no documentation supporting his contention of PTSD or Other Mental Health Issues. In absence of documentation supporting his assertion, there is insufficient evidence to establish that his misconduct was associated with or mitigated by PTSD or Other Mental Health Issues, and insufficient evidence to support an upgrade based on medical mitigation.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence that the applicant had an experience or condition during his time in service that mitigated his misconduct. However, he contends his misconduct was related to PTSD and Other Mental Health Issues, and per liberal guidance his contention is sufficient to warrant the Board's consideration.

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 contends his misconduct was related to PTSD and Other Mental Health Issues.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no documentation supporting his contention of PTSD or Other Mental Health Issues. In absence of documentation supporting his assertion, there is insufficient evidence to establish that his misconduct was associated with or mitigated by PTSD or Other Mental Health Issues, and insufficient evidence to support an upgrade based on medical mitigation.

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of

the applicant’s petition, available military record and medical review, the Board concurred with the advising official finding insufficient evidence that the applicant had an experience or condition during his time in service that mitigated his misconduct. The opine noted there is insufficient evidence to establish that his misconduct was associated with or mitigated by PTSD or Other Mental Health Issues, and insufficient evidence to support an upgrade based on medical mitigation. The Board found insufficient evidence of in-service mitigating factors to overcome the misconduct of two separate periods of going AWOL, committing burglary and stealing a vehicle while AWOL.

2. The applicant provided no post service achievement or character letters of support to attest to his honorable conduct for the Board to weigh a clemency determination. This board is not an investigative body. The Board determined despite the absence of the applicant’s medical records, they agreed the burden of proof rest on the applicant, however, he did not provide any supporting documentation and his service record has insufficient evidence to support his contention of PTSD or Other Mental Health Issues. Furthermore, the Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge. Therefore, the Board denied relief.

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.

3/19/2024

X [REDACTED]

CHAIRPERSON
[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. AR 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

a. 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.

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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at

expiration of their period of enlistment, military service obligation, or period for which called or ordered to AD.

d. A discharge under other than honorable conditions is an administrative separation from the Service under conditions other than honorable. It may be issued in lieu of trial by court martial.

e. A Soldier who requests discharge as prescribed in chapter 10 may be discharged under other than honorable conditions if he/she has been afforded the opportunity (not less than 72 hours) to consult with a consulting counsel.

(1) The Soldier must certify in writing that he/she understands that he/she may receive a discharge under other than honorable conditions.

(2) The Soldier must understand the adverse nature and possible consequences of such a discharge.

(3) The Soldier must personally sign a request for discharge. A conditional request is not permitted.

(4) The consulting counsel will sign as a witness, indicating that he/she is a commissioned officer of The Judge Advocate General's Corps. A Soldier may waive consultation with a consulting counsel. Counsel will prepare a statement to this effect that will be attached to the file; the Soldier will state that the right to counsel has been waived.

f. A Soldier who has committed an offense or offenses, the punishment for which under the UCMJ and the Manual for Courts-Martial includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial.

3. AR 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities, reasons for separating Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows code KFS is used for discharge In Lieu of Trial by Court-Martial.

4. AR 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

5. 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.

6. 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. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

7. 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.

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, 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.

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.

8. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//