

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 April 2024

DOCKET NUMBER: AR20230009382

APPLICANT REQUESTS: an upgrade of his characterization of service from under honorable conditions(general) to honorable.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 7 June 2023
- self-authored statement, 8 June 2023
- memorandum, separation authority approval, 6 January 2015
- DD Form 214 (Certificate of Release or Discharge from Active Duty) 15 January 2015
- divorce decree, 30 June 2016
- hospital form, 19 July 2016
- Long Beach City Court, 20 August 2018
- Nassau District Court, 7 February 2020
- Facebook screen shots, 26 November 2022
- Department of Veterans Affairs (VA) appointment, 2 February 2023
- audiology appointment, 24 March 2023
- audiology results
- New York Police Department (NYPD) assessment, 24 March 2023
- New York driving record, 28 March 2023
- earnings history, 28 March 2023
- Ears, Nose, and Throat Appointment, 3 April 2023
- New York City Transit violations, 12 April 2023
- NYPD Candidate results, 28 April 2023
- character reference, from J.A., date unknown

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 provides a 4-page self-authored statement available for the Board's review in full. He states his discharge was made on a single incident only two months after being released from the hospital where he suffered a traumatic brain injury (TBI) along with the downfall of his marriage. His discharge has delayed processing his New York Police Department candidacy because he is unable to use his military time and Montgomery GI Bill for college.

a. On 4 July 2014, his life shifted, when he was in a coma for two weeks, and then in the hospital for two months, dealing with the trauma he experienced. His life took a toll on his marriage and his career. He references an alleged altercation with his spouse at the time, to where the military police were not involved, but this alleged altercation would lead to the end of his career.

b. He believes when going through the discharge process, he handled this in a hasty manner due to his TBI. Prior to the alleged incident with his ex-spouse, his career was served honorably by his obtained secret clearance, his perfect physical fitness scores, his expertise at the range with all different weapons. He excelled at classes such as land navigation, combat lifesavings skills, and classes on every standard weapon. He was unable to attend Airborne Schooling because of a broken foot. This conduct he believes should outweigh his alleged altercation.

c. Because he broke his ex-spouse's phone during an alleged altercation, it led to misrepresentation and defamation of his character, although he was never convicted under court martial while serving. He has not had any further negative charges in his life post discharge. He hopes to attend college, move forward as a NYPD candidate, and starting a career. He has lost the ability to use his Montgomery GI Bill and his discharge has been a hindrance and a misrepresentation of his character. He aspires to pursue collegiate goals and career opportunities now being a NYPD Candidate.

3. The applicant enlisted in the Regular Army on 28 August 2012, for a period of 3 years and 26 weeks. He was awarded the military occupational specialty of 91F (Small Arms Artillery) and the highest rank he attained was private/E-2.

4. On 22 May 2013, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) for assaulting Mrs. A.R.H., by grabbing her arm on or about 27 April 2013. His punishment imposed was reduction to the grade of E-1, forfeiture of \$353.00 pay which was suspended to be automatically remitted if not vacated before 21 November 2013, extra duty, and restriction for 14 days.

5. He accepted NJP, under the provisions of Article 15, of the UCMJ, for disobeying a lawful command, when his superior commissioned officer, Colonel N.S.H., ordered him not to operate a motor vehicle on Fort Benning, Georgia, or land under the jurisdiction of

Fort Benning, and he willingly disobeyed this lawful command on or about 17 December 2013. His punishment imposed was reduction to the grade of E-1, forfeiture of \$200.00 pay per month for 2 months, extra duty and restriction for 45 days.

6. Court-martial charges were preferred against the applicant on 13 November 2014, for violations of the UCMJ. The relevant DD Form 458 (Charge Sheet) shows the following:

a. Charged with three specifications of assault on Mrs. A.R.H., by:

- unlawfully grabbing her around the neck with his arm on or about 10 September 2014
- unlawfully grabbing her around her body with his hand and arms on or about 10 September 2014
- unlawfully grabbing her by her arm with his hand on or about 27 April 2013

b. Charged with one specification of failure to obey a lawful general regulation by not wearing the required motorcycle safety equipment and wrongfully controlling a motorcycle without receiving Battalion Commander approval on or about 4 July 2014; and

c. One specification of disobeying a lawful command by operating a motor vehicle on or about 4 July 2014.

7. The applicant consulted with legal counsel on or about 12 December 2014.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a under other than honorable conditions (UOTHC) discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge, in lieu of trial by court-martial, under the provision of Army Regulation (AR) 635-200 (Active Duty and Enlisted Administrative Separations), Chapter 10. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He acknowledged making this request free of coercion. He further acknowledged understanding if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veteran's Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

c. He was advised he could submit any statements he desired in his behalf. He elected to not submit a statement on his own behalf.

8. On 15 December 2014, the applicant's immediate and intermediate commanders recommended approval of the request for discharge in lieu of trial by court-martial, with a service characterization of UOTHC.

9. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 6 January 2015, further directing the applicant receive an UOTHC discharge.

10. The applicant was discharged on 15 January 2015, under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial, in the grade of E-1. His DD Form 214 confirms his character of service was UOTHC, with separation code KFS and reentry code 4. He was credited with 2 years, 4 months, and 18 days of net active service. He was authorized or awarded the following:

- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon

11. The Army Discharge Review Board (ADRB) reviewed the applicant's request for an upgrade of his UOTHC characterization and issued a DD Form 214, upgrading the applicant's characterization of service from UOTHC to under honorable conditions (general). Item 18 (Remarks) show "service characterization upgraded per ADRB proceedings AR20150018011 on 18 January 2017 following application dated 29 January 2015."

12. On 12 August 2023, the ADRB considered the applicant's request for upgrade of his under honorable conditions (general) discharge to honorable. After careful review of his application, military records, and all other available evidence the Board determined that he was properly and equitably discharged and denied his request.

13. The applicant provides the following:

- a. His divorce degree, finalized on 22 June 2016.
- b. Medical documentation showing medical procedures to the applicant's eye, various scheduled appointments, and audiology results.
- c. Two certificates of dispositions with fines within the city courts paid for in full, his driving record which concurs all fines were paid in full.

- d. Screen shots taken from his ex-spouses personal Facebook account.
- e. His notice of results for his policy officer exam and his NYPD intake assessment.
- f. A character statement, from J.A., summarizing the applicant as someone who has excellent character and strong work ethic. He has never been reprimanded for any type of misconduct or unprofessionalism. Since his separation, he has worked on his personal and professional growth while working or attending college.

14. Discharges under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC characterization of service is normally considered appropriate.

15. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

MEDICAL REVIEW:

1. The applicant requests upgrade his Under Honorable Conditions, General, discharge to honorable. He contends his misconduct was related to Other Mental Health Issues.

2. 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 in the Regular Army on 28 August 2012; 2) On 22 May 2013, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) for assaulting Mrs. A.R.H., by grabbing her arm on or about 27 April 2013; 3) He accepted NJP, under the provisions of Article 15, of the UCMJ, for disobeying a lawful command, when his superior commissioned officer, Colonel N.S.H., ordered him not to operate a motor vehicle on Fort Benning, Georgia, or land under the jurisdiction of Fort Benning, and he willingly disobeyed this lawful command on or about 17 December 2013; 4) As detailed in the ROP, Court-martial charges were preferred against the applicant on 13 November 2014 for three specifications of assault of his wife, one specification of failure to obey a lawful general regulation, and one specification of disobeying a lawful command by operating a motor vehicle; 5) The applicant consulted with legal counsel on or about 12 December 2014. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice. After receiving legal counsel, he voluntarily requested discharge, in lieu of trial by court-martial, under the provision of Army Regulation (AR) 635-200 (Active Duty and Enlisted Administrative Separations), Chapter 10; 6) On 15 December 2014, the applicant's immediate and intermediate commanders recommended approval of the request for

discharge in lieu of trial by court-martial, with a service characterization of UOTHC. The applicant was discharged on 15 January 2015, under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

3. The electronic military medical record (AHLTA), VA electronic medical record (JLV), ROP, and casefiles were reviewed. A review of AHLTA shows the applicant's initial BH-related engagement occurred on 9 May 2013 whereby he was command referred to FAP as an alleged offender of domestic violence. The documentation was sparse on additional information but shows the applicant diagnosed with Martial Problems and scheduled for follow-up. The applicant presented for follow-up on 16 May 2013 stating a desire to focus on developing better methods of handling altercations with his spouse. Listed as a treatment goal was a martial relationship free of violence. The applicant was scheduled for follow-up; however, records are void of additional BH-related encounters proximal to the 16 May encounter.

4. The applicant next BH-related encounter appears to have occurred on 4 August 2014 whereby he underwent a neuropsychological examination related to a TBI secondary to an MVA on 4 July 2014. Test result demonstrated deficits in processing speed and verbally mediated executive functioning that would require 24-hour supervision upon discharge. The applicant denied clinically significant depressive symptoms and his mood and behavior was considered stable except for noted inconsistencies with his presentation of memory deficits that were inconsistent with TBI. The report also showed the applicant may need assistance with more complex decision making but noted the applicant with the cognitive capacity for basic reasoning and understanding. It was also noted his neurocognitive symptoms would improve over time.

5. Encounter noted dated 16 September 2014 shows the applicant was, again, command referred to FAP as an alleged offender of intimate partner abuse. It was noted that the applicant reported SI w/o intent, and pain of 5/10 related to TBI. It was also noted the applicant was under 24-hour supervision as directed by the Shepherd Center per discharge instructions. The documentation was sparse on additional detail but showed the applicant was diagnosed with Martial Problems, scheduled for follow-up, and referred to the TBI Clinic.

6. The applicant was seen at TBI Primary Care on 8 October 2014 with chief complaints of Severe TBI, Traumatic TMJ, hearing loss, and cognitive dysfunction. The provider noted the applicant with a history of treatment for TBI in July 2014 secondary to a motorcycle accident, with good progress, and a previous neuropsychological evaluation completed in August 2014. The provider further noted a need to review the charts related to the applicant's TBI and consider scheduling neuropsychological testing. The encounter reflected diagnosis of TBI, Hearing Loss, TMJ, Difficulty with Balance, and Cognitive Disorder characterized by short- and long-term memory

difficulty to information presented orally and visually. The applicant was referred for continued outpatient treatment.

7. On 24 October 2014, the applicant presented to the TBI MH clinic with complaints of depression and anxiety secondary to a TBI sustained in July 2014 for which he was still recovering. The applicant reported his current primary concerns were related to pending eye surgery and what the results might be. He also endorsed concerns related to upcoming ankle surgery. The applicant was diagnosed with adjustment disorder with Anxiety and Depression, and Traumatic Brain Injury and scheduled for follow-up.

8. Encounter note dated 7 November 2014 shows the applicant presented the TMC for follow-up. It was noted the applicant was seeing several specialty providers related to his TBI and that a neuropsychological consult was placed. On 15 December 2014, the applicant presented for a BH follow-up appointment and endorsed overall improvement in memory, less impulsive than prior to the accident, and better able to communicate and make healthier decisions. His diagnosis continued to reflect adjustment disorder with Anxiety and Depression and TBI, and he was scheduled to follow-up as needed. The applicant next, and final, BH-related documentation in AHLTA is dated 8 June 2015 and shows the applicant's FAP case was closed after the applicant had no additional FAP involvement in the previous 6-months.

9. A review of JLV shows the applicant 10 percent SC for TBI. VA C&P Examination, dated 5 October 2015, shows the applicant with a history of TBI secondary to an MVA in July 2014. The applicant current symptoms included being easily distracted, mild memory loss (e.g., needs to write things down to not forget), mild issues with verbal directions, headaches, tinnitus, and visual impairment. Records show that on 30 December 2015 the applicant was diagnosed with adjustment disorder with Depression related to medical issues secondary to his MVA and scheduled for follow-up. Encounter note dated 19 July 2017 shows the applicant having been identified as lost to follow-up following the December 2015 encounter. He also declined to complete a baseline assessment during the 19 June 2017 encounter but agreed to an appointment for a later date. Encounter documentation dated 23 June 2017 shows three additional unsuccessful attempts were made to contact the applicant by phone. JLV appears void of any subsequent BH-related treatment encounters.

10. The applicant requests an upgrade of his Under Honorable Conditions, General, discharge to Honorable and contends his misconduct was related to Other Mental Health Issues. A review of the records shows the applicant with in-service diagnoses of adjustment disorder and TBI and that he is 10 percent SC for TBI. However, the applicant's misconduct characterized by domestic abuse, failing to obey a general lawful regulation, and failure to obey a lawful command are not mitigated by the applicant's

diagnosis, as the initial instance of domestic abuse, disobeying a lawful command, and failure to obey a lawful regulation, all occurred prior to the applicant's diagnosis of adjustment disorder and TBI. Additionally, the applicant subsequent instances of domestic abuse are not mitigated as the misconduct is not natural sequela to either disorder and neither disorder resulted in the applicant not being able to differentiate between right and wrong and adhere to the right.

11. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence that the applicant had a condition or experience during his time in service. However, the condition or experience did not mitigate his misconduct.

12. Kurta Questions:

a. 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 Other Mental Health Issues.

b. Did the condition exist or experience occur during military service? Yes.

c. Does the condition or experience actually excuse or mitigate the discharge? No. A review of the records shows the applicant with in-service diagnoses of adjustment disorder and TBI and that he is 10 percent SC for TBI. However, the applicant's misconduct characterized by domestic abuse, failing to obey a general lawful regulation, and failure to obey a lawful command are not mitigated by the applicant's diagnosis, as the initial instance of domestic abuse, disobeying a lawful command, and failure to obey a lawful regulation, all occurred prior to the applicant's diagnosis of adjustment disorder and TBI. Additionally, the applicant subsequent instances of domestic abuse are not mitigated as the misconduct is not natural sequela to either disorder and neither disorder resulted in the applicant not being able to differentiate between right and wrong and adhere to the right.

BOARD DISCUSSION:

1. The applicant's contentions, the military record, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted.

2. The Board concurs with the medical advisory opinion. The applicant's misconduct, characterized by domestic abuse, failing to obey a general lawful regulation, and failure to obey a lawful command, are not mitigated by the applicant's diagnosis.

a. The initial instance of domestic abuse, disobeying a lawful command, and failure to obey a lawful regulation, all occurred prior to the applicant's diagnosis of adjustment disorder and TBI.

b. The applicant's subsequent instances of domestic abuse are not mitigated as the misconduct is not natural sequela to either disorder and neither disorder resulted in the applicant not being able to differentiate between right and wrong and adhere to the right.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

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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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

3. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

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.

4. 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; 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.

5. 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. 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//