

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 May 2024

DOCKET NUMBER: AR20230011896

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) discharge.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge)
- Civilian Appraisal
- Military Certificates
- Civilian certificate
- Army Substance Abuse Program (ASAP) Memorandum
- Marriage Therapy Memorandum
- Three Letters of Support
- Department of Veterans Affairs (VA) Initial Post-Traumatic Stress Disorder (PTSD) Disability Benefits Questionnaire
- VA Form 21-0960P (Mental Disorders (Other than PTSD and Eating Disorders) Disability Benefits Questionnaire)
- VA Rating Decision Extract

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states he was diagnosed with PTSD and depression while serving on active duty but was not given proper treatment and care. He is currently receiving treatment from a civilian doctor who confirmed these previous diagnoses.
3. The applicant enlisted in the U.S. Army Reserve (USAR) on 28 October 2003. On 25 October 2004, he was discharged from the USAR as a result of his enlistment in the Regular Army on 26 October 2004.

4. The applicant reenlisted for a period of 4 years on 28 October 2005 and was subsequently reassigned to a unit in Heidelberg, Germany.
5. On 12 September 2006, the applicant's immediate commander issued him a no contact order following his involvement in an incident on 11 September 2006. The incident resulted in the applicant being charged with three counts of Assault Consummated by a Battery. He was further ordered not to have in his possession at any time any knife, blade, weapon, firearm, ammunition and/or any other instrument capable of inflicting grievous bodily harm and/or death until final action was taken. Any violations of the above written order would result in the commander's recommendation of the maximum allowable punishment under the Uniform Code of Military Justice (UCMJ), forfeiture of all pay and allowances, and confinement for 5 years. The applicant was relieved of his duties and responsibility as the Unit Armorer/Assistant Unit Armorer effective 12 September 2006. He was not authorized to be in the arms room nor possess any keys, documents and/or other instruments that allowed him access to any ammunition, firearm and/or any other weapon.
6. On 13 August 2007, the applicant's immediate commander issued him a no contact order following his involvement in an incident on 12 August 2007. The incident resulted in the applicant being charged with three counts of Assault Consummated by a Battery. He was further ordered not to have in his possession at any time any knife, blade, weapon, firearm, ammunition and/or any other instrument capable of inflicting grievous bodily harm and/or death until final action is taken. Any violations of the above written order would result in the commander's recommendation of the maximum allowable punishment under the UCMJ, forfeiture of all pay and allowances, and confinement for 5 years. The applicant was relieved of his duties and responsibility as the Unit Armorer/Assistant Unit Armorer effective 12 September 2006. He was not authorized to be in the arms room nor possess any keys, documents and/or other instruments that allowed him access to any ammunition, firearm and/or any other weapon.
7. In March 2008, the applicant was given a rehabilitative transfer to a unit in Mannheim, Germany.
8. On 20 May 2008, the applicant was ordered not to consume alcohol for a period of 15 days following his involvement in a domestic violence (arguing) incident with his wife where alcohol may have been involved. He was advised that continued behavior of this nature could result in punitive measures under the UCMJ and/or initiation of action for his administrative separation from the Army. He was further advised of the potential consequences of such a separation.
9. On 9 June 2008, the applicant was counseled regarding his second failure to pass the Army Physical Fitness Test (APFT) on 6 June 2008. His first failure of the APFT was

on 11 April 2008. He was advised that a third failure could result in his administrative separation from the Army.

10. On 12 June 2008, the applicant was counseled for physically abusing his wife and for failing to be at his appointed place of duty. The applicant was reminded that continued behavior of this nature could result in punitive measures under the UCMJ and/or initiation of action for his administrative separation from the Army. He was further advised of the potential consequences of such a separation. The applicant was issued a no contact order with his spouse for a period of 5 days. The purpose of this no contact order was to give both parties in the relationship a cooling off period and prevent possible physical or emotional abuse.

11. A U.S. Army Garrison – Mannheim memorandum, subject: Verification of Treatment Completion, shows the applicant was a self-referral to the ASAP in Mannheim on 3 June 2008 and recommended for outpatient ASAP treatment. He was enrolled in ASAP on 17 June 2008, successfully completed the program and was discharged on 4 August 2008

12. On 18 August 2008, the applicant was issued a verbal and physical no contact order with his spouse for a period of 10 days. The purpose of this no contact order was to give both parties in the relationship a cooling off period and prevent possible physical or emotional abuse. He was also ordered to have no contact with another woman who lived in the suburbs of Leimn, Germany.

13. On 20 August 2008, the applicant was counseled regarding his failure to follow a lawful order from a commissioned officer by violation the no contact order with his wife. He was reminded that continued behavior of this nature could result in punitive measures under the UCMJ and/or initiation of action for his administrative separation from the Army. He was further advised of the potential consequences of such a separation.

14. On 4 September 2008, the applicant was counseled regarding the initiation of actions to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, paragraph 14-12b, for a pattern of misconduct. He was advised that he was required to complete parts I and II of a separation medical examination as well as a mental health evaluation. On 5 September 2008, the applicant's immediate commander rendered a written request for these medical procedures.

15. On 9 September 2008, the applicant was counseled regarding lying to a commissioned officer and his plagiarizing of an essay that his immediate commander had directed him to write on the importance of following orders. The commander

discovered that much of the essay had been copied word-for-word from a free-essay site on the Internet.

16. A DA Form 3975 (Military Police Report), dated 10 October 2008, shows the applicant and his wife were involved in a verbal confrontation that turned physical when she attempted to take a bottle of alcohol out of the applicant's hand. The applicant struck her twice on her chest, head-butted her twice on the right side of her face causing her to sustain a bruised eye socket, swollen nose, and minor scratches from where he had placed his hands around her neck. During the altercation, she fell to the ground hitting the kitchen counter with her head causing her to sustain a bump on her head. The altercation then moved to their bedroom where the applicant again placed his hands on her neck and prevented her from leaving the room. She then attempted to push past the applicant, scratching his neck and arm. The altercation ended when the military police arrived. The applicant was admitted to Landstuhl Regional Medical Center for psychiatric evaluation. The applicant was charged with Aggravated Assault with Grievous Bodily Harm.

17. On 16 October 2008, the applicant's immediate commander notified the applicant he was initiating actions to separate him under the provisions of Army Regulation 635-200, paragraph 14-12c, for commission of a serious offense. The specific reasons for this action were the applicant's multiple charges of assault, assault with intent to inflict serious bodily harm, communicating a threat, and violating a no contact order between himself and his wife. He was advised that he was being recommended for a general, under honorable conditions discharge. The applicant acknowledged receipt of the proposed separation notification on the same date.

18. A U.S. Army Health Clinic, Mannheim, memorandum, Subject: [the applicant], dated 20 October 2008, shows the applicant initiated Marriage Therapy at Mannheim Social Work Services on 4 June 2008. At the time he presented alone reporting high levels of verbal conflict in the home and a history of heavy alcohol use by his wife causing strain on their marriage. He expressed concern at that time about his career, marriage, and safety of his child. He expressed great worry over his wife's use of alcohol both during and after her pregnancy. He also expressed a desire to have couple's therapy and hoped his wife would participate.

a. On 13 June 2008, they did attend couple's therapy. In that session, his wife downplayed her alcohol use and did not appear to take seriously the rising conflict in the home and impact on her child. The applicant returned later to sign his contract, but his wife did not.

b. On 23 June 2008, the applicant returned for couple's therapy and stated his wife refused to attend. He expressed a desire to continue participating in therapy and was hoping his wife would change her mind as well as participating in ASAP for her alcohol

use. He continued to participate in therapy, but his wife never returned despite his efforts to improve the situation.

c. On 5 September 2008, in an individual counseling session the applicant was advised that due to continued intense verbal arguments in the home and threats by his wife to involve his command, it was in his best interest to not reside with her and to seek a stable environment for his child until his wife can participate in alcohol counseling and the arguments cease. He agreed and stated he would seek legal advice for legal separation at his own discretion due to his wife's alleged continued alcohol bingeing, excessive verbal fights, calling the military police regularly to remove him from the home when she was angry, excessive nights out clubbing, neglect of her parenting responsibilities, and an overall unsafe situation for an infant. The applicant stated he would very much like to ensure he was involved in his child's life and that his child had a safe environment. Additionally, he was very concerned over his military career and invested in trying to salvage it.

19. On 18 November 2008, the applicant's immediate commander formally recommended his separation from service prior to the expiration of his term of service, under the provisions of Army Regulation 635-200, Chapter 14, by reason of commission of a serious offense.

20. On 18 November 2008, the applicant rendered his election of rights wherein he accepted the opportunity to consult with counsel. He had been advised by counsel of the basis for the contemplated action to separate him under the provisions of Army Regulation 635-200, Chapter 14, and its effect; of the rights available to him; and the effect of any action by him in waiving his rights. He elected to submit a statement in his own behalf wherein, he requested to stay in the Army and stated the reasons why he should be retained.

21. On 21 November 2008, the applicant's intermediate commander concurred with the recommendation for separation with the issuance of a general, under honorable conditions discharge. The separation packet underwent a legal review the same day and was found to be legally sufficient.

22. On 25 November 2008, the separation authority approved the recommendation for separation, and directed the applicant be issued a general, under honorable conditions discharge.

23. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 6 December 2008, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of Misconduct (Serious Offense), with separation code "JKQ" and reentry code "3." His service was characterized as under honorable conditions (General). He was credited with completion of 4 years, 1 month, and 11 days

of active service. He was credited with continuous honorable service from 26 October 2004 to 27 October 2005.

24. The applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of the characterization of his service. On 1 September 2020, he was informed that after careful review of his application, military records, and all other available evidence, the ADRB determined he was properly and equitably discharged. Accordingly, his request was denied.

25. The applicant petitioned the ADRB again for relief. On 31 May 2022, he was once again informed the ADRB had denied his request.

26. The applicant provides:

a. His performance appraisal rendered for the period of 1 October 2018 to 30 September 2019 for his job at the Central Alabama Veterans Health Care System (CAVHCS) in Montgomery, AL.

b. Ten certificates he earned during his military service:

- Eight for completion of training courses
- One commemorating his receipt of the Army Good Conduct Medal for the period from 30 March 2004 to 29 March 2007
- One for award of the Bronze German Marksmanship Badge on 24 July 2006

c. A CAVHCS certificate presented to him for participation in VA Voices Experience, dated 12 December 2019.

d. Character reference letters from three people that served with the applicant in Germany who rendered favorable remarks regarding his desire to be helpful, duty performance, respectfulness, and work ethic.

e. A VA Initial PTSD Disability Benefits Questionnaire and a VA Form 21-0960P the applicant submitted in support of his claim for VA disability benefits.

f. A VA Rating Decision extract, dated 31 January 2022, which shows his evaluation of PTSD with major depressive disorder, and alcohol abuse disorder, which was rated at 100 percent, was continued.

27. 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.

28. 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.

29. MEDICAL REVIEW:

a. The applicant requests upgrade of his Under Honorable Conditions, General, discharge to Honorable. He contends his misconduct was related to PTSD and Other Mental Health Issues.

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 in the Regular Army on 26 October 2004 and reenlisted on 28 October 2005; 2) The applicant's commander issued him no contact orders on 12 September 2006 related to an incident on 11 September 2006, and issued a no contact order on 13 August 2007 for an incident that occurred on 12 August 2007; 3) On 20 May 2008, the applicant was ordered not to consume alcohol for a period of 15 days following his involvement in a domestic violence (arguing) incident with his wife where alcohol may have been involved; 4) On 12 June 2008, the applicant was counseled for physically abusing his wife and for failing to be at his appointed place of duty; 5) On 20 August 2008, the applicant was counseled regarding his failure to follow a lawful order from a commissioned officer by violation the no contact order with his wife; 6) DA Form 3975 (Military Police Report), dated 10 October 2008, shows the applicant and his wife were involved in a verbal confrontation that turned physical when she attempted to take a bottle of alcohol out of the applicant's; 7) On 16 October 2008, the applicant's immediate commander notified the applicant he was initiating actions to separate him under the provisions of Army Regulation 635-200, paragraph 14-12c, for commission of a serious offense; 8) On 21 November 2008, the applicant's intermediate commander concurred with the recommendation for separation with the issuance of a general, under honorable conditions discharge; 9) On 25 November 2008, the separation authority approved the recommendation for separation and the applicant was discharged on 6 December 2008, accordingly; 10) The applicant petitioned the ADRB on two occasions for upgrade of his character of service. He was informed of the Board's decision to deny the request on 1 September 2020 and again on 31 May 2022.

c. The military electronic medical record (AHLTA), VA electronic medical record (JLV), ROP, and casefiles were reviewed. A review of AHLTA shows the applicant's initial BH encounter occurred on 17 October 2006, whereby he was encouraged by command to seek treatment for stress after his ex-girlfriend and best friend were killed in a train accident, and stress related to a pending UCMJ hearing for assaulting another Soldier. He reported being preoccupied with the shock and trauma of his friends' death and the recent miscarriage by his current girlfriend, for which he was feeling depressed.

He was diagnosed with Adjustment Disorder with Depressed Mood and referred to the stress management group. Records were void of any corresponding stress management group attendance or follow-up.

d. The applicant next BH encounter occurred on 4 June 2008 whereby he was command referred for Marital Family Therapy (MFT) due to verbal conflicts with wife after discovering her intoxicated. The applicant reportedly became upset due to his wife consuming alcohol while pregnant. Records show the couple presented for a conjoint session on 13 June 2008 and agreed to MFT, however, on 24 June 2008 the applicant presented and disclosed that his wife declined further treatment. The applicant was reminded that due to recent verbal altercations, he and his wife were required to sign no violence contracts. The applicant's diagnosis reflected Marital Problems and he was scheduled for continued outpatient counseling, which he attended routinely. On 18 August 2008 the applicant presented to the psychiatry clinic with complaints of stress secondary to marital problems, his wife's recent miscarriage, and his desire for divorce. He reported his wife recently called the MPs on him after the two got into an argument related to her continued alcohol consumption. He reportedly packed her bags and took her to her parents' house, from where she made the call. He was diagnosed with Adjustment Disorder with Anxiety, started on psychotropic medication, and scheduled for follow-up.

e. On 19 September 2008 the applicant presented for Chapter 14 MSE and reported a history of childhood ADHD, for which he was prescribed Ritalin, attendance of anger management classes through ACS, current counseling through social work services, and outpatient treatment through psychiatry. He additionally reported a history of marital issues that resulted with the MPs being called 10 times over a 4-month period. The altercations were reportedly verbal in nature, except a single incident that resulted in shoving. The applicant was diagnosed with Adjustment Disorder and Marital Problems, and psychiatrically cleared for administrative separation.

f. Encounter documentation dated 10 October 2008 shows the applicant was referred by the LRMC ED for a psychiatric evaluation secondary to homicidal ideation. The evening before (9 October) the applicant was arrested for assault and battery of his wife, characterized by choking her, hitting her head on a counter, and threatening to kill his wife and her parents. The applicant reported a history of marital problems since 2007. His command, who was present, reported that the MPs had been called 10 for domestic violence since 2008, but that his wife had not pressed charges until now. Command further reported the applicant was pending administrative separation for patterns of misconduct, domestic violence, violating no contact order, lying to commissioned officers, and missing duty. The applicant blamed the situations on his wife due to her "nagging", and excessive drinking. He also endorsed being bothered by the fact that everyone thought his spouse could do no wrong. The provider noted the applicant with minimal remorse, and that the applicant stated he would "cut of their



heads with a knife” if he saw them; referring to his spouse and her parents. The applicant reported a history of severe neglect by his mother during childhood, endorsed living on the streets for a period of time, and noted his uncle and aunts partially raised him. He further reported a history of conduct problems with onset in childhood characterized by acting out between ages 5 – 8 and a hospitalization for “mental issues” between ages 6 – 7. He reportedly received “shots, pills, and straight jackets”. His father reportedly rescued him at age 11 and he lived with his father until joining the military. The provider noted the applicant with a long history of mental illness from childhood, decreasing compensation post marriage with increasing violence toward alcohol abusing wife. The applicant was diagnosed with Adjustment Disorder with Depressed and Anxious Mood, with r/o for Anxiety Disorder, Panic Disorder, Depressive Disorder. He was also diagnosed with Antisocial Personality Disorder with Narcissistic Traits and was voluntarily psychiatrically admitted. Records show the applicant remained inpatient through 15 October 2008. His discharge summary reflected a diagnosis of Personality Disorder NOS. Records show that upon hospital discharge the applicant continued to engage Social Work Services and FAP through 4 December 2008.

g. A review of JLV shows the applicant 100 percent SC for PTSD. Initial PTSD DBQ dated, 18 February 2016, shows the applicant was diagnosed with PTSD secondary to the loss of his girlfriend and friend, who were killed after being hit by a train. The examiner also diagnosed the applicant with MDD recurrent mild, and Panic Disorder secondary to PTSD. VA C&P, dated 16 May 2017, shows the applicant diagnosed with MDD, PTSD, and Alcohol Use Disorder, related to military service. PTSD Reviews dated 6 July 2017, 22 May 2018, 11 May 2020, 28 January 2022, show the applicant was continuously diagnosed by VA providers with PTSD, and MDD and Alcohol Use Disorder secondary PTSD. Included in the applicant’s casefile was a C&P Evaluation, dated 26 March 2020, that shows the applicant was diagnosed with MDD, Intermittent Explosive Disorder (IED), and Alcohol Use Disorder. The provider noted onset of the disorders dating back to 2008, when the applicant was psychiatrically hospitalized at LRMC. The examiner further noted that the related hospital records were not available for his review.

h. The referenced unavailable records were available for review by this medical advisor and shows that at the time of admission (10 October 2008) the applicant was diagnosed with Adjustment Disorder with Depression and Anxious Mood, and Antisocial Personality Disorder with Narcissistic Traits. Hospital Discharge Summary shows the applicant with a discharge diagnosis of Personality Disorder NOS. Per the DSM-IV Intermittent Explosive Disorder is not diagnosed when the behavior is better explained by another disorder such as Antisocial Personality Disorder. Given the applicant was diagnosed with Antisocial Personality Disorder, at the time of hospitalization, that he reported a history of conduct disorder with onset during childhood, endorsed instances of physically assaulting Soldiers in 2006 and 2007, self-report of assaulting at least 6 Soldiers by choking them, multiple instances of DV during service, a history of choking of his girlfriend in 2011, discharged a weapon in his home in 2018 to scare his girlfriend,

and being charged with murder in May 2020, the applicant behavior that the examiner associated with IED is better accounted for by the diagnosis of Antisocial Personality Disorder. Further it is reasonable to conclude that if the examiner had access to records showing the previous diagnosis of Antisocial Personality Disorder, the IED diagnosis may not have been rendered. Also included in the applicant's casefile is a VA Benefits Decision Letter, dated 31 January 2022, that shows the applicant 100 percent SC for PTSD with MDD and Alcohol Use Disorder. There is no indication of a consideration of IED and the applicant's VA BH problem list is also void of a diagnosis of Intermittent Explosive Disorder.

i. Record shows the applicant with a BH treatment history at the VA beginning in January 2014 that continues to date. The applicant's BH problem list reflects diagnosis of PTSD, MDD, Alcohol Use Disorder, and Adjustment Disorder with Anxiety and Depressed Mood. Records show the applicant has engaged primarily in outpatient treatment, with mixed results, but was psychiatrically hospitalized from 12 – 15 May 2020 for SI and depression secondary to being charged with murdering the estranged husband of his girlfriend, after the husband reportedly came to the house instigated an argument and reached for a gun. Post-hospitalization records show the applicant continued routine engagement for PTSD, MDD, and Alcohol Use Disorder through 8 March 2023, with poor results, and reengaged in treatment on 23 April 2024.

j. The applicant is requesting upgrade of his Under Honorable Conditions, General, discharge to Honorable. He contends his misconduct was related to PTSD and Other Mental Health Issues. A review of the records shows the applicant diagnosed with Adjustment Disorder and Martial Problems during service. Post-service records show the applicant 100 percent SC for PTSD with MDD and Alcohol Use Disorder, secondary to PTSD. Included in the applicant's casefile is a C&P Evaluation, dated 28 March 2020 that shows the applicant was also diagnosed with Intermittent Explosive Disorder, with onset associated with his 10 October 2008 psychiatric hospitalization. As opined by the medical advisor on the applicant's previous petitions for upgrade, the applicant's misconduct is not mitigated by his SC of PTSD with MDD and Alcohol Use Disorder, as domestic assault, communicating a threat, and violating a no contact order is not normal sequela of either SC condition. Regarding the diagnosis of IED, the provider who rendered the diagnosis noted that he did not have access to records related to the applicant psychiatric hospitalization. This medical advisor reviewed the records in question and found the applicant was diagnosed with Antisocial Personality Disorder and Personality Disorder NOS.

k. Per the DSM-IV, used at the time, Intermittent Explosive Disorder is not diagnosed when the behavior is better explained by another disorder such as Antisocial Personality Disorder. Given the applicant was diagnosed with Antisocial Personality Disorder, at the time of hospitalization, endorsed a history of conduct disorder with onset during childhood, endorsed instances of physically assaulting Soldiers in 2006 and 2007, self-reported assaulting at least 6 Soldiers by choking them, has a history of multiple instances of DV during service, reported choking of his girlfriend in 2011, discharged a

weapon in a home to scare his girlfriend in 2018, and being charged with murder in May 2020 the applicant behavior is better accounted for by the diagnosis of Antisocial Personality Disorder, and it is reasonable to conclude that if the examiner had access to records showing a diagnosis of Antisocial Personality Disorder on 10 October 2008, the IED diagnosis would not have been rendered. As for mitigation of misconduct related Antisocial Personality Disorder, such relief is not afforded under liberal guidance.

l. Conversely, if the applicant's diagnosis of IED is determined to have been properly rendered, his misconduct characterized by assaulting his spouse of the evening of 9 October 2008 would be mitigated by the disorder, given the purported onset of the disorder. However, misconduct characterized by assault in 2006 and 2007 and other instances of DV predating the 9 October 2008 hospitalization are not mitigated. Misconduct characterized by breaking no contact orders would also not be mitigated.

m. 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 does not mitigate his misconduct.

#### 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 is 100 percent SC for PTSD, MDD, and Alcohol Use Disorder, and has a potentially mitigating diagnosis of Intermittent Explosive Disorder.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the records shows the applicant diagnosed with Adjustment Disorder and Martial Problems during service. Post-service records show the applicant 100 percent SC for PTSD with MDD and Alcohol Use Disorder, secondary to PTSD. Included in the applicant's casefile is a C&P Evaluation, dated 28 March 2020 that shows the applicant was also diagnosed with Intermittent Explosive Disorder, with onset associated with his 10 October 2008 psychiatric hospitalization. As opined by the medical advisor on the applicant's previous petitions for upgrade, the applicant's misconduct is not mitigated by his SC of PTSD with MDD and Alcohol Use Disorder, as domestic assault, communicating a threat, and violating a no contact order is not normal sequela of either SC condition. Regarding the diagnosis of IED, the provider who rendered the diagnosis noted that he did not have access to records related to the applicant psychiatric hospitalization. This medical advisor reviewed the records in question and found the applicant was diagnosed with Antisocial Personality Disorder and Personality Disorder NOS.

n. Per the DSM-IV, used at the time, Intermittent Explosive Disorder is not diagnosed when the behavior is better explained by another disorder such as Antisocial Personality Disorder. Given the applicant was diagnosed with Antisocial Personality Disorder, at the time of hospitalization, endorsed a history of conduct disorder with onset during childhood, endorsed instances of physically assaulting Soldiers in 2006 and 2007, self-reported assaulting at least 6 Soldiers by choking them, has a history of multiple instances of DV during service, reported choking of his girlfriend in 2011, discharged a weapon in a home to scare his girlfriend in 2018, and being charged with murder in May 2020 the applicant behavior is better accounted for by the diagnosis of Antisocial Personality Disorder, and it is reasonable to conclude that if the examiner had access to records showing a diagnosis of Antisocial Personality Disorder on 10 October 2008, the IED diagnosis would not have been rendered. As for mitigation of misconduct related Antisocial Personality Disorder, such relief is not afforded under liberal guidance.

o. Conversely, if the applicant's diagnosis of IED is determined to have been properly rendered, his misconduct characterized by assaulting his spouse of the evening of 9 October 2008 would be mitigated by the disorder, given the purported onset of the disorder. However, misconduct characterized by assault in 2006 and 2007 and other instances of DV predating the 9 October 2008 hospitalization are not mitigated. Misconduct characterized by breaking no contact orders would also not be mitigated.

#### BOARD DISCUSSION:

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 review based on law, policy, and regulation, including published DoD guidance for liberal consideration of discharge upgrade requests. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding that the applicant's misconduct, including domestic violence and assault were not mitigated by his behavioral health diagnosis. The Board concluded that the characterization of service the applicant received upon separation was appropriate.

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, 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 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.
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 PTSD; 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.

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//