

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 July 2024

DOCKET NUMBER: AR20230012795

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (General) discharge
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his narrative reason for separation and corresponding separation code as "Secretarial Authority"

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

- DD Form 149 (Application for Correction of Military Record)
- Legal brief, undated (8 Pages)
- Exhibit 1, DD Form 214, for the period ending 22 October 2019
- Exhibit 2, Office of Personnel Management (OPM) Investigative Report, undated
- Exhibits 3 to 6, DA Forms 4856 (Developmental Counseling Form), dated 23 May to 10 July 2019
- Exhibit 7, DA Form 4856, dated 12 July 2019
 - memorandum, Subject: Executive Summary, Army Regulation (AR) 15-6 Investigation..., dated 31 July 2019
 - DA Forms 2823 (Sworn Statement), dated 12 July to 31 July 2019 (11)
- Exhibit 8, DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice), dated 14 August 2019
- Exhibit 9, memorandum, Subject: Article 15 Appeal..., dated 9 August 2019
 - self-authored statement
 - letter, character reference, dated 9 August 2019
- Exhibit 10, memorandum, Subject: Separation..., dated 17 September 2019
- Exhibit 11, memorandum, Subject: Acknowledgement..., dated 17 September 2019, and memorandum, Subject: Election of Rights...dated 24 September 2019
- Exhibit 12, self-authored statement

- Exhibit 13, memorandum, Subject: Commander's Report..., dated 26 September 2019
- Exhibit 14, memorandum, Subject: Separation..., dated 2 October 2019
- Exhibit 15, memorandum, Subject: Separation..., dated 3 October 2019
- Exhibit 16, letter, Army Review Boards Agency, dated 29 November 2022
- Exhibits 17 to 21, SnapChat messages and photos, undated
- Exhibit 22, Certificate, Gateway Technical College, Basic Jail Academy, dated 5 February 2021, and Certificate, Wisconsin Department of Corrections, Correctional Officer Pre-Service Training, dated 7 April 2022
- Exhibit 23, letter, Wisconsin Department of Corrections, dated 19 April 2022
- Exhibit 24, Journal Entries, dated 16 March 2021 to 14 August 2021 (3)
- Exhibit 25, statements of support, dated 19 November 2019 to 21 August 2022 (5)
- Exhibit 26, DA Form 268 (Report to Suspend Favorable Personnel Actions [FLAG]), dated 16 July 2019
- Exhibit 27, DA form 4856, dated 16 July 2019
- Exhibit 28, DA Form 3881 (Rights Warning Procedure/Waiver Certificate), dated 26 July 2019
- Exhibits 29 and 30, SnapChat messages, undated
- Exhibit 31, Diploma, Blackhawk Technical College, Associate of Applied Science, dated December 2022
- Exhibit 32, OPM Investigative Report, undated
- Exhibit 33, Enlisted Record Brief, dated 23 July 2019
- Exhibit 34, memorandum, Subject: Executive Summary, AR 15-6 Investigation..., dated 31 July 2019
- Exhibit 35, memorandum, Subject: Commander's Investigation..., dated 24 July 2019

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, through counsel, states:

a. There were errors in fact and errors in discretion by the applicant's chain of command that prejudiced the applicant. The impetus for the investigation into the applicant's conduct was an accusation that he was sending unwanted sexual messages to a female Soldier. Several of the female Soldiers interviewed during the investigation lied to the investigating officer (IO) or gave contradictory statements to the IO, in regard

to their communications or the nature of their sexual relationship with the applicant, as evidenced by SnapChat messages and photos provided by the applicant.

b. The applicant was a victim of a material error in fact regarding his relationship with the female Soldiers who claimed he harassed them. The IO's report did not accurately reflect the factual circumstances of the applicant's interactions with the female Soldiers in question. The female Soldiers conspired against the applicant to paint a false portrayal of his character.

c. The applicant's chain of command made a material error in discretion by initiating separation prior to substantiating the complaint without the applicant's sworn statement, thus hindering his administrative due process rights. The commander flagged the applicant for involuntary separation on 16 July 2019. However, he did not complete his investigation until 24 July 2019. The commander biasedly initiated separation action before substantiating the complaint. The IO did not complete his investigation until 31 July 2019. The applicant declined to make a statement to the IO without first speaking to a lawyer. The IO did not consider the applicant's perspective either. The applicant was presumed guilty before a complete record was compiled.

d. Additionally, the chain of command made an error in discretion by approving the separation based upon the IO's report rather than granting the applicant's request for a rehabilitative transfer. Not only was his service stripped away prematurely, but he is now forced to present a DD Form 214 with unfavorable information. He will continue to live with this unjust stigma until his record is corrected.

e. The applicant has strived to better himself since his separation. He graduated with an associate degree in criminal justice and is employed as a Correctional Sergeant at a correctional institution. He has been praised by his supervisors for his positive communication skills, inmate safety, and responsiveness to escalating situations.

3. The applicant enlisted in the Regular Army on 10 July 2017, for a 5-year period.

4. The applicant was formally counseled on 20 May and 23 May 2019 for reckless driving, endangering the welfare of other Soldiers, and disrespect and insubordination towards the company commander.

5. On 23 May 2019, the applicant was issued a no contact order. The protected person was noted as Private (PV2) S.P. The order included no in-person or third-party communication, to include contact via face-to-face, telephone, written, text, social media, or email.

6. The applicant was formally counseled on 28 May 2023 for insubordinate conduct towards a noncommissioned officer (NCO).

7. On 10 July and 12 July 2019, the applicant was issued no contact orders. The protected person(s) were noted as Private First Class (PFC) D. P. and Specialist (SPC) A.C.

8. The applicant's immediate commander initiated two flags to suspend favorable personnel actions, on 16 July 2019, by reason of adverse action and involuntary separation (field initiated). The applicant was counseled accordingly on the same date.

9. A memorandum, issued by the applicant's commander, on 24 July 2019, noted the commander was considering the applicant for early separation.

10. A memorandum for record issued by the IO, Alpha Company, 4th Brigade Support Battalion, 1st Stryker Brigade Combat Team, 4th Infantry Division, Fort Carson, CO on 31 July 2019, provides the facts, findings, and recommendations from an AR 15-6 investigation.

a. On or about 9 July 2019, PFC D.P. and [the applicant] had a verbal altercation. Upon further investigation, PFC D.P. stated [the applicant] spoke to her in the same demeanor in person and through social media messages. PFC D.P. further stated she was not the only Soldier who experienced the same actions from him. Five additional female Soldiers stated they received unwanted messages, blocked him on social media, or had verbal disputes with him. One additional Soldier overheard [the applicant] speak to PFC D.P. after she told him to stop.

b. Based upon the evidence reviewed, the IO found that [the applicant] contacted at least six Soldiers in the company in the same unwanted manner. Four of the Soldiers told him to stop talking to them or blocked him on social media.

c. The IO recommended the command review the investigation and consider appropriate administrative or punitive action against the applicant, that he be moved to a different position with adequate oversight from leaders, and that the command conduct a further investigation into the allegations.

11. The applicant accepted nonjudicial punishment on 6 August 2019, under the provisions of Article 15 of the Uniform Code of Military Justice for behaving himself with disrespect towards his superior commissioned officer, on or about 23 May 2019. His punishment included reduction to private/E-2.

a. The applicant appealed the imposed punishment, on 8 August 2019. In an attached memorandum in support of his appeal, the applicant requested his reduction and forfeiture of pay be set aside. He further stated, he meant no disrespect to the commander. He felt targeted by his platoon leadership, and his potential to become an NCO was hindered. This was his first negative counseling; he received waivers for

promotion to E-3 and E-4; and earned three Army Achievement Medals since arriving at the unit. He was attending college. A suspension of favorable action would not allow him to utilize tuition assistance, and a reduction in rank would make it difficult to pay tuition.

b. The applicant's appeal of his punishment was denied on 14 August 2019.

12. The applicant underwent a mental status evaluation on 29 August 2019. The examining provider noted a diagnosis of adjustment disorder with depressed mood, threat of job loss. However, the applicant did not have a behavioral health condition that caused him to fail medical retention standards. He understood the difference between right and wrong and could understand and participate in administrative proceedings.

13. The applicant was notified by his immediate commander, on 17 September 2019, of his commander's intent to initiate separation action against him under the provisions of AR 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12b, for a pattern of misconduct. As the specific reason for the action, the commander noted the applicant wrongfully sent unwanted and inappropriate messages to different females in his unit and continued attempts to contact them verbally or via social media after being blocked or told to leave them alone. The commander further recommended an under honorable conditions (general) characterization of service. The applicant acknowledged receipt of the notification on the same date.

14. The applicant's immediate commander initiated a flag to suspend favorable personnel action, on 24 September 2019, by reason of involuntary separation (field initiated).

15. The applicant consulted with counsel on 24 September 2019.

a. He was advised of the basis for the contemplated actions to separate him and its effects; of the rights available to him; and the effect of any action taken by him to waive his rights. He acknowledged understanding that he may expect to encounter substantial prejudice in civilian life if an under honorable conditions (general) discharge was issued to him.

b. In an attached statement, the applicant stated, in effect, he was accused of harassing females by sending inappropriate messages and reaching out to them after being told to stop. The accusations lacked important details and facts. Despite asking numerous times for a rehabilitative transfer and stating he was not comfortable with leadership and some of the females he worked with, his requests were denied. After speaking with a lawyer, he was not given the opportunity to provide a sworn statement to the IO. He further explained the nature of his relationships with the females involved in the investigation [full details available within the supporting documents]. He further

stated his sexual relationships were consensual, and he requested a rehabilitative transfer and suspension of his separation action.

16. On 2 October 2019, the intermediate commander recommended approval of the applicant's separation, prior to the expiration of his current term of service, with an under honorable conditions (General) characterization of service.

17. The separation authority approved the recommended action, on 3 October 2019, waived the rehabilitative transfer requirements, and directed a service characterization of under honorable conditions (general).

18. The applicant was discharged on 22 October 2019, under the provisions of AR 635-200, paragraph 14-12b, by reason of pattern of misconduct. His DD Form 214 shows his characterization of service was under honorable conditions (General), with separation code JKA and reentry code RE-3. He was credited with 2 years, 3 months, and 13 days of active service. He was awarded or authorized:

- Army Achievement Medal
- National Defense Service Ribbon
- Army Service Ribbon

19. The Army Discharge Review Board (ADRB) reviewed the applicant's request for an upgrade of his under honorable conditions (general) characterization of service on 19 September 2022. After careful review, the Board determined that he was properly and equitably discharged and denied his request.

20. The ADRB reconsidered his request and reviewed a new request for a change to the narrative reason for separation, separation code, and reentry eligibility code on 3 April 2023.

a. The Board's Medical Advisor reviewed the applicant's Department of Defense and Department of Veterans Affairs health records and provided an advisory opinion for the Board's review. The applicant was found to have the following potentially mitigating diagnoses: Adjustment Disorder, Dysthymic Disorder, Generalized Anxiety Disorder, Attention Deficit Hyperactivity Disorder, and likely Personality Disorder. The Adjustment disorder was diagnosed in service, and he is service connected for Dysthymic Disorder. However, these diagnoses were not determined to impact the applicant's ability to determine right from wrong.

b. After careful consideration and despite applying liberal consideration guidance, the Board determined the discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and

the applicant was provided full administrative due process. The Board denied his request for relief.

21. The applicant, through counsel, provides:

a. Exhibits 1 through 16 are excerpts from the applicant's service record which are covered, in pertinent part, in the Record of Proceedings (ROP) above. Exhibit 7, specifically, contains the sworn statements of the individuals involved in the complaint against the applicant. The sworn statements are provided in their entirety for the Board's review within the supporting documents.

b. Exhibits 17 through 21 show SnapChat messages, photos, and conversations between the applicant and three of the female Soldiers included in the complaint, PFC D.P., PFC S.L., and SPC A.C. The messages and photos are sexually explicit and were provided by counsel as evidence to show that the messages sent by the female Soldiers indicate they either provided contradictory information or lied to the IO about the nature of their relationship and communications with the applicant.

c. Exhibit 22, contains a Certificate from Gateway Technical College, dated 5 February 2021, and a Certificate from the Wisconsin Department of Corrections, dated 2 April 2022, showing the applicant completed the Basic Jail Academy and Correctional Officer Pre-Service Training.

d. Exhibit 23, contains a letter from the Warden, at Columbia Correctional Institute, Wisconsin Department of Corrections, dated 19 April 2022, confirming the applicant's promotion to Correctional Sergeant. Three additional journal entries (Exhibit 24), dated 16 March to 14 August 2021, note the applicant's positive communication skills and extra steps in assisting others in the performance of his duties as a correctional sergeant.

e. Exhibit 25, contains five statements of support, dated 19 November 2019 to 21 August 2022, wherein the authors attest to the applicant's strong character, integrity, willingness to learn, empathetic nature, and sense of values. He is professional and level-headed, with a positive attitude that he brings to work every day. He is a true role model and a positive person in his community. He was an exceptional junior Soldier, and his future should not be blemished by the unfair circumstances of his punishment.

f. Exhibits 26 to 28 are excerpts from the applicant's service record which are covered, in pertinent part, in the above ROP.

g. Exhibits 29 and 30, are additional SnapChat messages, from SPC A.C. and PV2 S.P.R., wherein the female Soldiers express apologies and divulge further information regarding the nature of their relationships with the applicant. The contents of all of the

SnapChat messages listed in the exhibits are included in their entirety in the supporting documents.

h. Exhibit 31, shows a diploma from Blackhawk Technical College, dated December 2022, awarding the applicant an Associates of Applied Science, in Criminal Justice.

i. Exhibits 32 to 35 are additional excerpts from the applicant's service record.

22. Regulatory guidance provides when an individual is discharged under the provisions of AR 635-200, paragraph 14-12b, by reason of misconduct, with separation code "JKA," the appropriate narrative reason is "pattern of misconduct."

23. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

24. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions, general, characterization of service and correction of his DD 214 to show his narrative reason for separation and corresponding separation code as Secretarial Authority. The DD Form 149 notes that the applicant is petitioning the Board on the "bases of material error and material injustice" though did not specify any behavioral health (BH) concerns related to his request. It is outside of the scope of this advisory to determine if there was material error or material injustice as it pertains to the applicant's discharge. As such, this advisory is limited to review of the applicant's available BH history and whether there is a nexus between the circumstances that led to the applicant's discharge and any potentially mitigating BH conditions. 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:

- The applicant enlisted in the Regular Army (RA) on 10 July 2017 and upon completion of Advanced Individual Training (AIT) was awarded the military occupational specialty 92F (Petroleum Supply Specialist). The highest rank he attained was specialist/E-4.
- The applicant was formally counseled on 20 May and 23 May 2019 for reckless driving, endangering the welfare of other Soldiers, and disrespect and insubordination towards the company commander. He was also counseled on 28 May 2019 for insubordinate conduct towards a noncommissioned officer (NCO).
- Between 23 May 2019 and 12 July 2019, the applicant was issued three separate no contact orders.
- A memorandum of record from an AR 15-6 investigation documented the investigating officer (IO) found the applicant had contacted at least six Soldiers in the company in an unwanted manner.

- The applicant received an Article 15 on 06 August 2019 for being disrespectful towards his superior commissioned officer.
- The applicant was notified by his immediate commander on 17 September 2019 of his commander's intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200, paragraph 14-12b, for a pattern of misconduct. As the specific reason for the action, the commander noted the applicant wrongfully sent unwanted and inappropriate messages to different females in his unit and continued attempts to contact them after being blocked or told to leave them alone.
- The applicant's commander initiated a flag to suspend favorable personnel action on 24 September 2019 by reason of involuntary separation. In response, the applicant authored a statement stating he had requested a rehabilitative transfer several times citing he was not comfortable with leadership and some of the females he worked with and that the request(s) were denied. The applicant also asserted that his sexual relationships were consensual, and he requested a rehabilitative transfer and suspension of his separation action.
- The applicant was discharged on 22 October 2019 under the provisions of AR 635-200, paragraph 14-12b, by reason of pattern of misconduct. He was awarded the Army Achievement Medal, National Defense Service Ribbon, and Army Service Ribbon during his service.
- The Army Discharge Review Board (ADRB) denied the applicant's previous application for upgrade on 19 September 2022. The ADRB re-considered the applicant's petition in addition to new request to change his narrative reason for separation, separation code, and reentry eligibility code on 03 April 2023. The Board's Medical Advisor found that the applicant had several potentially mitigating diagnoses to include Adjustment Disorder, Dysthymic Disorder, Generalized Anxiety Disorder, Attention Deficit Hyperactivity Disorder, and likely Personality Disorder. The Adjustment disorder was diagnosed in service, and at the time of the opine he was service connected for Dysthymic Disorder. However, these diagnoses were not determined to impact the applicant's ability to determine right from wrong. The Board denied his request for relief.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant's in-service treatment records were reviewed. On 07 March 2018, the applicant completed a pre-deployment health assessment. He screened negative for suicidal ideation, and it was documented he had no evidence of a deployment-limiting condition. The applicant completed a periodic health assessment (PHA) on 19 February 2019, and it was documented that he denied experiencing any suicidal or homicidal ideation and did not desire to be referred to a provider. On 25 March 2019, the

applicant's records were reviewed as part of a CENTCOM pre-deployment screening prior to clearing for an SFAB assessment. Only one page of the document was available for review in the records, however, it documented the applicant was free of all medical conditions listed, to include Traumatic Brain Injury (TBI).

d. Regarding in-service BH encounters, the applicant first presented to BH on 05 June 2019 with the reasons for the appointment documented as 'work, Army, relationship, stress' and noted to have been present for two months. Elaboration of his stressors were documented as feeling as though he was being treated unfairly in his unit, had requested to be moved, filed an IG complaint, and had entered the Army to be a Military Police (MP) officer; however, due to initial problems in obtaining his security clearance he was re-classified as a 92F. It was also documented that the applicant reported he was diagnosed and treated for Attention Deficit/Hyperactivity Disorder (ADHD) prior to joining the Army. It was documented that he was prescribed Adderall which he discontinued at age 17 due to joining the Army. It was noted the applicant reported the medication 'helped a lot' and he was interested in re-starting the medication. The applicant was not seen by BH again until 08 July 2019 due to his going on leave following his first appointment. At the time of his follow-up appointment, he was diagnosed with Adjustment Disorder with Depressed Mood, and it was noted that the condition was a reflection of the applicant's emotional response to stressors. The applicant was seen for individual therapy on 23 July 2019 and 19 September 2019. All of his in-service BH encounters documented that he met retention standards in accordance with (IAW) AR 40-501 and was considered fit for duty to include deployment. The applicant underwent a mental status evaluation on 29 August 2019. The examining provider noted the applicant's diagnosis as Adjustment Disorder with Depressed Mood, threat of job loss. It was noted that the applicant did not have a behavioral health condition that caused him to fail medical retention standards and was cleared for administrative separation or any administrative action deemed appropriate by his Command.

e. Per a Department of Veteran's Affairs rating decision letter, the applicant is 70% service-connected through the VA for Unspecified Depressive/Mood Disorder with Unspecified Personality Disorder. The applicant completed four Compensation and Pension (C&P) examinations through the VA dated 28 September 2020, 11 February 2022, 05 March 2023, and 10 July 2023. At the time of the first evaluation on 28 September 2020, the applicant was diagnosed with Specified Mood Disorder. On 11 February 2022, the applicant was diagnosed with Adjustment Disorder with Anxiety and Depression, Acute. On 05 March 2023, the applicant was diagnosed with Persistent Depressive Disorder (PDD), ADHD, Unspecified Type, and Cluster B Personality Traits. It was noted that the diagnoses offered at the time of the evaluation were a correction from the applicant's previous evaluation. The evaluator specifically noted that most of the applicant's occupational and social impairment was attributed to his diagnosis of personality disorder. The Disability Benefits Questionnaire (DBQ) completed on 10 July 2023 documented that the applicant met criteria for Unspecified Depressive/Mood

Disorder and Unspecified Personality Disorder with Narcissistic and Borderline Features. The evaluator noted that the applicant “is presenting with some mood symptoms but over riding that was a clear personality disorder presentation that had not been diagnosed in the past.”

f. Review of VA records in JLV show the applicant initiated BH treatment through the VA on 27 July 2020 as a walk-in for anxiety, depression, and interest in filing a VA claim. The applicant was referred to psychiatry as he was interested in medication management of his symptoms. On 01 September 2020 it was documented that the applicant was interested in starting medications for ADHD. The applicant was evaluated for ADHD on 16 July 2021, and it was documented that the applicant’s mother provided collateral information and confirmed the applicant was diagnosed with ADHD in childhood and treated from 2011-2017 with Vyvanse. He reported difficulties with work performance, impulse control, hyperactivity, not being able to pay attention and forgetfulness. On 02 September 2021, it was documented that the applicant’s mood and anxiety symptoms were well-managed with Sertraline, and he was diagnosed with PDD, Generalized Anxiety Disorder (GAD) and ADHD. The applicant contacted the Veteran’s Crisis Hotline (VCL) on 03 November 2021 requesting support as he reported he was forced to resign from his job as a correctional officer and that his termination was unjust and unfair. The applicant maintained BH treatment through the VA until 09 February 2024. It was documented that the applicant had discontinued his Vyvanse and Fluoxetine several months ago, that he no longer needed the medications, and requested that the medications be discontinued from his current medication list. The applicant reported that his mood is ‘good’ and he ‘no longer needs to be seen in the mental health clinic, no longer has depression and does not need ADHD medications.’ A mental health note dated 20 February 2024 documented that the applicant reported wanted to discontinue his medications and therapy because ‘he is feeling good and wants to complete his goal of getting into the military.’

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence the applicant had a behavioral health condition or experience while in-service as he was diagnosed with Adjustment Disorder with Depressed Mood. Post-discharge, the applicant has been 70% service-connected for Unspecified Depressive Disorder/Mood Disorder with Unspecified Personality Disorder through the VA. Review of VA records demonstrates the applicant has also been diagnosed with ADHD, Unspecified, Unspecified Personality Disorder with Narcissistic and Borderline Features, Generalized Anxiety Disorder, PDD, and Cluster B Personality Traits.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with Adjustment Disorder with Depressed

Mood in-service and is 70% service-connected for Unspecified Depressive Disorder/Mood Disorder with Unspecified Personality Disorder through the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with Adjustment Disorder with Depressed Mood in-service and is 70% service-connected for Unspecified Depressive Disorder/Mood Disorder with Unspecified Personality Disorder through the VA.

(3) Does the condition experience actually excuse or mitigate the discharge? No. The applicant was diagnosed with Adjustment Disorder with Depressed Mood in-service and has been 70% service-connected through the VA for Unspecified Depressive Disorder/Mood Disorder with Unspecified Personality Disorder since his discharge. The applicant's misconduct was documented in his service record as wrongfully sending unwanted and inappropriate messages to different females in his unit and continued attempts to contact them after being blocked or told to leave them alone. The applicant's in-service medical records documented that he met retention standards IAW AR 40-501, and an in-service chapter separation evaluation documented that he was cleared for administrative separation or any administrative action deemed appropriate by his Command. The applicant's in-service diagnosis of Adjustment Disorder with Depressed Mood and VA service-connected condition(s) of Unspecified Depressive Disorder/Mood Disorder with Unspecified Personality Disorder do not interfere with the ability to distinguish between right and wrong and act in accordance with the right. Furthermore, the seriousness of the applicant's misconduct outweighs relief offered under Liberal Consideration guidance. As such, consistent with the ADRB Medical Advisor's previous opine, behavioral health mitigation is not supported.

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for a pattern of misconduct with the commander citing sending unwanted and inappropriate messages to different female Soldiers within his unit. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board reviewed and concurred with the medical advisor's review finding sufficient evidence the applicant had a behavioral health condition or experience while in-service; however, that his condition did not mitigate his misconduct and ultimate discharge. The applicant was cleared for administrative separation with the diagnosis of adjustment disorder. Based on this, the Board denied relief concerning the applicant's request for

an upgrade of his under honorable conditions (General) discharge and amendment of his narrative reason for separation and corresponding separation code.

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 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. Title 10, USC, Section 1556, 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 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. The regulation identifies the following separation codes, with the authority and narrative reasons for separation.

SPD Code	Narrative Reason	Regulatory Authority	RE Code
JKA	Misconduct – Patterns of Misconduct	AR 635–200, para 14–12b	3
JFF	Secretarial Authority (involuntary discharge)	AR 635-200, para 5-3	TBD

4. AR 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. 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 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.

b. Separations under paragraph 5-3 (Secretarial Plenary Authority) are the prerogative of the Secretary of the Army. This authority is exercised sparingly and seldom delegated. It is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army.

c. 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.

d. 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.

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. 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.

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//