

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 July 2024

DOCKET NUMBER: AR20230012961

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (General) discharge
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Rating Decision, 5 April 2022
- Firefighter Qualification Card, 6 July 2022
- University Enrollment Schedule, Fall 2023
- Certificates (x6)
- Tri-Cities Homelessness Policy Committee – Agenda, 8 September 2022
- Applicant Resume

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 states he is requesting an upgrade of his discharge due to post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and mental health. At the time of his discharge, he was experiencing extreme adverse medical symptoms and living situations which contributed significantly to the discharge. He does not believe his discharge reflects his character or conduct in his community or life.

3. The applicant provides:

a. A VA Rating Decision, dated 5 April 2022 shows the applicant received a service connected disability rating of 70% for unspecified adjustment disorder with mixed anxiety and depressed mood effective 10 September 2021, among three other physical ailments.

b. A Qualification Card issued on 6 July 2022 shows the applicant was qualified as a firefighter through 6 July 2023.

c. His enrollment schedule, dated 7 September 2023, [REDACTED] University for Fall 2023

d. Six certificates for completion of the following:

- Introduction to Intrapersonal Strengths in Positive Psychology, 14 April 2022
- Ayurveda: The Science of Life, 14 April 2022
- Lesson 1 – Introduction to System Specific Limitations, 21 June 2022
- Lesson 2 – Introduction to Metabolic Analysis, Testing and Training, 29 June 2022
- Module 1 – Foundations in Exercise Physiology, 1 July 2022
- Module III – Nutrition and Exercise Prescription, 22 July 2022

e. A Tri-Cities Homelessness Policy Committee Agenda, dated 8 September 2022 lists topics of discussion and speakers for the City [REDACTED].

f. The applicant's resume lists his current work experience, skills, and accomplishments.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 11 March 2008.

b. A DA Form 8003 (Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) Enrollment) shows on 11 August 2008 the applicant was enrolled in rehabilitation with a start date of 15 August 2008.

c. On 8 October 2008, he received nonjudicial punishment for one specification of failure to go to his appointed place of duty on or about 21 July 2008, and one specification of incapacitation for the performance of duties as a result of wrongful previous overindulgence in intoxicating liquor or drugs on or about 21 July 2008. His punishment included reduction to private (PVT)/E-1, suspended for 60 days.

d. On 11 November 2008, the suspension of punishment of reduction to PVT and forfeiture of \$754.00 pay per month for 2 months imposed on 8 October 2008 was vacated for failure to go to his appointed place of duty on or about 2 November 2008.

e. A Rehabilitation Failure Statement shows the applicant was enrolled in ADAPCP on 11 August 2008 following a self-referral for excessive alcohol use. A determination was made that the applicant was a rehabilitative failure based on his failure to follow the

treatment plan while enrolled. He was enrolled in Intensive Outpatient Treatment and continued to struggle with maintaining sobriety while enrolled. His treatment was elevated, and he attended a 28-day inpatient treatment program and relapsed following his release while still attending the aftercare treatment program.

f. On 18 March 2009, the applicant received a General Officer Memorandum of Reprimand (GOMOR) for driving under the influence of alcohol on 1 March 2009 and taking another Soldier's car without her authority causing her to alert the local authorities. A welfare check resulted in a deputy finding the vehicle in a ditch and when questioned by the deputy, he noticed an odor of alcohol emitting from the applicant's breath, and the applicant admitted to drinking. He was arrested and the breath test resulted in a blood alcohol content (BAC) of .183. The applicant acknowledged receipt on 25 March 2009 and elected not to make a statement or submit written matters.

g. The applicant's immediate commander notified him of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 9 for alcohol or other drug abuse rehabilitation failure. He acknowledged receipt on 7 April 2009.

h. On 9 April 2009, after consultation with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a discharge under other than honorable conditions is issued to him
- he may apply to the Army Discharge Review Board (ADRB) or the ABCMR for upgrading
- he is ineligible to apply for enlistment in the Army for 2 years after discharge
- he elected not to submit matters

i. The immediate commander initiated separation action against the applicant for drug abuse failure. The commander indicated that he had determined the applicant was a rehabilitative failure based on the applicant failing to follow his treatment plan while enrolled in the Army Substance Abuse Program (ASAP). He was enrolled in ASAP on 11 August 2008 for excessive alcohol consumption and had been counseled on numerous occasions about his misconduct, ranging from failure to report on numerous occasions and his rehabilitation failure.

j. On 15 April 2009, the separation authority approved the applicant's discharge under the provisions of AR 635-200, paragraph 9, for alcohol rehabilitation failure with his service characterized as general, under honorable conditions.

k. On 20 April 2009, he was discharged from active duty with an under honorable conditions (General) characterization of service. His DD Form 214 (Certificate of

Release or Discharge from Active Duty) shows he completed 1 year and 24 days of active service with 15 days of lost time. He was assigned separation code JPD and the narrative reason for separation listed as "Alcohol Rehabilitation Failure," with reentry code 4. It also shows he was awarded or authorized:

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

I. On 21 April 2009, after thoroughly reviewing all matters submitted in response to the memorandum of reprimand and after careful consideration, the imposing general officer directed the GOMOR and all related documents, be permanently filed in the applicant's official military personnel file.

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

6. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

7. By regulation (AR 635-200), a member who has been referred to Army Drug and Alcohol Prevention and Control Program (ADAPCP) for alcohol/drug abuse may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there is a lack of potential for continued Army service and rehabilitation efforts are no longer practical.

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

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (General) discharge. He contends he experienced a traumatic brain injury (TBI) and mental health conditions including PTSD that mitigate his misconduct and discharge. 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 11 March 2008; 2) On 8 October 2008, he received nonjudicial punishment for failure to go to his appointed place of duty and being drunk on duty on 21 July 2008; 3) A Rehabilitation Failure Statement shows the applicant was enrolled in ADAPCP on 11 August 2008 for excessive alcohol use. A determination was made that the applicant was a rehabilitative

failure based on his failure to follow the treatment plan while enrolled; 4) On 18 March 2009, the applicant received a General Officer Memorandum of Reprimand (GOMOR) for driving under the influence of alcohol on 1 March 2009 and taking another Soldier's car without her authority; 5) The applicant was discharged on 20 April 2009, Chapter 9, "Alcohol Rehabilitation Failure." His service was characterized as an under honorable conditions (General).

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined.

c. The applicant asserts he was experiencing a TBI, mental health conditions including PTSD while on active service, which mitigates his misconduct and discharge. There is sufficient evidence the applicant demonstrated problems with excessive alcohol abuse shortly after enlisting in the military. He was enrolled in extensive military substance abuse treatment to include individual, group, Intensive Outpatient, and inpatient hospital treatment programming starting in August 2008. There is insufficient evidence the applicant was diagnosed with a mental health condition beyond alcohol abuse while on active service. He was experiencing stress and sleep problems related to his occupational/legal problems and his upcoming discharge later in his treatment protocol. Specifically, the applicant was prescribed anti-depressant and sleep aid medication by a primary care provider in April 2009 when he reported these concerns. There is insufficient evidence the applicant was diagnosed with a TBI, PTSD, or a mental health condition while on active service. On 11 February 2009, the applicant completed a Mental Status Exam as part of his administrative separation for a Chapter 9, Alcohol Rehabilitation Failure. He was provided a screening for PTSD and TBI, and he did not fit criteria for either condition or another mental health condition beyond Alcohol Dependence. He was cleared for administrative separation for a Chapter 9 from a behavioral health perspective.

d. A review of JLV provided evidence the applicant has engaged with the VA since 2021 predominantly for physical concerns and assistance with homelessness. In 2021, he completed a Compensation and Pension Evaluation. The applicant was reported to have had difficulty adjusting to the military. His current symptomatology was attributed primarily to his level of physical pain. He was diagnosed with service-connected Chronic Adjustment Disorder/Mood disorder (70SC%). He was not identified as experiencing service-connected PTSD or a TBI, despite being evaluated for both conditions.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct, which led to his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced a TBI and mental health conditions including PTSD that mitigate his misconduct and discharge. The applicant was diagnosed with depression and insomnia while on active service by a primary care provider, which were attributed to the negative consequences of his occupational and legal problems as the result of his ongoing alcohol abuse/dependence. He was also diagnosed with service-connected Chronic Adjustment Disorder/Mood Disorder, which was attributed to his difficulty adjusting to the military and his current difficulty with pain.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced a TBI and mental health conditions including PTSD that mitigate his misconduct and discharge. The applicant was diagnosed with depression and insomnia while on active service by a primary care provider, which were attributed to the negative consequences of his occupational and legal problems as the result of his ongoing alcohol abuse/dependence. He was also diagnosed with service-connected Chronic Adjustment Disorder/Mood Disorder, which was attributed to his difficulty adjusting to the military and his currently difficulty with pain.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is sufficient evidence beyond self-report the applicant was experiencing an ongoing problem with alcohol abuse/dependence while on active service. He was provided extensive treatment for this condition. Yet, he continued to demonstrate addictive behavior and misconduct as a result of his substance abuse. Throughout his treatment, he was evaluated by multiple behavioral health providers, and he was not diagnosed with a mental health condition including PTSD or a TBI. Eventually, he was diagnosed with depression and insomnia as a result of the negative consequences for his misconduct and ongoing alcohol abuse. In addition, he was not diagnosed with PTSD or a TBI by the VA. However, the VA did diagnose him with Chronic Adjustment Disorder/Mood Disorder related to his difficulty in the military and current problems related to ongoing pain. However, the applicant was properly identified and provided treatment in the military, but he continued to demonstrate problems with alcohol abuse. Therefore, he was properly discharged in accordance with the policies and procedures at the time of his service. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the short term of honorable service completed prior to the misconduct leading to the applicant's separation and the lack of any mitigation for that misconduct found in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

1/6/2025

X

CHAIRPERSON

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

REFERENCES:

1. Title 10, 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. 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 ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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 (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 9 of the regulation states a member who has been referred to the Army Drug and Alcohol Prevention and Control Program (ADAPCP) for alcohol/drug abuse may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there is a lack of potential for continued Army service and rehabilitation efforts are no longer practical. Nothing in this chapter prevents separation of a Soldier who has been referred to such a program under any other provisions of this regulation. Initiation of separation proceedings is required for Soldiers designated as alcohol/drug rehabilitation failures. The service of Soldiers discharged under this chapter

will be characterized as honorable or general under honorable conditions unless the Soldier is in entry-level status and an uncharacterized description of service is required. However, an honorable discharge is required if restricted-use information was used.

4. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, 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, on those conditions or experiences. The guidance further describes evidence sources and criteria and requires boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief based on equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not

result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

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

//NOTHING FOLLOWS//