

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 June 2024

DOCKET NUMBER: AR20230013005

APPLICANT REQUESTS:

- upgrade of his under honorable conditions (general) character of service
- favorable change to his separation code
- favorable change to his reentry eligibility (RE) code

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge)

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 was going through a lot of mental and behavioral health issues at the time of his separation. He lost both parents and he had just returned from a stressful deployment. He always strived to be a great Soldier and had so many things he wanted to accomplish in the Army. He wouldn't imagine all the difficulties he would face in only his first term of service. He wishes he was as strong then as he is now. His post-traumatic stress disorder (PTSD) after deployment played a huge role as well.
3. On 27 February 2017, the applicant enlisted in the Regular Army, for 4 years. The highest grade he attained was E-4.
4. On 13 October 2019, in Lawton, OK, the applicant was arrested and charged with driving under the influence, transporting an open container, and making an improper turn.
5. On 25 October 2019, the applicant was given a General Officer Memorandum of Reprimand (GOMOR) for driving under the influence (DUI).

6. On 4 December 2019, the applicant underwent a medical examination. The examining physician noted he had suffered head trauma while deployed to the United Arab Emirates. He was deemed medically qualified for administrative separation.

7. On 11 December 2019, at Fort Sill, OK, the applicant was arrested and charged with destruction of government property, failing to remain at the scene of the accident, transporting an open container, and operating a vehicle without a driver's license.

8. On 16 January 2020, the applicant underwent a mental status evaluation. The examining physician diagnosed him with past events of alcohol misuse. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

9. On 31 January 2020, the applicant's commander notified him that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 14-12b, for a pattern of misconduct. As the specific reasons, his commander cited the applicant's GOMOR for DUI and his two citations for transporting an open container.

10. On 28 February 2020, the applicant acknowledged that he had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to him.

a. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a character of service that is less than honorable was issued to him.

b. He declined to submit a statement in his own behalf.

11. The applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, paragraph 14-12b, for a pattern of misconduct.

12. Consistent with the chain of command's recommendation, the separation authority approved the recommended discharge on 9 March 2020, with his service characterized as under honorable conditions (general).

13. The applicant was discharged on 26 March 2020, in the grade of E-4. He was credited with 3 years and 27 days of net active service this period. His DD Form 214 (Certificate of Release or Discharge from Active Duty) contains the following entries in:

- Item 24 (Character of Service) – UOTHC
- item 25 (Separation Authority) – AR [Army Regulation] 635-200, PARA 14-12B
- item 26 (Separation Code) – JKA
- item 27 (Reentry Code) – 3

- item 28 (Narrative Reason for Separation) – Pattern of Misconduct

14. Additionally his DD Form 214 shows he was awarded or authorized the:

- Army Achievement Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon
- Certificate of Achievement

15. The applicant petitioned the Army Discharge Review Board (ADRB) requesting upgrade of his under honorable conditions (general) discharge. On 26 April 2023, the ADRB voted to deny relief and determined his discharge was both proper and equitable.

16. 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.

17. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his under honorable conditions (general) characterization of service. He contends he experienced PTSD that mitigates his misconduct.

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:

- The applicant enlisted into the Regular Army on 27 February 2017.
- The applicant received a GOMOR for driving under the influence (DUI) on 25 October 2019, and on 11 December 2019 he was arrested and charged with destruction of government property, failing to remain at the scene of the accident, transporting an open container, and operating a vehicle without a driver's license.
- The applicant was discharged on 26 March 2020 under Army Regulation 635-200, paragraph 14-12b, for a pattern of misconduct. He was credited with 3 years and 27 days of net active service.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts PTSD after his deployment as well as the death of both parents during the deployment played a role in his misconduct. An ER note dated 11 December 2019 indicated the applicant reported a history of seizures and that the car accident was the result of a seizure. While under observation in the ER, he had another seizure and was treated with medication and observation. A Report of Mental Status Evaluation dated 16 January 2020 indicated the applicant had a history of

alcohol misuse but met retention standards with the possibility of needing a waiver for deployment. Additionally, the documentation stated that the applicant has not surpassed the medical retention decision point and does not meet criteria for a condition requiring referral to IDES. There was insufficient evidence that the applicant was diagnosed with PTSD while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed an initial engagement with mental health services through the DoD on 31 October 2017. The document indicates the applicant presented with his command and the focus was related to "significant problems with this soldier and he is facing an Article 15." The diagnosis was Adjustment Disorder. The applicant then presented on his own for an intake appointment on 6 November 2017, and the documentation discusses difficulty in his work environment and feeling targeted because he is gay. There are four notes between 7 November 2017 and 29 December 2017 that are updates to command team and discuss the applicant's lack of attendance to appointments. There is notation that the applicant had been reporting to his command team that he had been engaged with mental health "for several months," but this was untrue. His next encounter with behavioral health was on 21 May 2019, which noted that he was referred due to head trauma after passing out and having a seizure while at work. Documentation discusses loss of consciousness of 30 minutes or less and necessity of seven staples in the back of his head. He was followed for post-concussion syndrome and had a cardiac work up, which was clear for any abnormalities. He was next seen in BH on 30 October 2019 following his DUI, and he was assessed for substance abuse and given a diagnosis of Alcohol Use, unspecified. He was enrolled in the ASAP and a treatment team meeting, including command, was conducted on 6 November 2019. The applicant completed three sessions with ASAP counselor before documentation shows a chapter physical for administrative separation was conducted on 4 December 2019, and he had three more sessions with the ASAP counselor prior to the Mental Status Evaluation, where he was cleared for administrative discharge, on 16 January 2020. The applicant had four more sessions with the ASAP counselor before his discharge on 26 March 2020. The content of all session notes is related to the applicant's abstinence from alcohol, stress related to the DUI and impact to his relationships with members of his unit, loss of military career, and relationship difficulties.

e. Documentation shows that the applicant engaged with the VA on 6 October 2020 through the Veteran Justice Outreach Program while he was incarcerated for an alcohol-related driving charge. He was seen for several visits before being released and went into the VA's residential substance abuse program. Documentation reflects participation in group and individual counseling sessions with focus on recovery and trauma experienced while in jail. Through 2021 and into 2022, the applicant engaged VA for homeless services, substance abuse treatment, and vocational rehabilitation. The applicant's most recent contact with VA was in August 2023 where he was seen for triage following a call to the Veterans Crisis Line. Documentation indicated that the applicant continued to struggle with alcohol use and loss of his military career. He was

referred for mental health treatment, but he did not show up for the appointment. Diagnoses listed by VA include: Alcohol Abuse, Anxiety Disorder, unspecified, and Depression, unspecified.

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

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed PTSD at the time of the misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition, PTSD, while on active service. Behavioral health documentation from his time in service shows that the applicant engaged in treatment for alcohol misuse, stress associated with his alcohol-related incident, and his command's pursuit of administrative discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence that the applicant was experiencing PTSD while on active service. Both DoD and VA documentation of treatment focuses on alcohol abuse, and while the VA documentation does discuss trauma exposure, this is in the context of his post-discharge experiences while in jail. However, the applicant contends he was experiencing PTSD that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service to include deployment, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA Behavioral Health Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct not being mitigated by PTSD. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

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.

12/9/2024

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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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. 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 601-210 (Regular Army and Army Reserve Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-6 provides:

- RE code "1" applies to Soldiers completing an initial term of active service, who are considered qualified for enlistment if all other criteria are met.
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable – they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification.

5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides that separation codes are three-character alphabetic combinations that identify reasons for and types of separation from active duty. Separation code narrative reasons are aligned with applicable regulatory authority paragraphs. The separation code "JKA" is the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, for pattern of misconduct.

6. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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. 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 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. It states that action will be initiated to separate a Soldier for misconduct when it was clearly established that rehabilitation was impracticable or unlikely to succeed.

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

8. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, 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 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.

9. 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//