

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2024

DOCKET NUMBER: AR20230013134

APPLICANT REQUESTS: in effect,

- upgrade of his under honorable conditions (general) discharge to an honorable discharge
- the narrative reason and corresponding Separation Program Designator (SPD) code for his separation be changed
- his Reentry Eligibility (RE) code be changed from "3"
- to appear before the Board in person

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Self-authored affidavit
- Letter of support
- 569th Engineer Company (Mobility Augmentation) memorandum, Subject: Fort Carson, CO
- DD Form 2708 (Receipt for Inmate or Detained Person)
- DA Form 2627 (Record of Proceedings Under Article 15 of the Uniform Code of Military Justice (UCMJ))
- Documents extracted from his separation packet
- Letter from the Army Discharge Review Board (ADRB), Army Review Boards Agency (ARBA), Arlington, VA

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 provides a two-page affidavit that is available in its entirety for the Board's consideration. He states he should receive liberal consideration because his discharge was unfair at the time and remains so now.

a. During his unit's deployment to Iraq, one of his fellow Soldiers committed suicide by strangling himself and the applicant woke the next morning to discover him dead. His unit was subjected to numerous mortar and rocket attacks. Throughout the deployment, he was a member of a detail responsible for "bagging and tagging" the remains of Soldiers who were blown up.

b. Upon returning from Iraq, another Soldier committed suicide by cutting his wrists after being caught in possession of child pornography. The applicant was a first responder for this incident, and he believes these horrific events are what caused him to develop post-traumatic stress disorder (PTSD). He did not know how to cope with the post-deployment nightmares he was experiencing and began drinking heavily.

c. He reenlisted for a permanent change of station reassignment to Fort Carson, CO. He reached a point where he could no longer cope and attempted to commit suicide but failed. His wife joined him at Fort Carson. Even though she had another person's child and committed adultery, he decided to accept the situation. On the night of his battle buddy's birthday celebration a female Soldier was stabbed to death by the sergeant on barracks duty. The applicant knew her personally and attempted to block out this tragedy by drinking to the point that he would pass out.

d. His drinking caused him to misbehave and resulted in him receiving punishment for attacking his wife, being in a black-listed establishment off-post, and being disrespectful toward a senior noncommissioned officer (NCO). He accepted his punishment and was hopeful that he would be allowed to remain in the Army, but he was ultimately escorted off Fort Carson as a civilian.

e. Since his discharge, he continues to experience nightmares, flashbacks, startle reflex, memory issues, anger, outrage, difficulty being in crowds. He suffers from major depression and has attempted to commit suicide. Severe panic attacks three or four times per week prevent him from going out in public and being able to work. He has been fired from jobs for attempting to fight supervisors.

3. The applicant enlisted in the Regular Army on 15 October 2008 in the rank/grade of private (PV1)/E-1. He served in Iraq from 22 November 2009 to 14 July 2010. On 4 November 2010, he reenlisted for a period of 3 years for reassignment to Fort Carson, CO.

4. A DD Form 2708 shows the applicant was released from the Fort Carson Police Station to his unit on 26 February 2012 after being arrested for committing the following offenses:

- domestic violence
- simple assault consummated by battery

- two counts of child abuse
- damage to government property
- damage to private property
- interference with telecommunication device

5. On 10 April 2012, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, UCMJ. The pertinent DA Form 2627 is illegible for the first two offenses. However, the third offense was unlawfully pushing his wife with his hands. His punishment included reduction to E-1; forfeiture of \$745.00 per month for a period of two months, suspended, to be automatically remitted if not vacated before 10 June 2012; extra duty for 45 days; and restriction for 45 days.

6. On 2 March 2012, a protective order was imposed upon the applicant to restrain him from any contact or communication with his wife until 1 May 2012.

7. A DA Form 3975 (Military Police (MP) Report) dated 3 June 2012 shows the applicant was charged with Domestic Disturbance as result of engaging in a verbal altercation with his wife over marital problems. The altercation never became physical or threatening.

8. On 6 June 2012, the applicant was counseled for lying to an NCO and for harassing another Soldier by calling and/or texting him over 30 times in a 12-hour period. He was advised that continued behavior of this nature could result in the initiation of administrative action to have him separated from the Army and the potential consequences of a separation of this nature.

9. On 2 August 2012, the applicant accepted NJP under the provisions of Article 15, of the UCMJ for being disrespectful toward an NCO and making a false statement. His punishment included reduction to E-1; forfeiture of \$745.00 per month for a period of two months, suspended, to be automatically remitted if not vacated before 29 January 2013; extra duty for 15 days; and restriction for 15 days.

10. On 14 August 2012, the applicant was informed that he was being considered for separation from the Army due to a pattern of misconduct. He was further advised that it could result in either a general, under honorable conditions discharge or an under other than honorable conditions discharge.

11. On 17 August 2012, the applicant was informed the command had decided to initiate his separation from the Army and was advised to begin the transition process.

12. On 30 August 2012, the suspension of a portion of the punishment imposed was vacated as a result of the applicant breaking restriction.

13. The applicant's immediate commander informed the applicant that he was initiating action to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c, for misconduct-commission of a serious offense. The specific reasons for this action were the applicant's false official statement, breaking restriction on two occasions, being disrespectful toward an NCO, violating a no-contact order, possessing an unregistered firearm in his on-post residence, and assaulting his wife. The applicant's commander informed him he was recommending that he receive an under honorable conditions (general) characterization of service. The applicant acknowledged receipt of the notification on 26 September 2012.

14. The applicant consulted with counsel and was advised of the rights available to him. He elected not to submit a statement in his own behalf.

15. The applicant's immediate commander formally recommended the applicant's separation from service under the provisions of Army Regulation 635-200, Chapter 14, by reason of misconduct. The available record is void of the separation authority's approval memorandum.

16. The applicant was discharged on 17 October 2012 in the rank of PV1, under the provisions of Army Regulation 635-200, paragraph 14-12c, due to Misconduct (Serious Offense) with Separation Code "JKQ" and Reentry Eligibility Code "3." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 4 years and 3 days of net active service. He completed his first full term of service. His decorations, medals, badges, citations, and campaign ribbons include the:

- Army Commendation Medal
- Meritorious Unit Commendation Medal
- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal with campaign star
- Army Service Ribbon
- Overseas Service Ribbon

17. The applicant petitioned the ADRB for relief on 11 March 2018. On 7 November 2019, he was informed that after careful review the ADRB determined that he was properly and equitably discharged and denied his application.

18. The applicant petitioned the ADRB for relief on 26 April 2021. On 11 May 2023, he was informed that the ADRB had denied his application.

19. In addition to the previously discussed documents, the applicant provides a Letter of Support rendered by Dr. [REDACTED] a clinical psychologist and the Director of a Department of Veterans Affairs outpatient counseling center for combat veterans and their families. In part, he states he began providing the applicant psychotherapy service in March 2015 and, since then, had conducted 55 treatment sessions with him. He opines the applicant's exposure to combat-related traumatic stressors contributed to the development of PTSD.

20. Army Regulation 635-200, 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.

21. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

22. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under honorable conditions (general) to honorable. He contends he experienced a mental health condition, including 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 15 October 2008. He served in Iraq from 22 November 2009 to 14 July 2010, and he reenlisted on 4 November 2010.
- The applicant engaged in a pattern of misconduct between February and June 2012, which resulted in nonjudicial punishment and initiation of separation action by his commander. The specific reasons for the action were the applicant's false official statement, breaking restriction on two occasions, being disrespectful toward an NCO, violating a no-contact order, possessing an unregistered firearm in his on-post residence, and assaulting his wife.
- The applicant was discharged on 17 October 2012 under the provisions of Army Regulation 635-200, paragraph 14-12c, due to Misconduct (Serious Offense) with Separation Code "JKQ" and Reentry Eligibility Code "3." He was credited with completion of 4 years and 3 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 a series of stressors, both during and following his deployment, resulted in PTSD and were the root cause of his behavior along with his alcohol use, which he used to self-medicate his PTSD symptoms. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed the applicant is 100% service connected through the VA for PTSD. The applicant initiated DoD mental health treatment in April 2009, and documentation reflected anxiety associated with relationship problems. He was diagnosed with Adjustment Disorder with Anxiety. The next encounter was on 12 October 2011 as a walk-in following the applicant's suicidal gesture of ingesting 50 ibuprofen pills and being taken to the ER. He attributed his primary stress to his relationship with his wife and questioning the paternity of her pregnancy. Documentation indicates the applicant denied trauma history, and he did not endorse symptoms typically associated with PTSD. However, he did report drinking excessively on the weekends. He completed an intake three days later, where he reiterated the relationship problems as his primary stressor and was diagnosed with Adjustment Disorder with Anxiety. He underwent a pre-deployment screening on 1 December 2011 where he reported some hypervigilance, which did not interfere with daily living, and discussed the relationship difficulties. A series of behavioral health notes and documentation in February and March 2012 were reviewed. The applicant was involved with the Family Advocacy Program, Substance Abuse Program, and mental health following an alcohol related incident where he physically hit his wife, resulting in need for medical attention. Documentation discusses nightmares associated with military experiences, agitation, anger, and depressed mood. PTSD was assessed, and the applicant endorsed subthreshold symptoms for diagnosis. He was diagnosed with Alcohol Abuse and Adjustment Disorder with Depressed Mood. On 18 May 2012, the applicant began a treatment that is typically for PTSD, although he was diagnosed with Adjustment Disorder with Mixed Emotional Features. The targeted trauma was related to a childhood experience of being physically abused by his father. In subsequent visits, the applicant terminated this treatment indicating that these memories are not a problem "when I'm not drinking." The applicant continued to have regular engagement in individual, group, and medication management visits (declined medications) until discharge in October 2012. There is documentation of a Mental Status Evaluation to clear him for separation dated 4 September 2012, which noted that the applicant was negative for PTSD and met retention standards.

e. The applicant initially engaged the VA for mental health treatment in July 2013, and he was diagnosed with PTSD and Mood Disorder. He reported nightmares related to deployment experiences, flashbacks, exaggerated startle response, and hypervigilance. He was started on three psychiatric medications, including a mood stabilizer. The applicant has utilized group, individual, and medication management services through VA as well as caregiver support. His most recent contact was in

November 2023 where he declined referral to an intensive outpatient treatment program for PTSD, and his last prescription for medication was in 2021.

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 a mental health condition, including PTSD, at the time of the misconduct. Documentation showed that he endorsed some symptoms of PTSD, but he was primarily diagnosed with Adjustment Disorder. He is 100% service connected through the VA for PTSD, and he has engaged in mental health care for PTSD at VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service, and there is documentation of mental health treatment during his time in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. There is sufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. He was diagnosed with Adjustment Disorder, and the content of his treatment, while in service, was primarily related to his relationship problems and his alcohol use. He has been diagnosed with PTSD through the VA and is 100% service connected for PTSD. His behaviors related to disregard for authority and excessive alcohol use can be a natural sequela to trauma exposure and PTSD. Therefore, the charges related to oppositional behaviors, such as breaking restrictions and being disrespectful to an NCO, warrant mitigation. However, there is no nexus between his mental health condition, including the PTSD, and his misconduct related physical abuse of his wife, violating a no contact order, and possessing an unregistered firearm on post: 1) these types of misconduct are not part of the natural history or sequela of his mental health conditions; 2) his mental health conditions do not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing mental health condition, including PTSD, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board carefully considered the applicant's request, supporting documents, 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.

3. The Board found evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct being partially mitigated by PTSD. Considering all the facts in this case, the Board found the decision to discharge the applicant for misconduct was too harsh. Based on a preponderance of the evidence, the Board determined the applicant's character of service should be changed to honorable and the reason for his discharge should be changed to Secretarial authority with the associated codes.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 to show the following entries:

- Item 24 – Honorable
- Item 25 – AR 635-200
- Item 26 – JFF
- Item 27 – 1
- Item 28 – Secretarial authority

X	[REDACTED]
CHAIRPERSON	
[REDACTED]	

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 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. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR.

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. Army Regulation 601-210 (Active and Reserve Components 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 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their 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

6. Army Regulation 635-5-1 (SPD Codes) implements the specific authorities and reasons for separating Soldiers from active duty. It also prescribes when to enter SPD codes on the DD Form 214.

a. Paragraph 2-1 provides that SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of Department of Defense and the Military Services to assist in the collection and analysis of separation data. This analysis may, in turn, influence changes in separation policy. SPD codes are not intended to stigmatize an individual in any manner.

b. Table 2-3 provides the SPDs and narrative reasons for separation that are applicable to enlisted personnel. It shows, in part, SPD JKQ is the appropriate code to assign to an enlisted Soldier who is voluntarily separated under the provisions of Army Regulation 635-200, Chapter 14, for Misconduct (Serious Offense). Additionally, the SPD/RE Code Cross Reference Table established RE code "3" as the proper reentry code to assign to Soldiers separated under this authority and for this reason.

7. 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. 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.

8. 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//