

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 August 2024

DOCKET NUMBER: AR20230013245

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) discharge to an honorable discharge, and to appear before the Board via video/telephone.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- District Court of Wyandotte County, KS, Veteran's Treatment Court, Order for Expungement
- Kansas City, Department of Veterans Affairs (VA) Medical Center, Health Care for Homeless Veterans (HCHV), Mental Health Admission Evaluation Note

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states he has made great strides in changing the person he was at the time of his discharge. He wants this upgrade for his children. The applicant indicates on his DD Form 149 that post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and other mental health conditions are related to his request.
3. On 13 February 2007, the applicant enlisted in the Regular Army for a period of 5 years and 17 weeks. Upon completion of initial entry training, he was awarded military occupational specialty 88M (Motor Transport Operator). He served in Iraq from 26 November 2007 to 30 December 2008.
4. The applicant's record is void of documentation showing the facts and circumstances regarding his administrative separation under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, (Pattern of Misconduct). However, his DD Form 214 (Certificate of Release or Discharge from Active Duty) shows:

a. He was discharged on 25 February 2011 in the rank/grade of private/E-1, under the provisions of Army Regulation 635-200, paragraph 14-12b, for a pattern of misconduct. His service was characterized as Under Honorable Conditions (General). He was assigned Separation Code "JKA" and Reentry Code "3." He was credited with completion of 4 years and 13 days of net active service. He did not complete his first full term of service.

b. He was awarded or authorized the: Meritorious Unit Commendation, National Defense Service Medal, Global War on Terrorism Service Medal, Iraq Campaign Medal with Campaign Star, Army Service Ribbon, Overseas Service Ribbon, and the Combat Action Badge.

5. The applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of his discharge. On 3 October 2012, the applicant was informed that after careful review of his application, military records, and all other available evidence, the ADRB determined that he was properly discharged and denied his request.

6. The applicant provides:

a. A District Court of Wyandotte County, KS, Veteran's Treatment Court, Order for Expungement, which shows the applicant was arrested on 8 February 2018 and charged with three offenses. He entered into Veteran's Treatment Court on 10 February 2022 and graduated from that program on 12 July 2023. It was opined that his current circumstances and behavior warranted an expungement, and the expungement was consistent with public welfare. It was therefore ordered that his arrest record, conviction, or diversion record be expunged. It was further ordered that he be treated as not having been arrested, convicted, or diverted of the crimes in this case.

b. A Kansas City, VA Medical Center, HCHV, Mental Health Admission Evaluation Note shows the applicant underwent a mental health evaluation for a primary diagnosis of Housing Instability to determine his eligibility and case management. A review of his previous visits shows, in part, he was evaluated for moderate mood disorder, Anxiety disorder, Chronic PTSD, and Depressive disorder.

7. 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 (UOTHC) 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.

8. Army Regulation 15-185 (ABCMR) 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 has occurred by a preponderance of the evidence. It is not an investigative body.

9. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition. Applicants do not have a right to a hearing before the ABCMR.

10. MEDICAL REVIEW:

1. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service to honorable. Per his DD 149, the applicant indicated Posttraumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), and Other Mental Health Issues are related to his request. 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 (RA) on 13 February 2007 as an 88M (Motor Transport Operator). He served in Iraq from 26 November 2007 to 30 December 2008, 2) the applicant's record is void of documentation showing the facts and circumstances regarding his administrative separation. His DD 214 shows he was discharged on 25 February 2011 under the provisions of Army Regulation (AR) 635-200, paragraph 14-12b, for a pattern of misconduct. He was assigned a separation code of JKA and reentry code of '3,' 3) the applicant previously petitioned the Army Discharge Review Board (ADRB) for an upgrade and on 03 October 2012 the applicant was informed that his request was denied.

2. 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. There were no in-service treatment records available for review in JLV and the applicant did not provide any as part of his application. The applicant had numerous VA BH encounters in JLV. A summary of the relevant details will be included below. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

3. Some of the applicant's in-service medical records were available for review through the Veterans Benefits Management System (VBMS); however, there were no BH treatment records available for review. A Report of Medical Examination dated 06 December 2006 for the purposes of enlistment documented psychiatric as 'normal' on clinical evaluation. A pre-deployment health assessment dated 31 October 2007 documented the applicant's self-reported health as 'very good' and marked 'yes' that he had sought counseling or care for mental health in the past year though additional details regarding the nature of his treatment were not documented. Review of available records show the applicant was administered a permanent profile for physical health reasons though none of the profiles reviewed from 2009-2010 documented any duty

limitations for psychiatric reasons. The applicant was evaluated on 27 May 2008 after reporting he hit his head on a HMMV door. He denied experiencing any symptoms consistent with a TBI at the time of the visit with the exception of difficulty falling asleep. The applicant was evaluated in the emergency room (ER) on 07 July 2009 subsequent to a suicide attempt via overdose (eight Paxil). The applicant completed a physical examination on 17 May 2010 in conjunction Chapter 14-12b separation (the reasons for the chapter were not identified). The problem list for that note included the following BH conditions: Adjustment Disorder with Depressed Mood, Alcohol Abuse, Depression, and Borderline Personality Disorder. The applicant was psychiatrically hospitalized on 19 October 2010 due to reporting he wanted to buy a pistol from the PX and shoot everyone he sees. At the time of the evaluation, he screened negative for hallucinations and delusions though was noted to have poor impulse control. BH medications were documented as Trazodone and Paxil. At the time of the visit the provider also documented the applicant was undergoing a Medical Evaluation Board (MEB) for neck and back pain. On 06 December 2010, a medical provider documented the applicant's problem list included the following BH conditions: depression, personality disorder, aggressive behavior, alcohol use, and 'among others.'

4. The applicant completed a Compensation and Pension (C&P) on 08 October 2010 while still in-service. The provider documented the applicant was being medically boarded while also undergoing a Chapter 14 separation due to misconduct. The reasons for separation were not specified in the note. It was documented that the applicant was demoted for getting into a physical fight with his wife. The provider documented the applicant endorsed a history of auditory and visual command hallucinations. The provider diagnosed the applicant with Bipolar Disorder with Psychosis and Personality Disorder NOS with Borderline and Antisocial Features. The provider documented that the applicant's BH conditions were not caused nor aggravated by the military but demonstrate that he was unfit for continued military service. Throughout the evaluation, the provider details a pre-military history of behavioral health problems, to include a history of misconduct and psychiatric hospitalizations (to include at age 6 years old).

5. Review of JLV shows the applicant is 100% service-connected through the VA, 70% for PTSD. The applicant completed an initial BH Compensation and Pension (C&P) examination on 15 October 2012 and underwent two subsequent reviews dated 15 August 2013 and 28 June 2022. The provider diagnosed the applicant with PTSD, chronic, with associated depression and Borderline Personality Disorder (BPD). There were numerous combat-related stressors from the applicant's deployment to Iraq that were associated with his diagnosis of PTSD (e.g., exposure to enemy fire, death of Soldier in unit where the applicant typically pulled guard duty, ran over a child when driving, mortar landed within 20 feet of him). The provider documented that the symptoms attributable to each condition could be differentiated, stating that his PTSD symptoms included re-experiencing, avoidance, numbing, and arousal. Symptoms

associated with BPD included affect instability and mood reactivity, intense anger, unstable and intense interpersonal relationships, transient stress-related paranoia, dissociative symptoms, distress at signs of perceived abandonment or being alone, unstable sense of self, risky and self-damaging behaviors, and a marked sense of emptiness. The condition(s) were reaffirmed at subsequent reviews. Although the provider also documented that the applicant had a history of two TBIs in-service, a C&P examination dated 26 August 2013 indicated that the applicant did not have a TBI. The provider documented he was treated for depression, anxiety, BPD, and suicidal and homicidal ideation while stationed at Ft. Polk (now known as Ft. Johnson). Furthermore, it is documented that the applicant was psychiatrically hospitalized for homicidal ideation towards his noncommissioned officer (threatened to shoot him). Since being discharged from the military, the applicant has had difficulty maintaining employment in part due to his reactivity in the workplace (e.g., yelling in response to conflict). It was also documented he has problems with decreased concentration, following directions, social relationships, or feeling as though he is being challenged by others. Regarding military misconduct, the examiner noted he reported problems with gambling and not paying his loans, drinking, and got an Article 15 for domestic violence (slapping his spouse).

6. The applicant appeared to initiate BH treatment through the VA on 09 August 2012 for depression and PTSD. On 09 August 2012, the provider documented the applicant was discharged for threatening to shoot his NCO, had multiple Article 15s and disciplinary actions. At the time of the visit, he was diagnosed with Depression Not Otherwise Specified (NOS) and Personality Disorder NOS accompanied by back pain and separation from his wife and family. The applicant engaged in BH treatment through the VA from the time of initiating services through 01 May 2024. The BH note on 06 May 2024 documented he desired to continue BH services for treatment of PTSD. The record shows several attempts since his last encounter to re-engage him in treatment. His diagnoses were noted as PTSD, BPD, Gambling Disorder, history of TBI, Tobacco Use Disorder, and Cannabis Use Disorder. It was noted that the applicant reported Lamotrigine, which is a mood stabilizer, has been helpful for him. It was also documented he had previously been trialed on other mood stabilizers, antipsychotics, antidepressants, and sleep medications (i.e., Abilify, Fluoxetine, Olanzapine, Prazosin, quetiapine, and Trazodone). The provider also documented the applicant has been psychiatrically hospitalized 15-20 times, with his last admission occurring 5-6 years ago. A non-VA note within JLV shows the applicant was psychiatrically hospitalized on 03 November 2016 and diagnosed the applicant with Major Depressive Disorder (MDD), Severe, Recurrent, with psychotic features, PTSD, and Generalized Anxiety Disorder. The admitting provider did document that the applicant appeared to show signs of MDD with psychotic features upon his return from Iraq.

7. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service to honorable. The applicant

contends he experienced PTSD, TBI, and Other Mental Health Issues which mitigates his misconduct. The specific facts and circumstances leading to his discharge were unavailable for review. Additionally, the applicant's in-service BH treatment records were not available for review though his in-service problem list shows a history of Adjustment Disorder with Depressed Mood, Anxiety, Depression, and Borderline Personality Disorder. Per review of JLV, the applicant is 70% service-connected through the VA for PTSD secondary to his combat deployment to Iraq. The applicant was also diagnosed with Borderline Personality Disorder, Gambling Disorder, Tobacco Use Disorder, and Cannabis Use Disorder, which are not mitigating conditions. The records also show the applicant has previously endorsed hallucinations in-service and has been diagnosed with MDD with psychotic features and Bipolar Disorder with Psychotic features at times throughout his treatment history. Of note, the provider who diagnosed him with Bipolar Disorder opined that the applicant's condition existed prior to service and was not aggravated by service as evidenced by the applicant's reported mental health history prior to service. Moreover, the available records demonstrate the applicant has been psychiatrically hospitalized numerous times throughout his life, to include at least twice during his service.

#### 8. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. In-service records show the applicant was treated and/or diagnosed with depression, anxiety, and Bipolar Disorder with Psychotic Features (diagnosed through a C&P examination). Post-discharge, the applicant has been 70% service-connected through the VA for PTSD.

(2) Did the condition exist or experience occur during military service? Yes. In-service records show the applicant was treated and/or diagnosed with depression, anxiety, and Bipolar Disorder with Psychotic Features (diagnosed through a C&P examination). Post-discharge, the applicant has been 70% service-connected through the VA for PTSD.

(3) Does the condition experience actually excuse or mitigate the discharge? Unclear. Although the applicant's in-service BH treatment records were unavailable for review, the available documentation shows he was treated for anxiety and depression in-service and was also diagnosed with Bipolar Disorder with Psychosis by a C&P examiner while he was still in-service. Subsequent to his discharge, the applicant has been diagnosed with PTSD as a result of combat-related trauma and is 70% service-connected through the VA for this condition.

9. The applicant has been diagnosed with a number of potentially mitigating BH conditions to include PTSD, Bipolar Disorder with Psychotic Features, Depression NOS, Major Depressive Disorder with Psychotic Features, and Generalized Anxiety Disorder.

However, without an understanding of the circumstances that led to the applicant's discharge, a nexus between his BH conditions and misconduct cannot be established. Furthermore, due to the seriousness of some of the misconduct that was documented in his medical record (e.g., domestic violence and a threat to kill others), mitigation would only be supported under extraordinarily rare circumstances (e.g., severe psychotic or manic episode) which would necessitate documentation that clearly demonstrates the applicant's inability to distinguish right from wrong and act in accordance with the right, to which there is no such documentation available at this time. Given the absence of information that led to the applicant's discharge, support for BH mitigation is unclear at this time.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board concurred with the advising official finding without an understanding of the circumstances that led to the applicant's discharge, a nexus between his BH conditions and misconduct cannot be established. Furthermore, the opine noted due to the seriousness of some of the misconduct that was documented in the applicant's medical record (e.g., domestic violence and a threat to kill others), mitigation would only be supported under extraordinarily rare circumstances.
2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of domestic violence and making threatening commits of killing other people. The Board found the applicant's record is void of documentation showing the facts and circumstances regarding his administrative separation. Evidence in the records show the applicant was administered a permanent profile for physical health reasons though none of the profiles reviewed from 2009-2010 documented any duty limitations for psychiatric reasons. The Board noted that the applicant's provider details a pre-military history of behavioral health problems, to include a history of misconduct and psychiatric hospitalizations (to include at age 6 years old). , Additionally, the Board determined the provider who diagnosed the applicant with Bipolar Disorder opined that the applicant's condition existed prior to service and was not aggravated by service as evidenced by the applicant's reported mental health history prior to service.

3. The Board found the applicant did not provide post service achievements or character letters of support for the Board to weigh a clemency determination. The applicant was discharged for misconduct and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Therefore, the Board denied relief.

4. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

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

REFERENCES:

1. Title 10, USC, Section 1552(b), provides that applications for correction of military records must be filed within three years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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.
4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC 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.

6. 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; TBI; 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.

7. 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//