

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 June 2024

DOCKET NUMBER: AR20230013466

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (general) discharge
- amend item 26 (Separation Code) to a medical code
- amend item 28 (Narrative Reason for Separation) to reflect a head injury resulting in traumatic brain injury (TBI)
- compensation from the time of the head injury for missed time and rank
- reinstatement into the Army at or above the rank/grade of private first class (PFC)/E-3
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Two DD Forms 689 (Individual Sick Slip)
- Department of Veterans Affairs (VA) Correspondence
- VA Benefits Letter
- Honor Graduate Letter
- Two Officer Candidate School Recommendation Letters
- Two Certificates of Achievement
- CPA Examination Qualification

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 assaulted with a metal case while following an order to recover stolen weapons, which resulted in a head injury that caused a TBI. The incident led to his military career ending. Instead of being treated for TBI, he was discharged for misconduct due to an Article 15 for driving against a doctor's recommendation.

3. The applicant provides:

a. Two sick call slips that show he was seen on two different occasions for a head injury and pain in his body, due to receiving the anthrax vaccine and placed on quarters for 24 hours.

b. VA Correspondence from 18 January 2019, that states he is a patient at the Fort Worth VA clinic and has a history of severe TBI during military duty, and that his confusion, poor speech, body tremors, poor balance, and depression are a result of the TBI.

c. VA Benefits Letter that details his military service information and VA disability benefits.

d. Honor Graduate Letter, dated 10 March 1998, that commends the applicant for his outstanding academic achievement in completing the Finance Specialist Course #10-98 as an Honor Graduate.

e. Two Officer Candidate School Recommendation Letters:

(1) One letter from a former Detachment Sergeant and Disbursing Noncommissioned Officer in Charge (NCOIC), highlights the duties performed by the applicant, as having served diligently as an accounting specialist in one to two grades higher than his peers.

(2) Another letter from the Dallas-Fort Worth Chapter Commander of the National Association for Black Veterans, that details how the applicant immediately showed up to the organization with an abundance of energy and drive, ready to help improve membership, raise funds, and make a contribution in support of the homeless, minority, and disadvantaged veterans and their families.

f. Two Certificates of Achievement:

(1) On 22 April 1999 he was awarded the Certificate of Achievement for achieving a score of 295 on the Army Physical [Fitness] Test.

(2) On 25 February 1998, he was awarded the Certificate of Achievement for his outstanding performance during the 369th Adjutant General Battalion's Black History Month Program.

g. CPA Examination Qualification from the Texas State Board of Public Accountancy that shows his application of intent was approved, effective 25 October 2012.

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

a. He enlisted in the Regular Army on 4 November 1997.

b. Standard Form 93 (Report of Medical History) conducted on 16 August 1999, in which the applicant stated that he was in "good health" and that he had never suffered from any of the symptoms in item 11 of the form.

c. On 16 August 1999, a Report of Medical Examination was conducted, in which it is documented in the "Clinical Evaluation" portion of the form that all items were considered "normal."

d. DA Form 3822-R (Report of Mental Status Evaluation) was completed on 13 August 1999, and found the applicant's behavior to be normal, fully alert, fully oriented, with an unremarkable mood, a clear thinking process, normal thought content, and a good memory. It was also found that he had the mental capacity to understand and participate in the proceedings, was mentally responsible, and meets the retention requirements of Chapter 3, Army Regulation 40-501 (Standards of Military Fitness).

e. On 9 September 1999, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him in accordance with Chapter 14-12c, of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) for commission of a serious offense. The specific reason for this proposed action: He offered violence to a superior commissioned officer and disrespecting a superior noncommissioned officer through language and deportment. The commander advised the applicant of his rights and recommended a general, under honorable conditions discharge.

c. The applicant acknowledged receipt of the commander's notification and he subsequently consulted with legal counsel. He was advised of the basis for the contemplated separation action for commission of a serious offense, the type of discharge he could receive, and its effect on further enlistment or reenlistment, the possible effects of this discharge, and of the procedures/rights that were available to him. He elected to submit a statement on his own behalf.

d. After this acknowledgement, his immediate commander initiated separation action against him in accordance with Army Regulation 635-200 by reason of commission of a serious offense. On 10 September 1999, the intermediate commander recommended approval of the discharge action with the issuance of an honorable discharge.

e. On 10 September 1999, the separation authority approved the applicant's discharge under the provisions of Chapter 14 of Army Regulation 635-200 by reason of

commission of a serious offense with the issuance of a general, under honorable conditions discharge.

f. DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), dated 17 September 1999, shows the applicant accepted nonjudicial punishment, under the provisions of Article 15 of the UCMJ. His punishment included reduction to private/E-1. The offenses are not available for review.

g. On 30 September 1999, he was discharged under the provisions of Chapter 14-12c of Army Regulation 635-200. His DD Form 214 shows he held the rank of private/E-1 at the time of separation. He completed 1 year, 10 months, and 27 days of active service. His DD Form 214 shows in:

- Block 24 (Character of Service): Under Honorable Conditions (General)
- Block 25 (Separation Authority): AR 635-200, Paragraph 14-12c
- Block 26 (Separation Code): JKQ
- Block 28 (Narrative Reason for Separation): Misconduct

5. There is no evidence the applicant 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 635-5):

a. The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

b. For block 24 (Character of Service) the correct entry is vital as it affects a soldiers' eligibility for post-service benefits. Characterization or description of service is determined by directives authorizing separation. The entry must be one of the following: honorable, under honorable conditions (General), under other than honorable conditions, bad conduct, dishonorable, or uncharacterized.

c. For block 26 (Separation Code) obtain the correct entry from AR 635-5-1, which provides the corresponding separation program designator code for the regulatory authority and reason for separation.

d. For block 28 (Narrative Reason for Separation) of the DD Form 214 will show the narrative reason for separation as shown in AR 635-5-1 (Separation Program Designators) based on the regulatory or other authority.

7. AR 635-5-1 (Separation Program Designator Codes), prescribes the rules for separation program designator code control and usage. It shows for: Misconduct (Serious Offense): JKQ, AR 635-200.

8. Also by regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as commission of a serious offense, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

9. 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.

10. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge. He also requests a medical discharge. He contends he experienced a traumatic brain injury (TBI) and PTSD that mitigates his misconduct. 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 4 November 1997; 2) On 9 September 1999, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him with Chapter 14-12c, for commission of a serious offense. The specific reason for this proposed action: He offered violence to a superior commissioned officer and disrespecting a superior noncommissioned officer through language and deportment; 3) The applicant was discharged on 30 September 1999, Chapter 14-12c, Misconduct. His service was characterized as Under Honorable Conditions (General).

b. The Army Review Boards Agency (ARBA) Behavioral Health 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. The applicant also provided hardcopy military and VA medical documentation, which were also reviewed.

c. The applicant asserts he experienced a TBI and resultant PTSD, which mitigate his misconduct. He reported being assaulted with a metal case, which caused a TBI and resulted in PTSD. The only available evidence the applicant incurred a TBI while on active service in his military medical records was evident on an undated sick call slip. The applicant was seen by a Physician Assistant and diagnosed with a head injury and placed on quarters for 24 hours. There is insufficient evidence the applicant ever reported or was diagnosed with a mental health condition including PTSD while on active service. On 13 August 1999, the applicant completed a Mental Status Evaluation as part of his Chapter proceedings. He was not diagnosed with a mental health condition, and he was psychiatrically cleared for any administrative action deemed

appropriate by command. The applicant had a Report of Medical History completed as part of his Chapter proceedings on 16 August 1999. The applicant did not report or was diagnosed with a head injury. In addition, he again did not report any mental health symptoms or a history of behavioral health treatment.

d. A review of JLV provided evidence the applicant began to engage with the VA in 2017 with a Compensation and Pension (C&P) Evaluation. He reported being in a physical altercation on 27 August 1999, which involved him being hit in the head with a metal case of a weapon. Evidence available during this C&P evaluation cited was an ER medical record that a 20lb metal box fell on the applicant's head on 27 August 1999. He lost consciousness only for 5-10 seconds, but his neurological examination was normal. He did experience a headache and short-term dizziness, but he did not report impairment of memory, concentration, or any cognitive impairment. The results of this C&P evaluation were the applicant was found to potentially have residual headaches related to this event on 27 August 1999, and he was awarded service-connected disability for TBI at 10%. The applicant has received treatment for his headaches/TBI at the VA since 2017. The applicant has received behavioral health treatment for Major Depression and PTSD. However, he has not been diagnosed with a service-connected mental health condition including PTSD. He did provide a letter from a physician on 18 January 2019 that the applicant was experiencing physical and mental health problems related to his TBI, but his JLV medical records did not support this physician's assertion. Also, applicant has noted inconsistencies between his military records and his report of his military service in his VA medical records.

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. In addition, there is insufficient evidence the applicant was ever found to not meet medical retention standards in regard to a TBI or mental health condition including PTSD. Therefore, there is insufficient evidence to warrant a referral to IDES at this time.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, the applicant asserts he experienced a TBI and resultant PTSD while on active service that mitigates his misconduct. The applicant has been diagnosed with a service connected TBI (10%) by the VA, and there is some evidence he experienced a head injury at some point while on active service. However, the applicant reported being hit in the head with a metal case. This is consistent with his report during his C&P evaluation in 2017. However, this event was consistently reported to have occurred on 27 August 1999. The applicant was already undergoing Chapter proceedings for misconduct related to his behavior of "offered violence to a superior commissioned officer and disrespecting a superior noncommissioned officer through language and

deportment” by this time. Therefore, the TBI and the resultant PTSD the applicant is referring to would be unrelated to his misconduct and not be mitigatable. In addition, there is insufficient evidence the applicant’s case warrants a referral to IDDES at this time as he was not diagnosed with a mental health condition or TBI which was found to not meet medical retention standards at any point in his military career. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board’s consideration.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

#### 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, the frequency and nature of his misconduct and the reason for his separation. The Board considered the applicant's TBI and PTSD claim and the review and conclusions of the ARBA Behavioral Health Advisor. The Board found the evidence of post-service achievements provided by the applicant insufficient to support clemency. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official that his misconduct is not mitigated by TBI/PTSD and there is no evidence of a condition that would have been a basis for referring him to the Disability Evaluation System. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation and the reason for his separation and related codes were not in error or unjust. The Board further determined there is no basis for relief related to his requests for compensation or reinstatement in the Army.

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.

12/19/2024

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. Army Regulation 635-5 (Separation Documents) states:

a. The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or



discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

b. For block 4 (Grade, Rate or Rank) enter active duty grade or rank and pay grade at time of separation from ERB/ORB.

c. For block 24 (Character of Service) the correct entry is vital as it affects a soldiers' eligibility for post-service benefits. Characterization or description of service is determined by directives authorizing separation. The entry must be one of the following: honorable, under honorable conditions (general), under other than honorable conditions, bad conduct, dishonorable, or uncharacterized.

d. For block 26 (Separation Code) obtain the correct entry from AR 635-5-1, which provides the corresponding separation program designator code for the regulatory authority and reason for separation.

e. For block 28 (Narrative Reason for Separation) of the DD Form 214 will show the narrative reason for separation as shown in AR 635-5-1 (Separation Program Designators) based on the regulatory or other authority.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. Table 2-2 identified the SPD code:

- JKQ - Misconduct (serious offense), AR 635-200, paragraph 14-12c

4. Army Regulation 27-10 (Military Justice) prescribes the policies and procedures pertaining to the administration of military justice. When a person is reduced in grade as a result of an unsuspended reduction, his or her date of rank in the grade to which reduced is the date the punishment of reduction was imposed. If, however, a reduction is set aside and all rights, privileges, and property are restored, the member concerned will be entitled to pay as though the reduction had never been imposed.

5. AR 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. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

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//