

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 July 2024

DOCKET NUMBER: AR20230013816

APPLICANT REQUESTS: reconsideration of his previous request for correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 1 January 2017, to show the following:

- an upgrade of his under general, under honorable conditions discharge
- as a new request, a change of his narrative reason for separation correction and the corresponding separation program designator (SPD) code
- and a personal appearance before the Board

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214 effective 1 January 2017

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20230002256 on 23 August 2023.

2. The applicant states the issues that impacted his service and discharge status are related to his undiagnosed major depressive disorder. He is currently rated 100% disability, service-connected by the Department of Veterans Affairs (VA). During his service he states he was very uncomfortable interacting with people outside of his family and extended family.

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

a. On 17 May 2008, the applicant was appointed as a Reserve commissioned officer and executed an oath of office on the same day. He was subsequently appointed as a Medical Operations Officer in the California Army National Guard (CAARNG) on 19 June 2008.

b. He was ordered to active duty for training (ADT) on 14 October 2008. His DD Form 214 shows he was honorably released from active-duty training on 19 December 2008. His DD Form 214 shows he completed 2 months and 6 days of active service with no lost time.

c. On 25 July 2009, he was ordered to active duty in support of Operation Enduring Freedom - Kosovo Force. He was honorably released from active duty, by reason of completion of required active service, on 24 November 2009. His DD Form 214 shows he completed 4 months of active service with no lost time.

d. Orders 105-1029, dated 15 April 2010, ordered the applicant to full-time National Guard duty (FTNGD) in an Active Guard/Reserve (AGR) status.

e. An investigation was initiated on 11 February 2016. The investigating officer determined, by a preponderance of the evidence, the applicant and specialist (SPC) H engaged in an overt and extensive prohibited personal relationship. The applicant exhibited favoritism towards SPC H in the workplace. The applicant engaged in a prohibited relationship with sergeant (SGT) L. However, the evidence did not substantiate the applicant's actions with respect to SGT L as reprisal. As an officer and company commander, the applicant bore most of the responsibility.

f. On 1 June 2016, the applicant received a General Officer Memorandum of Reprimand (GOMOR) for engaging in a prohibited relationship with a junior enlisted Soldier under his command. Additionally, engaged in a dating type relationship with a junior enlisted female over a period of many months, to the clear detriment of the command and all involved. The evidence strongly suggested the junior Soldier moved into his home and were likely still living together as a couple. The investigation further established the adverse impact of his decision to engage in a prohibited relationship on the command and the favoritism he displayed to the female Soldier who worked directly under his supervision. The applicant acknowledged receipt and elected to submit written matters.

g. On 29 July 2016, the applicant provided a rebuttal admitting he made mistakes and he learned from his mistakes. Additionally, he felt he had an opportunity to articulate why some of the allegations were false or exaggerated. He admitted that he had romantic feelings for SPC H but did not engage in a romantic relationship at any time nor did he engage in any dating, sexual contact, or other forms of physical intimacy. They did not live together, nor had they ever lived together. He elected not to pursue a romantic relationship with her while they both remained in the service. He chose not to engage in a romantic relationship because he understood the rules of the military. However, he could not see the extent to which they were close and the perception it created. Furthermore, he sees how the extent to which he took an interest in her well-being and development was greater than it would have been had he not had

romantic feelings for her. He also recognized that his behavior created the impression that a romantic relationship had ensued. He also believes, in retrospect, he was too friendly with his Soldiers and did not maintain the proper professional distance to be an effective leader. The investigation contained some inaccuracies, detailed in his rebuttal. In closing he requested the command not remove him from the AGR program and the letter of reprimand be filed in his local file.

h. On 3 August 2016, after thoroughly reviewing all matters submitted in response to the memorandum of reprimand and after careful consideration, the imposing general officer directed the GOMOR and all related documents, be permanently filed in the applicant's official military personnel file (OMPF).

i. The available service record is void of the specific facts and circumstances surrounding the applicant's discharge processing.

j. On 1 January 2017, he was released from active duty with a general, under honorable conditions discharge. His DD Form 214 shows he completed 6 years, 8 months, and 17 days of active service with no lost time. He was assigned separation code LND and the narrative reason for separation listed as "Miscellaneous/General Reasons." It also shows he was awarded or authorized:

- Army Commendation Medal
- U.S. Air Force Commendation Medal
- Army Achievement Medal (5th award)
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Armed Forces Reserve Medal with "M" device
- Kosovo Campaign Medal with bronze service star
- North Atlantic Treaty Organization (NATO) Medal

k. A DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) shows on 21 April 2020 a PEB convened and found the applicant physically unfit. The PEB recommended a rating of 40% and that the applicant's disposition be permanent disability retirement. His two disabling conditions were listed as left shoulder impingement syndrome (VASRD Code 5010-5201) with a rating of 20% and diabetes mellitus, type 2 (VASRD Code 7913) with a rating of 20%. The onset of symptoms occurred in 2016 while on AGR orders for greater than 30 days.

l. On 3 June 2020, the applicant was transferred to the Retired Reserves, by reason of placement on the permanent disability retired list (PDRL). His NGB Form 22 (National Guard Report of Separation and Record of Service) shows he completed 13 years, 11

months, and 15 days of net service. Block 23 (Authority and Reason) lists Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation).

4. On 23 August 2023, the ABCMR rendered a decision in Docket Number AR20230002256. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the medical opinion finding no evidence in the record that the applicant was diagnosed with PTSD. Given the evidence, the medical opine determined there is insufficient evidence to support an upgrade of his current discharge characterization or narrative reason for separation. Additionally, a review of the medical records found sufficient evidence that the applicant had an experience or condition during his time in service. However, the condition did not mitigate his misconduct. 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. The Board agreed the narrative reason and separation code was not in error or unjust. Therefore, the Board denied relief.

5. By regulation (AR 600-8-24), when an officer's tour of active duty is terminated due to discharge, release from active duty (REFRAD), or resignation, the period of service will be characterized as honorable, under honorable (general), under other than honorable (UOTH), dishonorable, or dismissal depending on the circumstances. The characterization of service will be predicated on the officer's behavior and performance while a member of the Army. Characterization will be based on a pattern of behavior and duty performance rather than an isolated incident.

6. By regulation (AR 635-8), 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. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

7. By regulation (AR 635-5-1), 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.

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

## 9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous petition to the Board for an upgrade of his under honorable conditions characterization of service and a new request to change his narrative reason for separation and the corresponding separation program designator code. The applicant's previous consideration and proceedings from the ABCMR are summarized in Docket Number AR20230002256 on 23 August 2023. He contends he experienced Other Mental Health Issues 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 was appointed as a Reserve commissioned officer on 17 May 2008, 2) an investigation was initiated on 11 February 2016. It was determined that the applicant engaged in a prohibited personal relationship with a specialist (E-4) and the evidence strongly suggested they lived together, 3) on 01 June 2016 the applicant received a General Officer Memorandum of Reprimand (GOMOR) for engaging in a prohibited relationship with a junior enlisted Soldier under his command and engaging in a dating type relationship with a junior enlisted female over a period of many months to the clear detriment of the command and all involved, 4) the available service record is void of the specific facts and circumstances surrounding the applicant's discharge processing, 5) on 01 January 2017 the applicant was released from active duty with a general, under honorable conditions discharge with his narrative reason for separation listed as "Miscellaneous/General Reasons," 6) the applicant was found physically unfit by a Physical Evaluation Board on 21 April 2020 for diabetes mellitus, type 2 and left shoulder impingement syndrome. He was transferred to the Retired Reserves on 03 June 2020 by reason of placement on the permanent disability retired list (PDRL), 7) the previous medical opine found that there was evidence that the applicant had an experience or condition during his time in service; however, the condition did not mitigate his misconduct.

b. 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. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant's in-service military treatment records were available for review in JLV from 27 July 2009 through 04 October 2019. The applicant's previous behavioral health history is well documented in the prior advisory. As such, a brief summary of his BH history will be summarized. Review of available profiles do not show that the applicant was on profile or had duty limitations for BH reasons while in-service. Per review of JLV, the applicant was evaluated as part of his security clearance processing on 16 April 2012. It was documented that the applicant did not have any psychiatric conditions at the time of the evaluation though did report experiencing stress and depression during his 2009 deployment which resolved upon his return. The applicant

was evaluated by BH as a walk-in on 18 March 2016 for insomnia and anxiety. Stressors were noted to have started in 2015 after he was directed to move twice within a year, losing a friend to death by suicide, and the 15-6 investigation for inappropriate relations with a Soldier. At the time of the visit, he was diagnosed with Other Problem Related to Employment and was referred for outpatient treatment. During his intake appointment for outpatient therapy on 02 May 2016 the applicant was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood. He was initially prescribed Prozac and Trazodone though later discontinued Prozac and was started on Celexa. He was also prescribed Prazosin for distressed awakenings. The applicant continued treatment until 24 April 2017 as it was documented he felt his treatment goals had been met.

d. A review of JLV shows that the applicant is 100% service-connected through the VA, with 70% service-connection for Major Depressive Disorder (MDD). The Disability Benefits Questionnaire completed on 11 January 2018 demonstrated was diagnosed with Major Depressive Disorder (MDD), Moderate, with Anxious Distress. It was determined that the claimed condition was at least as likely as not (50% or greater probability) incurred in or caused by the claimed in-service injury, event, or illness. There is no indication of ongoing treatment for MDD through the VA. The applicant has not been diagnosed with any other BH conditions through the VA.

e. Consistent with the previous BH Advisor's opine, based on the available information it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence that the applicant had an experience or condition during his time in service. However, the condition did not mitigate his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood while in-service and is 70% service-connected through the VA for MDD.

(2) Did the condition exist or experience occur during military service? Yes. The applicant was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood while in-service and is 70% service-connected through the VA for MDD. Service connection establishes that the condition existed during service.

(3) Does the condition experience actually excuse or mitigate the discharge? No. There is evidence that the applicant met criteria for a BH condition while in-service, Adjustment Disorder with Mixed Anxiety and Depressed Mood, and has been service-connected through the VA for MDD. However, engaging in inappropriate relationships is not consistent with the natural sequelae and trajectory of either Adjustment Disorder with Mixed Anxiety and Depressed Mood nor Major Depressive Disorder. These BH

conditions do not interfere with the ability to distinguish between right and wrong and act in accordance with the right. As such, BH medical mitigation is not supported.

#### 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, available military records and the medical review, the Board concurred with the advising official finding sufficient evidence that the applicant had an experience or condition during his time in service. However, the condition did not mitigate the applicant's misconduct. The opine noted that, engaging in inappropriate relationships is not consistent with the natural sequelae and trajectory of either Adjustment Disorder with Mixed Anxiety and Depressed Mood nor Major Depressive Disorder.

2. The Board found insufficient evidence of in-service mitigating factors to overcome the misconduct of inappropriate relationships with junior enlisted Soldiers. The Board determined based on a preponderance of evidence, the narrative reason for separation and separation program designator (SPD) code was not in error or unjust. The applicant provided no character letters of support for the Board to weigh a clemency determination nor post service achievements. The Board noted, the applicant was released from active-duty and provided an under honorable conditions (general) character 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. The Board found reversal of the previous Board decision is without merit and denied relief.

3. 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 Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20230002256 on 23 August 2023.

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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. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.
  - a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent



evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

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

2. Army Regulations 600-8-24 (Officer Transfers and Discharges) provides that when an officer's tour of active duty is terminated due to discharge, release from active duty (REFRAD), or resignation, the period of service will be characterized as honorable, under honorable (general), under other than honorable (UOTHC), dishonorable, or dismissal depending on the circumstances. The characterization of service will be predicated on the officer's behavior and performance while a member of the Army. Characterization will be based on a pattern of behavior and duty performance rather than an isolated incident.

a. Paragraph 1-22(a) states an officer will normally receive an Honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearance for reasons that do not involve acts of misconduct, for an officer.

b. Paragraph 1-22(b) states an officer will normally receive an Under Honorable Conditions characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an Honorable discharge. A separation under honorable conditions will normally be appropriate when an officer:

(1) Submits an unqualified resignation or a request for REFRAD under circumstances involving misconduct.

(2) Is separated based on misconduct, including misconduct for which punishment was imposed, which renders the officer unsuitable for further service unless an under other than honorable conditions separation is appropriate.

3. Army Regulation 635-5-1 (Separation Program Designator Codes), in effect at the time, prescribes the specific authorities (statutory or other directives), reasons for separating soldiers from active duty, and the SPD codes to be entered on 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. Paragraph 2-4 provides that RE codes are determined by the separation authority and reason for separation, not the character of separation. Officers do not have RE codes and reentry/future appointments are determined by Human Resources Command during the reappointment process.

c. Table 2-2 (SPD codes applicable for officer personnel) shows SPD Code "LND" as the applicable code for involuntary separations under the provisions of Army Regulations 600-8-24, paragraph 4-2a (12), (13), or (14) by reason of miscellaneous/general reasons.

4. Army Regulation 635-5 (Separation Processing and Documents) states 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. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

5. National Guard Regulation 600-5 (The Active Guard Reserve (AGR) Program Title 32, Full Time National Guard Duty (FTNGD) Management), prescribes procedures for selecting, assigning, using, managing, and administering Army National Guard of the United States personnel serving on FTNGD in an AGR status.

a. Paragraph 6-5 relates to the involuntary release from FTNGD status. The regulation provides that single acts of misconduct including but not limited to those involving violence, hostile work environment, integrity, or moral turpitude may warrant initiating release without prior corrective action or rehabilitation.

b. Paragraph 6-6 provides that in addition to REFRAD, the command may initiate discharge from the ARNG for same underlying basis in accordance with applicable regulations.

6. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised 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.

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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which 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.

9. Section 1556 of Title 10, U.S. 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//