

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 August 2024

DOCKET NUMBER: AR20230013885

APPLICANT REQUESTS: upgrade of his under honorable conditions (general) discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Service Documents
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 served in Iraq from 15 February 2007 until October 2007. While deployed in Iraq, he requested to see the Combat Stress Clinic and the Unit Chaplain due to what he was experiencing, and he was discharged upon return because of the treatment that he requested. He should not have been punished due to requesting mental health treatment while he was deployed.
3. The applicant enlisted in the Regular Army on 19 April 2006. His military occupational specialty was 11B (Infantryman). He served in Iraq for an undetermined period.
4. The applicant accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) on 6 December 2007, for violating a lawful general order by wrongfully duplicating aerial photography of the Forward Operating Base BM Iraq on a personal webpage on or about 12 September 2007. His punishment consisted of reduction to private 2/E-2, forfeiture of \$340.00 pay for one month, restriction and extra duty.

5. The Mental Health Evaluation, dated 20 September 2007 shows a diagnostic finding of adjustment disorder with depression and anxiety. The applicant had the mental capacity to participate in the proceedings and was mentally responsible to distinguish between right and wrong. The recommendation was that his present state of emotional and/or behavioral dysfunction is of such severity that the applicant's ability to perform military duties is significantly impaired. This condition meets the criteria set forth in Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 5-17, for other designated mental condition.

6. DA Form 3349 (Physical Profile), dated 24 September 2007, shows the applicant was placed on a temporary physical profile for adjustment disorder.

7. Orders 270-01, dated 27 September 2007, issued by the Warrior Transition Battalion, Womack Army Medical Center, Fort Bragg, NC shows the applicant would proceed to a unit for continuing medical care.

8. The applicant was counseled on 3 December 2007 and 9 January 2008 for mental health evaluation and separation under AR 635-200, Chapter 5-17.

9. The applicant's immediate commander notified the applicant on 15 January 2008 that he was initiating action to separate the applicant from service based on his diagnosis of a designated mental condition, by a physician trained in psychiatry and psychiatric diagnosis. The condition was described as an adjustment disorder with depression and anxiety. The severity of his condition greatly impairs his ability to function in a military environment. The commander recommended a under honorable conditions (general) discharge.

10. The applicant waived his right to consult with a qualified representative from the Trial Defense Service office and elected to continue immediately with the proceedings.

11. The applicant was qualified for separation and his DD Form 2807 (Report of Medical History), shows:

- item 8 (Current Medications) illegible, Buspar, Remeron, Valium
- item 29 (Explanation) the applicant states he attempted suicide in 2007 (overdose) due to family issues
- item 30 (Examiners Summary Comments) shows meds, a concussion Iraq 2007, medical issues-traumatic brain injury (TBI) evaluated by Neurology, anxiety disorder with depressed mood and alcohol abuse

12. The applicant's commander formally recommended the applicant's separation from service under the provisions of AR 635-200, Chapter 5-17.

13. The applicant's chain of command recommended approval of the discharge, and that he not be transferred to the Individual Ready Reserve.

14. The Legal Review memorandum, dated 28 January 2008 shows the type of discharge approved was within the scope of the separation authority.

15. The separation authority approved the recommended discharge on 28 January 2008, and directed the issuance of a under honorable conditions (general) discharge.

16. The applicant was discharged on 19 February 2008. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Paragraph 5-17, by reason of condition, not a disability. His service was characterized as under honorable conditions (general). He completed 1 year, 10 months, and 1 day of net active service. He was awarded or authorized the: National Defense Service Medal, Global War on Terrorism Service Medal, Army Service Ribbon, and Parachutist Badge.

17. The applicant provides a copy of his DD Form 214 and service documents as discussed above.

18. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

19. MEDICAL REVIEW:

1. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service. On his applicant he indicated that Other Mental Health Issues were related to his discharge. The applicant asserts that when he was deployed to Iraq he requested to see the Combat Stress Clinic and Unit Chaplain and was discharged due to the treatment he requested. 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 19 April 2006 as an 11B (infantryman). He served in Iraq for an undetermined period of time, 2) he received an Article 15 on 06 December 2007 for violating a lawful general order by wrongfully duplicating aerial photograph of the Forward Operating Base BM Iraq on a personal webpage on or about 12 September 2007, 3) on 15 January 2008 the applicant was notified his commander was initiating action to separate him based on his diagnosis of Adjustment Disorder with Depression and Anxiety. The applicant was discharged on 19 February 2008 under the provisions of Army Regulation (AR) 635-200, Paragraph 5-17, by reason of condition, not a disability, with a separation code of JFV.

2. The Army Review Boards 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.

3. The applicant's in-service medical records were available for review from 21 April 2006 through 27 February 2008. Regarding his treatment history, his first BH encounters show the applicant was psychiatrically hospitalized from 09-16 September at Landstuhl Army Medical Center (LRMC) following evacuation from theater following a suicide attempt via overdose (50 Tylenol). His LRMC discharge summary dated 03 October 2007 documented his discharge diagnoses as Major Depressive Disorder (MDD), Single Episode, Severe, without mention of Psychotic Behavior and Personal History of Poisoning, presenting hazards to health though his principal diagnoses were listed as MDD and Adjustment Disorder with Depressed Mood. Available BH clinical documentation from his inpatient treatment dated 10 and 12 September 2007 diagnosed with applicant with Marital Problem. Of note, the applicant's inpatient records show he was diagnosed with MDD by an occupational therapy (OT) technician and therefore it is unclear if this diagnosis was rendered by BH as he was not diagnosed with this condition by a BH provider in the available records except by OT and the discharge summary. He was evaluated upon his return to his home duty station on 21 September 2007 and documented that the applicant's reason for suicide attempt was interpersonal problems with his unit members and marital discord. More specifically, the applicant reported that he felt he had been emotionally and physically abused by his Platoon via 'corrective PT and being smoked.' Furthermore, the applicant felt he was being punished for speaking with the Chaplain about his marital problems, unit problems, and the combat situations he had encountered. At the time of the visit, he reported the following symptoms: sadness, anger, irritability, anxiety, loneliness, headaches, fatigue, sleep disturbance, decreased appetite with weight loss of about 32 pounds during the last 5 months of deployment, increased use of tobacco, hopelessness, homicidal ideation towards his unit if he were to return to them, and emotional instability. The applicant was diagnosed with Marital Problem, Adjustment Disorder with Disturbance of Emotions and Conduct, and Psychiatric Diagnosis Deferred on Axis II (Cluster B Traits, Rule Out Borderline Personality Disorder). His records show he was issued a temporary BH profile for Adjustment Disorder on 24 September 2007. At his follow-up psychiatry appointment on 12 October 2007, the provider documented that his symptoms started after returning home on rest and recuperation (R&R) and finding about his wife's infidelity. It was also noted that he reported experiencing problems at work and marital problems, and that he endorsed experiencing frequent nightmares related to combat. Alcohol Abuse was added as a diagnosis, and it was recommended he self-refer to the Army Substance Abuse Program (ASAP) due to increased alcohol use. At the time of follow-up on 22 October 2007, the applicant endorsed feeling afraid of people from his platoon and that they wanted to hurt him. More specifically, the applicant endorsed feeling mistreated by his unit and said while deployed he found scorpions in his room, that his firing pin had been

taken out of his weapon, and he had been sent to clear houses on his own. The provider documented this as paranoid ideation but that the applicant did not have delusions or psychosis. The applicant essentially asserted that he chose to attempt suicide in theater as he preferred to kill himself rather than have someone else do it for him. At the time of the visit the applicant endorsed improvement in sleep with medication though reported experiencing nightmares 4 times per week. The provider documented that the applicant likely had a personality disorder with narcissistic traits though was not diagnosed. The provider recommended the applicant for a Chapter 5-17 separation. On 28 November 2007, Bereavement due to the death of his mother was added to this problem list following her unexpected death on 06 November 2007. The provider also documented that the applicant felt he would do well in another unit or separated from the military due to not trusting his current battalion. His final in-service BH note was dated 14 January 2008 with no changes to his diagnoses (Adjustment Disorder with Disturbance of Emotions and Conduct, Marital Problem, and no diagnosis on Axis II with a note of Cluster B Traits, Rule Out Borderline Personality Disorder). In-service records show he was prescribed Remeron (antidepressant) Hydroxyzine for anxiety, and BuSpar (anxiety). Regarding pre-military BH history, it was documented in the records that the applicant reported a history of childhood sexual abuse and witnessing his friend's murder. He reported he was previously prescribed Clonazepam and Seroquel though was not diagnosed with any conditions. He also reported prior suicide attempt in 2003 via alcohol and Vicodin following the death of his son.

4. A memorandum dated 20 September 2007 completed by an inpatient psychiatrist at the applicant's home duty station and prepared for the applicant's commander documented the applicant's report of mental status and diagnostic findings. The provider diagnosed the applicant with Adjustment Disorder with Depression and Anxiety, and it was also noted that he had elevated liver function tests (LFT). The provider documented that the applicant had the mental capacity to participate in the proceedings, was mentally responsible, and was able to distinguish between right and wrong. The provider documented that the applicant's condition met criteria set forth in AR 635-200, Chapter 5-17 for administrative separation. The provider further documented that the Soldier's condition would likely not respond to additional efforts at rehabilitation in the foreseeable future and command was advised to take the action that was in the best interest of the Soldier as well as the unit.

5. An in-service Report of Medical History dated 30 March 2006 for the purposes of enlistment documented no history of BH concerns and psychiatric was documented as 'normal' on clinical evaluation. A Report of Medical Examination for the purposes of separation dated 27 February 2008 documented the following BH-related conditions: post-concussive syndrome, traumatic brain injury, anxiety disorder, and alcohol abuse with a recommendation to follow-up with his primary care manager (PCM), neurology, and the VA. His records show a history of Anxiety Disorder Not Otherwise Specified

(NOS) which was diagnosed at the time of his termination physical by a non-behavioral health provider.

6. A review of JLV shows the applicant is 90% service-connected through the VA, 50% for Anxiety Disorder. The applicant underwent a Compensation and Pension (C&P) examination on 08 February 2022. He was diagnosed with Anxiety Disorder NOS, Depressive Disorder, Recurrent, Moderate, Alcohol Use Disorder, in Early Remission, and Cannabis Use Disorder. The associated medical opinion dated 08 February 2022 documented that although the applicant had a pre-military history of mental instability that he was symptom free at the time of entry into the military and demonstrated adequate functioning until he became unstable and was psychiatrically hospitalized. The applicant's alcohol and cannabis use were also documented as coping behaviors that 're-emerged' during service and worsened, especially after separation. Furthermore, the provider opined that there is insufficient evidence to indicate whether his in-service symptoms were a 're-igniting' of pre-existing BH problems or a progression.

7. Regarding his VA BH treatment history, the applicant's diagnoses include Substance Abuse, Posttraumatic Stress Disorder (PTSD), Mood Disorder NOS, Depressive Disorder, Substance Abuse, Alcohol Dependence, uncomplicated. The applicant initiated BH treatment through the VA on 04 June 2008 when he presented to the emergency room for suicidal behavior. It was documented that he was reporting having nightmares about Iraq and put a loaded gun in his mouth. The applicant was psychiatrically hospitalized at the time of the visit and was diagnosed with PTSD, Adjustment Disorder, Suicidal ideation with Psychotic Features, Acute and Chronic Alcohol, Polysubstance Abuse, Axis II was deferred though noted a rule out of Borderline Personality Disorder. A TBI evaluation on 06 June 2008 documented the applicant did not have a TBI due to service. Review of the applicant's VA records shows that he was psychiatrically hospitalized again in July 2008 and 2009. He did not have any BH records from July 2009 through October 2021 (aside from social work case management in 2010). In October 2021 he was psychiatrically hospitalized again after drinking alcohol and making suicidal comments. The applicant was referred for treatment of alcohol use disorder via an Intensive Outpatient Program (IOP). He continued to follow-up with psychiatry on approximately a monthly basis with his last follow-up documented as 02 July 2024.

8. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service. He contends Other Mental Health Issues that are related to his request. The applicant was discharged under the provisions of AR 635-200, Chapter 5-17 for Adjustment Disorder with Depression and Anxiety. Review of in-service records shows that the applicant was diagnosed with Adjustment Disorder with Anxiety and Depressed Mood, Adjustment Disorder with Mixed Emotions and Conduct, Alcohol Abuse, and Major Depressive Disorder, Single

Episode, Severe. Post-discharge, the applicant was diagnosed and 50% service-connected for Anxiety Disorder through the VA. At the time of his C&P examination, he was also diagnosed with Depressive Disorder, Recurrent, Moderate, Alcohol Use Disorder, in Early Remission, and Cannabis Use Disorder. For the purposes of treatment, the applicant has been diagnosed with the following BH conditions through the VA: Substance Abuse, PTSD, Mood Disorder NOS, Depressive Disorder, Substance Abuse, Alcohol Dependence, uncomplicated.

9. 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 Anxiety and Depressed Mood in-service. Records show he was also diagnosed with Major Depressive Disorder, Single Episode. Post-discharge he was 50% service-connected through the VA for Anxiety Disorder NOS.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with Adjustment Disorder with Anxiety and Depressed Mood in-service. Records show he was also diagnosed with Major Depressive Disorder, Single Episode. Post-discharge he was 50% service-connected through the VA for Anxiety Disorder NOS.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was discharged under the provisions of AR 635-200, Chapter 5-17 due to a diagnosis of Adjustment Disorder with Anxiety and Depressed Mood. Per AR 635-200, Adjustment Disorders that are not chronic (e.g., lasting less than 6 months when separation procedures are initiated) do not require disposition through medical channels and fall under the purview of administrative discharge. Although individuals may be diagnosed with more than one behavioral health condition, if those co-morbid conditions do not fail retention standards IAW AR 40-501, they do not require disposition through medical channels. Had the applicant met criteria for MDD at the time of discharge which was subsequently determined to fail retention standards by his evaluating provider(s), he would have been referred for a medical evaluation board (MEB) IAW AR 40-501, which he was not. Moreover, although the applicant was subsequently diagnosed with several additional BH conditions through the VA to include Anxiety Disorder, NOS, PTSD, and Depressive Disorder, it is of note that VA examinations are based on different standards and parameters as they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating does not imply failure to meet Army retention standards at the time of service or that a different diagnosis rendered on active duty is inaccurate. A subsequent diagnosis through the VA is not indicative of a misdiagnosis or other injustice at the time of service. Furthermore, even an in-service diagnosis of PTSD, MDD or Anxiety Disorder is not automatically unfitting per AR 40-501 and would

not automatically result in medical separation processing. As such, the applicant's discharge appears to be fair and equitable.

10. It is unclear if the applicant's misconduct while deployed influenced the commander's recommendation for the characterization of service as under honorable conditions (general) rather than honorable. As such, it is of note that Adjustment Disorder with Anxiety and Depressed Mood does not interfere with one's ability to distinguish between right and wrong and act in accordance with the right. As such, BH mitigation would not be supported for wrongfully duplicating aerial photograph of the Forward Operating Base BM Iraq on a personal webpage.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct leading to the applicant's separation and the lack of mitigation of that misconduct found in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

2/13/2025

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A solid black rectangular redaction box covering the name of the 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, USC, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.
3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.
 - a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.
 - b. Paragraph 5-17, states commanders who are special court-martial convening authorities may approve separation under this paragraph based on other physical or mental conditions not amounting to disability that potentially interfere with assignment to or performance of duty. A recommendation for separation must be supported by

documentation confirming the existence of the physical or mental condition. Members may be separated for physical or mental conditions not amounting to disability, which is sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired.

4. 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 Service 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 post-traumatic stress disorder (PTSD); traumatic brain injury (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.

5. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and BCM/NRs on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//