

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 July 2024

DOCKET NUMBER: AR20230014412

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge.

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), 31 August 2023
- Self-Authored Statement
- Four Character Statements

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, that since his time in the Army, he has become a different man. He is a father of four and is an active member of his recovery community. He is a contributing and responsible member of society, whereby living a life of accountability to sobriety and God. He accepts full responsibility for his actions and reasons for discharge to include the characterization of service received. During his time in the Army, he struggled with his emotions due to alcoholism and trauma related to post traumatic stress disorder (PTSD) from an incident where another Soldier stabbed him twice with a knife in the back. He further states that he neither received nor sought help for his emotions, but instead found his relief in alcohol abuse. He is asking the Board to upgrade his discharge characterization, so he may qualify for Department of Veterans Affairs benefits.
3. The applicant provides four character statements that summarize, the applicant's growth and responsibility as a member of society since discharge, to include: his active participation within the recovery community; his active participation within the church; and his dedication to his family and friends.

- Mr. M.A.M. Statement, dated, 5 September 2023
- Sergeant (SGT) B.N. Statement, dated, 9 September 2023
- SGT D.A.A. Statement, undated
- SGT D.B. Statement, undated

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

a. Having had prior service in the U.S. Army Reserve, he enlisted in the Regular Army on 31 August 2005.

b. The service record is void of prior documentation of nonjudicial punishment.

c. On 22 June 2006, court-martial charges were preferred on the applicant for six specifications between on or about 29 April 2006 and 30 April 2006:

- two specifications of violating a lawful order
- one specification of without proper authority, through neglect suffer a passenger car, military property of the United States, to be damaged by driving the vehicle into a ditch
- one specification of operating a vehicle under the influence of alcohol
- one specification of wrongfully appropriating a motor vehicle of value more than \$500
- one specification of being drunk and disorderly

d. On 27 June 2006, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations). He acknowledged:

- maximum punishment
- he was guilty of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration,
- he may be deprived of his rights and benefits as a veteran under both Federal and State law
- he may expect to encounter substantial prejudice in civilian life

e. He did not submit a statement to the separation authority on his own behalf.

f. On 7 July 2006, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge in lieu of trial by courts-martial. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted pay grade.

g. On 18 July 2006, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 10 months, and 18 days of active service. He was assigned separation code KFS and the narrative reason for separation listed as "In Lieu of Trial by Court-Martial," with reentry code 4. It also shows he was awarded or authorized:

- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon

5. On 30 December 2023, the Army Review Boards Agency notified the applicant he was required to provide a copy of medical documentation to support his claim of PTSD. The applicant was provided 30 days to submit supporting documentation with a suspense of 30 January 2024. The applicant has not provided a response to date.

6. On 18 September 2008, the Army Discharge Review Board reviewed the applicant's characterization of service and determined that he was properly and equitably discharged. The request for a change in the character and/or reason of discharge was denied.

7. By regulation, an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service/in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

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. Background: The applicant is applying to the ABCMR requesting an upgrade of his Under Other Than Honorable Conditions (UOTHC) characterization of service. The applicant contends his behavior was associated with alcohol abuse secondary to Posttraumatic Stress Disorder (PTSD).

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted in the Regular Army on 31 August 2005. He had previously served in the U.S. Army Reserves.
- On June 22, 2006, court-martial charges were preferred for misconduct that occurred in April 2006 for six specifications to include: violating a lawful order, without proper authority causing property damage by driving a vehicle into a ditch, operating a vehicle under the influence of alcohol, wrongfully appropriating a motor vehicle, and being drunk and disorderly. In consultation with legal, on 27 June 2006 the applicant requested a discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations). He was discharged on 18 July 2006 as UOTHC.
- The applicant was sent a letter by the ARBA on 30 December 2023 requesting a copy of medical documentation to support his claim of PTSD and provided 30 days to submit supporting documentation. The applicant did not provide a response.
- The applicant previously applied for relief on the basis that his command did not have appropriate concern for his well-being as he was not referred to the Army Substance Abuse Program (ASAP) for treatment until his 4th underage drinking offense. On his DD Form 293 from his previous request, the applicant contended that his drinking at the time was due to depression. The Army Discharge Review Board, on 19 September 2008, previously determined that the applicant was properly and equitably discharged. His request for a relief was denied.

c. Review of Available Records Including Medical:

All supporting documents were reviewed. Lack of citation or discussion in this section should not be interpreted as lack of consideration. The VA electronic medical record joint legacy viewer (JLV), ROP and casefiles were reviewed. VA and DoD electronic behavioral health (BH)-related records were available for review through JLV. Civilian and in-service military behavioral health records were not provided by the applicant.

- There were no medical or BH-related records provided for review during the applicant's time in service. There is no documented history, medical or otherwise, available regarding a history of treatment for being stabbed while in the military. There was no documented history of PTSD in the records available for review. The applicant had several post-discharge BH-related encounters through the DoD from 24 August 2006 through 11 May 2007. The following BH conditions/problems were listed on his problem list in JLV through the DoD: Insomnia (24AUG2006), Depression (04JAN2007), Inquiry and Counseling: For

Marital Conflict (06FEB2007), Episodic Mood Disorders (30MAR2007); Inquiry and Counseling: Perpetrator and victim of Spousal/Partner Abuse (02APR2007 & 11MAY2007), and Marital Problem (11MAY2007). The diagnoses were rendered post-discharge and were not documented to be linked to his time in service by the provider(s).

- The applicant was seen in the Family Medicine at the TMC by a Physician's Assistant (PA) approximately three times for BH-related concerns on 24 August, 2006, 04 January 2007 and 30 March 2007. Per review of the records, the applicant self-reported that he was previously prescribed Zoloft and wanted to re-engage with treatment. There is no documentation available in the record that the applicant was treated for depression or prescribed Zoloft in 2005. The PA referred the applicant to behavioral health for insomnia and depression. On 30 March 2007, the PA ordered a sleep-deprived EEG with temporal lobe lead and MRI with contrast, as requested by the applicant's treating psychiatrist. There is no record available in JLV that these tests were completed. At the time of the visit, the applicant was diagnosed with Episodic Mood Disorder and was prescribed Divalproex Sodium and Citalopram Hydrobromide. As the applicant was receiving psychiatry services on the economy, documentation was unavailable for review. There is no documentation in the record asserted by the treating provider as to the onset of these condition(s).
- The applicant attended visits for an Anger Control Group through the Social Work Family Advocacy clinic 08-29 January 2007. During his visit to the Social Work Management clinic on 02 April 2007, the applicant reported he completed court-ordered level 1 alcohol treatment. He attempted to schedule an appointment for marital counseling on 11 May 2007.
- Minimal VA BH-related documentation was available for review in JLV. The applicant is not service connected (SC) through the VA for any BH conditions. He has one BH-related condition on his problem list in JLV through the VA: Major Depressive Disorder, Single Episode, Unspecified (31JAN24). There were two notes available for review from 2008 and several notes from an inpatient stay in January/February 2024.
- The applicant presented to the emergency department (ED) on 09 August 2008 and was psychiatrically hospitalized for suicidal ideation and identified stressors as financial, job, and a recent move. It was documented that he denied a history of CVA, significant head trauma or progressive neurologic disease. His AUDIT-C score was positive for alcohol-related problems at this visit. It was further documented that the applicant began drinking at the age of 13 with the longest period of abstinence from alcohol being 1 month. The applicant informed the treating psychiatrist that he was diagnosed with Bipolar Disorder and prescribed Depakote but that the medications were not working. At this visit he also denied

having any re-experiencing symptoms associated with PTSD. He endorsed a childhood history of sexual abuse. He was provisionally diagnosed with Mood disorder, Anxiety Disorder Not Otherwise Specified and Polysubstance Abuse (mainly alcohol) with rule outs of Bipolar Disorder, Major Depressive Disorder, PTSD from childhood sexual abuse and Antisocial Personality Disorder. At the time of the visit, it was documented that the applicant was interested in counseling for childhood sexual and physical abuse. He was discharged on 10AUG2008. There is no documentation in the record specifying date of onset for the provisional diagnoses and the conditions were not tied to the applicant's service.

- On 30 January 2024, the applicant presented to the ED for depression and suicidal ideation due to a recent relapse following two years of sobriety. The applicant reported to his provider that he was being treated for Bipolar 2 disorder with Wellbutrin which he said was helpful though discontinued care. During his hospital stay, it was documented on 31 January 2024 that he reported having nightmares associated with previous traumas of child abuse and when he was stabbed in the military. At the time of his discharge from the hospital on 02 February 2024 his primary diagnoses were Opioid Use Disorder, Stimulant Use Disorder with a secondary diagnosis Depressive Episode with rule outs of Major Depressive Disorder and Bipolar 2 Disorder.
- The applicant submitted four character statements as part of his petition to the board. The character statements were provided by individuals who met the applicant post-service and do not reference symptoms or treatment associated with PTSD or any other BH-related conditions.

d. Based on the available information, there is insufficient evidence based on the available to indicate that the applicant had a condition or experience during his time in service that mitigated his misconduct. The available records do not show that the applicant has ever been diagnosed with PTSD. The records also do not show that he has ever endorsed symptomatology associated with PTSD aside from his most recent psychiatric hospitalization in January 2024. The onset of these symptoms were not documented nor elaborated on in the records. Although the applicant has been diagnosed with several BH conditions post-discharge, there is no medical documentation available indicating that these conditions were present during his time in service. Therefore, medical mitigation is not supported. However, as he contends his misconduct was related to PTSD, and per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

e. Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes, the applicant asserts he had PTSD due to being stabbed while in the military.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant asserts mitigation due to PTSD at the time of discharge. This assertion alone is worthy of consideration by the Board. Although applicant was diagnosed with several BH conditions post-discharge, there is no documentation available associating the conditions with his time in service or the misconduct. There is no medical documentation or otherwise to support the applicant's assertion of PTSD while in-service. Furthermore, there is no documentation provided that the applicant has ever been diagnosed with PTSD. As such, 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 medical review, the Board concurred with the advising official finding insufficient evidence based on the available to indicate that the applicant had a condition or experience during his time in service that mitigated his misconduct. The opine noted, although the applicant has been diagnosed with several BH conditions post-discharge, there is no medical documentation available indicating that these conditions were present during his time in service

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of operating a vehicle under the influence of alcohol along with various specifications of damaging the military property of the United States, by driving the vehicle into a ditch. Under liberal consideration, the Board carefully reviewed the applicant's post service achievements and character letters of support attesting to the progress and your recovery in turning your life around. However, the Board

determined the applicant's misconduct did not outweigh the severity of the misconduct. Therefore, the Board denied relief.

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.

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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. 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 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service/in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

3. 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 post-traumatic stress disorder (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.

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 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, traumatic brain injury, sexual assault, or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences. The guidance further describes evidence sources and criteria and requires boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

5. 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.

6. 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//