

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 September 2024

DOCKET NUMBER: AR20230014667

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (General) discharge
- correction of his narrative reason for separation
- a personal appearance before the Board

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

- DD Forms 149 (Application for Correction of Military Record), dated 24 November 2023 and 13 January 2024 (two)
- Event Report, Cumberland County Sheriff's Office, dated 15 April 2006
- Incident Report, Cumberland County Sheriff's Office, dated 16 April 2006
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 23 January 2007
- statements of support, dated 8 January 2024 to 17 January 2024 (four)
- letters, Department of Veterans Affairs, dated 18 December 2023 and 16 January 2024 (two)

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 did not engage in patterns of misconduct. His Army Emergency Relief loan was stolen from him by his former spouse, and he never lied to a commissioned officer. He was the victim of a crime. He filed a police report and received the funds back from the credit union. He had a defensive altercation with his former spouse, which he did not handle well due to his post-traumatic stress disorder (PTSD) from Hurricane Katrina. He is not the same person since the deployment. It was a traumatic experience for him.

3. The applicant enlisted in the Regular Army on 4 January 2005, for a 5-year period. Upon completion of initial entry training, he was awarded military occupational specialty 13D (Field Artillery Automation).
4. The applicant was formally counseled on two occasions between 12 June 2006 and 16 October 2006 for failure to report.
5. A DA Form 4856 (Developmental Counseling Form), dated 18 October 2006, shows the applicant's unit was on deployment to the Joint Readiness Training Center, Fort Polk, LA, from 1 October 2006 thru 13 October 2006.
6. The applicant accepted nonjudicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on 18 October 2006, for violating a lawful regulation by failing to report within the required recall standard. His punishment consisted of extra duty for 14 days and restriction for 14 days.
7. The applicant was formally counseled on 1 November 2006 regarding his performance, behavior, and attitude following his arrest and subsequent 13-day confinement for assaulting a female.
8. The applicant accepted nonjudicial punishment, under the provisions of Article 15 of the UCMJ, on 22 November 2006, for making a false official statement to Captain T.M. His punishment consisted of reduction to the grade of private/E-1, forfeiture of \$636.00 pay per month for two months, and 45 days of extra duty.
9. An Incident Report from the Fayetteville Police Department, dated 27 November 2006, shows the applicant was listed as the victim of "forgery – using/uttering." The report further noted, the suspect stole a check from his residence and forged his name to cash the check.
10. The applicant underwent a medical examination on 29 November 2006. A DD Form 2807-1 (Report of Medical History) and the corresponding DD Form 2808 (Report of Medical Examination) show the applicant reported being in good health. He was determined to be medically qualified for service.
11. The applicant underwent a mental status examination on 4 December 2006. The examining provider determined he was mentally responsible and psychiatrically cleared him for any administrative action deemed appropriate by command.
12. A letter from the Defense Finance Accounting Service, dated 6 December 2006, shows the applicant was served with an income withholding order for child and/or spousal support.

13. A Commander's Inquiry was conducted by the applicant's commander after receiving a complaint from the Inspector General regarding non-support for court ordered child support,. The command notified the State to determine the amount owed. [The applicant] was ordered to pay his child support directly to the State via certified check or money order until his command verified the start of his wage withholding. He was ordered to see legal about his owed amount of child support.

14. On 28 December 2006, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12b, for patterns of misconduct, with an under honorable conditions (general) characterization of service.

15. On that same date, the applicant acknowledged receipt of the notification and subsequently consulted with counsel. He was advised of the basis for the contemplated action to separate him and its effect; of the rights available to him; and the effect of waiving his rights. He further acknowledged understanding that he may expect to encounter substantial prejudice in civilian life if he were issued a general discharge. He elected to submit a statement in his own behalf, however, it is not available for review in the applicant's service record.

16. The commander formally recommended the applicant's separation from service, prior to his expiration term of service, under the provisions of Army Regulation 635-200, paragraph 14-12b.

17. On 2 January 2007, the separation authority approved the recommended separation action and directed the issuance of an under honorable conditions (General) discharge.

18. The applicant was discharged on 23 January 2007, under the provisions of Army Regulation 635-200, paragraph 14-12b, by reason of pattern of misconduct. His DD Form 214 shows his characterization of service was under honorable conditions (General), with separation code JKA and reentry code RE-3. He completed 2 years and 8 days of active service, with time lost from 19 October 2006 to 30 October 2006. He was awarded or authorized the following:

- National Defense Service Medal
- Global War on Terrorism Service Medal
- Humanitarian Service Medal
- El Salvadorian Parachutist Badge
- Parachutist Badge

19. The applicant provides:

a. An Event Report, dated 15 April 2006, shows the applicant filed a report with the sheriff's office, stating his wife removed all of the furniture from their residence and took off. A subsequent Incident Report, filed on 16 April 2006, shows he reported a Kenmore Dryer as stolen.

b. In a statement of support, dated 9 January 2024, the applicant's spouse states she has witnessed and shared with him the reoccurring trauma of his deployment to "Hurricane Katrina," which has caused him considerable distress. He has suffered with a number of health problems recently that she believes are due to his military service.

c. In three additional statements of support, dated 8 January 2024 to 17 January 2024, the authors attest to their experiences with the applicant during his time at Northern Illinois University. The applicant exhibited good character. He was a decent, honorable person. He was value-added to classes, demonstrated integrity, and an interest in making an extra effort. Despite his hardships, he was dedicated to the work at hand. In addition to graduate school, and an internship, he often worked a second job to support his family while his wife was in school.

c. Two decision letters from the VA, dated 18 December 2023 and 16 January 2024, show the applicant has a 70 percent (%) disability rating for PTSD with major depressive disorder recurrent moderate, unspecified anxiety disorder, and alcohol-related disorders moderate. His combined rating evaluation is 80%.

20. Regulatory guidance provides when an individual is discharged under the provisions of Chapter 14, by reason of misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge of such is merited by the Soldier's overall record.

21. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

22. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under honorable conditions (general) to honorable and a correction to his narrative reason for separation. He contends he experienced an undiagnosed mental health condition, including PTSD, that mitigates his misconduct.

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 into the Regular Army on 4 January 2004.
- The applicant was formally counseled on two occasions between 12 June 2006 and 16 October 2006 for failure to report. He accepted NJP on 18 October 2006 for violating a lawful regulation by failing to report within the required recall standard, and he was counseled again on 1 November 2006 regarding his performance, behavior, and attitude following his arrest and subsequent 13-day confinement for assaulting a female.
- A commander's Inquiry was conducted after receiving a complaint from the Inspector General regarding non-support for court ordered child support. The command notified the State to determine the amount owed, and the applicant was ordered to pay his child support directly to the State via certified check or money order until his command verified the start of his wage withholding.
- On 28 December 2006, the applicant was notified of intent to initiate separation action against him under the provisions of Army Regulation 635-200, paragraph 14-12b, for patterns of misconduct.
- The applicant was discharged on 23 January 2007, and he was credited with 2 years and 8 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he did not lie to a commissioned officer, and his behavior toward his ex-wife was not handled well due to his undiagnosed PTSD. The application contained a VA Decision Letter dated 18 December 2023, which showed the applicant's service connected for PTSD, Major Depressive Disorder, Unspecified Anxiety Disorder, Alcohol Related Disorder was increased from 50% to 70%. A Report of Medical History dated 29 November 2006 and authored by the applicant showed no endorsement or report of any mental health symptoms or diagnoses. A Report of Mental Status Evaluation dated 4 December 2006 showed no evidence of an emotional or mental disorder, and the applicant met retention standards and was cleared for administrative action. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed the applicant was referred for a command directed evaluation on 2 November 2006 following his arrest for assault on his wife, and he denied mental health symptoms with the exception of "I worry a lot." The provider reported to command that the applicant "is not mentally ill but does have poor decision making." On 4 December 2006, a Mental Status Evaluation for the Chapter 14 separation was conducted, and documentation showed the applicant

reported a history of family problems but denied significant mental health symptoms or problems. He was cleared for administrative separation.

e. The applicant engaged mental health treatment through the VA on 17 November 2023 and reported depression and anxiety, and he requested evaluation for medication. He completed an intake on 14 December 2023 where he expressed having difficulty with anxiety and excessive worry, and he endorsed symptoms of PTSD. He reported a recent arrest for domestic battery against his wife that occurred while drinking and indicated he had stopped drinking. He discussed recent triggering of PTSD symptoms secondary to teaching a course related to natural disasters, and he reported trauma related to working with hurricane victims while in the military. He was started on a medication and diagnosed with PTSD and Alcohol Use Disorder. He was referred for psychotherapy and attended an intake visit and two follow sessions. His last contact with mental health was on 7 July 2024.

f. A review of the Disability Benefits Questionnaire (DBQ) for the applicant's initial PTSD evaluation through the VA, which was dated 22 December 2022, showed the applicant reported trauma exposure, seeing dead human and animal bodies during Hurricane Katrina, and he endorsed the requisite number of symptoms to warrant a diagnosis of PTSD. He was also diagnosed with Generalized Anxiety Disorder, and documentation discussed social and occupational impairment primarily related to Tinnitus and hearing loss, which also complicates his anxiety and depression. A separate claim related to Mental Disorders Other Than PTSD or Eating Disorders dated 23 May 2023 noted diagnoses of PTSD, Major Depressive Disorder, Unspecified Anxiety Disorder, Alcohol-Related Disorder, and Depressive and Anxiety Disorder due to Another Medical Condition (bilateral hearing loss), but the summary addressed the symptom overlap of these conditions. A review of his PTSD claim was conducted on 12 December 2023, and it was noted that his marital relationship was more strained, and he was contemplating discontinuing one of his doctoral programs due to exacerbation of his mental health symptoms.

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service, but he has been diagnosed with PTSD and other mental health conditions by

the VA beginning in 2022. He is considered 70% disabled for these mental health conditions.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service, and a Mental Status Evaluation conducted as part of the separation process did not indicate any mental health related symptoms or diagnoses. Additionally, there is no nexus between his asserted mental health condition, including PTSD, and his misconduct related to making a false statement, not paying child support, or assault on a female: 1) these types of misconduct are not part of the natural history or sequelae of a mental health condition; 2) his asserted mental health conditions do not affect one's ability to distinguish right from wrong and act in accordance with the right.

i. However, the applicant contends he was experiencing mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for misconduct with the commander citing failure to report, false official statements, and confinement for 13 days. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant's contention of post-traumatic stress disorder; however, reviewed and concurred with the medical advisor's review finding insufficient evidence to support he had a condition or experience that mitigated his misconduct. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. Upon review of the applicant's service record and petition, the Board found no error or injustice in the narrative reason for separation assigned during separation processing. The applicant was discharged for patterns of misconduct in accordance with

Army Regulation 635-200 and the narrative reason annotated on his DD Form 214 accurately reflects the facts as they existed at the time of separated. The Board denied relief to amend his narrative reason for separation.

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 evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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

REFERENCES:

1. Title 10, U.S. Code (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 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 ABCMR applicants (and/or their counsel) prior to adjudication.
3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides 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.
4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities, reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. Table 2-3 shows "pattern of misconduct" as the corresponding narrative reason for Soldiers separated under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12b, with SPD Code JKA.
5. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a provides that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

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

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

6. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//