

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 September 2024

DOCKET NUMBER: AR20230014704

APPLICANT REQUESTS RECONSIDERATION:

- his under honorable conditions (general) discharge be upgraded to an honorable discharge
- to change his discharge to reflect he was discharged under the Temporary Early Retirement Authority (TERA)
- (new request) award of the Purple Heart Medal

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

- DD Form 149 (Application for Correction of Military Record)
- Two (2) DD Forms 214 (Certificate of Release or Discharge from Active Duty)
- Medical documents
- Purple Heart information paper

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 AR20220001685 on 11 January 2023.

2. The applicant states, in effect:

a. He respectfully disagrees with AR20220001685, paragraph 1 of the Board Discussion. The effects of Traumatic Brain Injury (TBI) and Post-Traumatic Stress Disorder (PTSD) on personality can manifest in various ways.

a. He strongly refutes the accusation of making a false report. He wants to emphasize that he takes the responsibility of reporting incidents or information seriously, and his intentions have always been to provide accurate and truthful information. Accusations of making a false report can have significant consequences and he would not engage in such behavior lightly. He clearly stated his intent in his report. If there are any inaccuracies or discrepancies in the report, they are

unintentional and can be attributed to misunderstandings or errors, which can occur in any complex situation.

b. He believes he should be awarded the Purple Heart in recognition of his service and sacrifice in the line of duty. Throughout his time in service, he has demonstrated unwavering commitment and bravery, often placing himself in harm's way to protect and defend our nation. As documented in his medical history, he received concussion injuries caused as a result of enemy generated explosions.

c. He believes living with the general under honorable conditions discharge for the past eleven plus years is punishment enough. He is deeply disappointed in himself for having this black mark on file. He would like the board to provide relief in this matter and grant an honorable discharge. He wants to be remembered for the good things that he did while serving. The general under honorable conditions discharge is a constant reminder of the one negative incident.

3. The applicant provides:

a. Two (2) DD Forms 214, which reflect the following:

(1) Covering the period of service from 24 October 1995 thru 23 October 1999, Navy, GSM3 (E-4), honorably released from active duty and transferred to Naval Reserve, under the provisions of MILPERSMAN 3620150, completion of required active service. He served 4 years of net active service this period and 4 months and 2 days of total prior inactive service. Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Good Conduct Award, Sea Service Deployment Ribbon, National Defense Service Medal.

(2) Covering the period of service from 17 November 2000 thru 3 May 2012, Army, SFC (E-7), discharged under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 10, in lieu of trial by court-martial, character of service of general under honorable conditions. He served 11 years, 5 months, and 17 days of net active service this period; 4 years of total prior active service; and, 1 year, 4 months, and 25 days of total prior inactive service.

(aa) Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized):

- Iraq Campaign Medal w/2 Campaign Stars
- Bronze Star Medal (4th award)
- Army Commendation Medal (2nd award)
- USN Achievement Medal
- Meritorious Unit Commendation

- Army Good Conduct Medal (3d award)
- USN Good Conduct Medal
- National Defense Service Medal w/Bronze Service Star
- Afghanistan Campaign Medal w/2 Campaign Stars
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Noncommissioned Officer Professional Development Ribbon (3d award)
- Army Service Ribbon
- Overseas Service Ribbon (2nd award)
- USN Sea Service Deployment Ribbon
- Combat Action Badge
- Master Explosive Ordnance Disposal Badge

(bb) Item 18 (Remarks) Served in imminent danger pay area,

Afghanistan: 6 November 2002 – 22 June 2003  
 23 May 2004 – 17 November 2004  
 17 March 2012 – 8 March 2012

Iraq: 8 June 2006 – 10 December 2006  
 29 April 2007 – 21 July 2008

b. Medical documents (68 pages)

c. Purple Heart information paper, dated 9 August 2023, published on the U.S. Army Human Resources Command website.

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

a. He enlisted in the Regular Army on 17 November 2000 for 4 years with prior service.

b. DD Form 458 (Charge Sheet) reflects court-martial charges were preferred against the applicant on 11 February 2012 for violations of the Uniform Code of Military Justice (UCMJ) as follows:

(1) Charge I, Article 89 of the UCMJ, one specification of behaving himself with disrespect at or near Multinational Base Tarin Kowt, Afghanistan, on or about 6 February 2012, toward First Lieutenant (1LT) [REDACTED] his superior commissioned officer, then known by the accused to be his superior commissioned officer, by saying to him "if you know how the fu\*\* to get there then you should lead" and "you don't know who the fu\*\* you are talking to, guy," or words to that effect.

(2) Charge II, Article 90 of the UCMJ, one specification of striking 1LT [REDACTED] on the face with his hands, at or near Multinational Base Tarin Kowt, Afghanistan, on or about 6 February 2012, his superior commissioned officer, then known to the accused to be his superior commissioned officer, who was then in the execution of his office.

(3) Charge III, Article 107 of the UCMJ, one specification making a false official statement at or near Multinational Base Tarin Kowt, Afghanistan, on or about 6 February 2012, with intent to deceive, to Sergeant (SGT) [REDACTED] a military policeman assigned to the Combined Team Uruzgan Provost Marshal Office, an official statement, to wit: "We returned to our starting point where I exited my vehicle to talk to 1LT [REDACTED] to work out our differences," or words to that effect, which statement was totally false, and was then known by the applicant to be so false.

(4) Charge IV, Article 134 of the UCMJ, one specification of wrongfully communicating a threat at or near Multinational Base Tarin Kowt, Afghanistan, on or about 6 February 2012, to Specialists (SPC) [REDACTED] and [REDACTED] a threat to injure 1LT [REDACTED] by stating he would "beat up" 1LT [REDACTED] or words to that effect, which conduct was to the prejudice of good order and discipline and of a nature to bring discredit upon the armed forces.

c. The applicant consulted with legal counsel on 15 February 2012 and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a bad conduct or dishonorable discharge.

d. The applicant acknowledged he had been fully advised of the nature of his rights under the UCMJ; the elements of the offenses with which he was charged; any relevant lesser included offenses thereto; and the facts which must be established by competent evidence beyond a reasonable doubt to sustain a finding of guilty; the possible defenses which appear to be available at this time; and the maximum permissible punishment if found guilty.

e. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of AR 635-200, Chapter 10, for the good of the service – in lieu of trial by court-martial. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charges against him, or of a lesser included offenses that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the VA, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

f. He was advised he could submit any statements he desired in his own behalf. The applicant elected to submit a personal statement and two letters of support. In his statement the applicant set forth a recounting of his service, awards received, and apologized for his actions.

g. The applicant's company and battalion commanders recommended that the Chapter 10 request be approved, and the applicant be discharged with a general (under honorable conditions) characterization of service. The brigade commander recommended that the Chapter 10 request be approved but that the applicant be discharged with an under other than honorable conditions characterization of service.

h. In a review by the command Staff Judge Advocate recommended the Chapter 10 request discharge be approved and recommended the applicant be discharged with an under other than honorable conditions characterization of service.

i. On 26 February 2012, the separation authority approved the applicant's request for voluntary discharge in lieu of trial by court-martial, under AR 635-200, Chapter 10 and directed the applicant be discharged with a general, under honorable conditions characterization of service.

j. As previously stated in paragraph 3a(2), the applicant's DD Form 214 reflects he was discharged on 3 May 2012, under the provisions of AR 635-200, chapter 10, in lieu of trial by court-martial, character of service of general under honorable conditions. He served 11 years, 5 months, and 17 days of net active service this period; 4 years of total prior active service; and, 1 year, 4 months, and 25 days of total prior inactive service.

5. To be awarded the Purple Heart, the regulatory guidance requires all elements of the award criteria to be met; (1) there must be proof a wound was incurred as a result of enemy action, (2) that the wound required treatment by medical personnel, and (3) that the medical personnel made such treatment a matter of official record. Additionally, when based on a TBI, the regulation stipulates the TBI or concussion must have been severe enough to cause a loss of consciousness; or restriction from full duty due to persistent signs, symptoms, or clinical findings; or impaired brain functions for a period greater than 48 hours from the time of the concussive incident.

## 6. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration of an upgrade to his characterization of service from under honorable conditions (general) to honorable and consideration for retirement under the TERA program. 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 Navy and served from 24 October 1995 to 23 October 1999. He enlisted into the Regular Army on 17 November 2000.
- The applicant served in Afghanistan from November 2002 to June 2003; May 2004 to November 2004; and January 2012 to March 2012. He served in Iraq from June 2006 to December 2006 and from April 2007 to July 2008.
- He had court-martial charges preferred against him on 11 February 2012 for violations of the UCMJ with one specification of behaving himself with disrespect; one specification of striking a superior commissioned officer on the face with his hands; one specification making a false official statement; and one specification of wrongfully communicating a threat. He voluntarily requested discharge under the provision of AR 635-200, Chapter 10, for the good of the service – in lieu of trial by court-martial.
- The applicant was discharged on 3 May 2012 and was credited with 11 years, 5 months, and 17 days of net active service. He has 15 years of active service and 1 year of inactive service.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he had PTSD and had experienced a Traumatic Brain Injury (TBI) that altered his personality and mitigates his misconduct. A neuropsychological evaluation dated 24 March 2009 outlined symptoms of TBI, including headaches, irritability, and occasional dizziness and moodiness. He also reported anxiety, distractibility, and memory difficulties, and the precipitating incident, an IED blast to his vehicle, occurred in September 2007. The report concludes with a diagnosis of Anxiety Disorder, Not Otherwise Specified (NOS), and it noted that "given available information concerning the blast, SFC [REDACTED] likely incurred a mild concussion without probable persistent symptomatology except for possible occasion (sic) episode of dizziness." It goes on to say, "it is unlikely that this mild isolated concussion is producing any cognitive impairments." There was sufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV), which includes DoD mental health records, showed the applicant was seen on 12 March 2009 for an assessment through the Army Substance Abuse Program (ASAP). It was determined that he did not need services. Documentation of the above discussed neuropsychological evaluation in March 2009 was noted, and an initial intake for mental health treatment was conducted on 3 April 2009. He was seen for two therapy sessions where he learned interventions to help manage anxiety and improve relationships. He was seen by his primary care provider on 10 June 2009, and documentation showed the use of an antidepressant medication, which improved his symptoms of anxiety. In August 2011, he was cleared for PCS and reported no symptoms of depression, anxiety, or other mental illness. A pre-deployment assessment was conducted in December 2011, and no mental health symptoms were noted. A post-deployment assessment in May 2012 showed the applicant endorsed nightmares and minimal symptoms of depression.

e. The applicant completed a compensation and pension (C&P) evaluation by VA on 15 May 2012, and although he reported some hyperarousal and avoidance symptoms of PTSD, he did not meet full criteria for the diagnosis, and he was diagnosed with Anxiety Disorder, NOS. Documentation showed that the applicant completed a pre-deployment assessment as a civilian in May 2012 and was cleared to deploy.

f. The applicant initiated mental health care with the VA on 3 October 2019, and he reported difficulty concentrating and memory loss, which was impacting his ability to perform in school, and he was referred to neurology. Documentation from a DoD pre-deployment (as a civilian) assessment dated 18 December 2019 showed a VA Rating Decision letter dated 30 July 2012 with a service-connected disability rating of 10% for TBI. The applicant denied a mental health history, and he denied having any memory problems.

g. The next encounter showed a C&P exam on 5 March 2020, and he reported increasing symptoms of anxiety, but he did not meet criteria for PTSD. A new medication to help with sleep and mood stabilization was started in July 2020. Documentation from another initial visit on 8 April 2022 showed the applicant reported taking a different medication to help with anxiety and sleep, and he indicated increased agitation, irritability, sleep difficulty, and social isolation. He was referred for alcohol abuse treatment, but he declined services and indicated he had decreased consumption on his own. He had routine follow up for medication management, and his most recent mental health encounter was on 6 March 2023 where it was noted that his sleep had improved, alcohol consumption was decreased, and anxiety symptoms were manageable with intermittent use of medication. VA records show the applicant is currently service connected at 70% for PTSD and 10% for TBI.

h. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support that the applicant had a

mental health condition while on active service, but his condition does not fully mitigate his misconduct. The applicant's deployment history, including being subjected to an IED blast in 2007, is a likely contributor to his hyperarousal and avoidance symptoms associated with PTSD. However, in the absence of a neuropsychological evaluation that includes cognitive and psychological testing, there is no way to discern the degree to which, if any, his history of concussion could be a mitigating factor in his misconduct.

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had a mental health condition, including PTSD, at the time of the misconduct. Documentation from his time in service showed he was diagnosed with Anxiety Disorder NOS. He is also service connected through the VA for PTSD and TBI.

(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, and documentation supports this assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant asserts mitigation based his service connection through the VA for TBI and PTSD, and he has a history of diagnosis of Anxiety Disorder NOS while on active service. Without a more comprehensive neuropsychological evaluation that includes cognitive testing, it is difficult to attribute his behavior associated with the misconduct to a TBI, and the evaluation that is available stated that it is unlikely that the concussion is producing any cognitive impairment.

j. Hyperarousal symptoms, such as anger and irritability, associated with PTSD can be a natural sequela to exposure to trauma and highly stressful events. This can create low frustration tolerance and emotionally acting out, but there is no nexus between striking a superior officer on the face or making a false statement and a diagnosis of Anxiety Disorder or PTSD. These conditions do not impair one's ability to distinguish between right and wrong and act in accordance with the right.

k. However, the applicant contends he was experiencing mental health condition or an experience that mitigates 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 relief is not warranted.
2. The Board did not find evidence showing the applicant incurred an injury that met the criteria for the Purple Heart and determined this portion of his request should be denied.
3. Regarding his requests pertaining to his character of service and retirement under TERA, the Board concurred with the conclusions the Board reached in Docket Number AR20220001685 and determined the requests should be denied.

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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20220001685 on 11 January 2023.

2/26/2025

X

CHAIRPERSON

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

REFERENCES:

1. 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 provides that 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 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

2. Army Regulation 600-8-22 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards.

a. The Purple Heart is awarded to any member of an Armed Force of the United States under the jurisdiction of the Secretary of the Army, who, after 5 April 1917, has been wounded, killed, or who has died or may hereafter die of wounds received, under any of the following circumstances:

- In any action against an enemy of the United States.
- In any action with an opposing armed force of a foreign country in which the Armed Forces of the United States are or have been engaged.
- While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.
- As the result of an act of any such enemy or opposing Armed Forces.
- As the result of an act of any hostile foreign force.
- After 7 December 1941, certain rules apply to friendly fire
- On or after 7 December 1941, certain rules apply to Prisoners of War

b. To qualify for award of the Purple Heart the wound must have been of such severity that it required treatment, not merely examination, by a medical officer. A wound is defined as an injury to any part of the body from an outside force or agent. A physical lesion is not required.

(1) Treatment of the wound will be documented in the member's medical and/or health record.

(2) Award may be made for a wound treated by a medical professional other than a medical officer provided a medical officer includes a statement in the member's medical record that the severity of the wound was such that it would have required treatment by a medical officer if one had been available to provide treatment.

(3) A medical professional is defined as a civilian physician or a physician extender. Physician extenders include nurse practitioners, physician assistants, and other medical professionals qualified to provide independent treatment (to include Special Forces medics). Medics (such as combat medics – military occupational specialty 68W) are not physician extenders.

(4) A medical officer is defined as a physician with officer rank. The following are medical officers: (a) An officer of the medical corps of the Army; (b) An officer of the medical corps of the U.S. Navy; (c) An officer in the U.S. Air Force designated as a medical officer in accordance with Title 10, United States Code, section 101.

c. Examples of enemy-related injuries which clearly justify award of the Purple Heart are as follows:

- Injury caused by enemy bullet, shrapnel, or other projectile created by enemy action
- Injury caused by enemy emplaced trap, mine, or other improvised explosive device
- Injury caused by chemical, biological, or nuclear agent released by the enemy
- Injury caused by vehicle or aircraft accident resulting from enemy fire.
- Smoke inhalation injuries from enemy actions that result in burns to the respiratory tract
- Concussions (and/or mild traumatic brain injury (mTBI)) caused as a result of enemy-generated explosions that result in either loss of consciousness or restriction from full duty due to persistent signs, symptoms, or clinical finding, or impaired brain function for a period greater than 48 hours from the time of the concussive incident

//NOTHING FOLLOWS//