

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 October 2024

DOCKET NUMBER: AR20240000961

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

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

- DD Form 293 (Application for the Review of Discharge)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Veterans Affairs (VA) summary of benefits letter

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 was traumatized from his experiences at his duty station. He was zip tied in the motor pool; no one else experienced this hazing. A fellow member died by suicide during his time in service. He is a 100% disabled Veteran.
3. On his DD Form 293, the applicant notes other mental health and military sexual trauma (MST) issues are related to his request.
4. On 3 July 2008, the applicant enlisted in the Regular Army. Upon completion of training, he was awarded military occupational specialty 91B (Wheeled Vehicle Mechanic). The highest grade he attained was E-4.
5. The applicant underwent a Medical Evaluation Board (MEB) to determine whether his medical conditions met medical retention standards. The Board determined that the applicant did not meet retention standards, under Army Regulation 40-501 (Standards of Medical Fitness). Further, the Board recommended the applicant's referral to a Physical Evaluation Board (PEB); however, the available record is void of the MEB proceedings.

6. A DA Form 199 (Informal PEB Proceedings) shows a PEB convened on 23 February 2011, and the Board determined the applicant was physically unfit and recommended his medical separation with a disability rating of 10% with entitlement to severance pay. The PEB considered his left knee arthropathy and heat intolerance. The Board determined the applicant's medical and physical impairment prevented reasonable performance of duties required by grade and military specialty.

7. On 3 March 2011, the applicant acknowledged he had been advised of the Board's findings and recommendations. He concurred with the results, waived his right to a formal hearing, and did not request reconsideration of his VA ratings.

8. On 6 April 2011, the applicant underwent a mental status evaluation. He was diagnosed with an adjustment disorder. However, he was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

9. The applicant's commander notified the applicant on 20 May 2011, that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, paragraph 14-12c, for commission of a serious offense. He noted the applicant had used marijuana between 18 January 2011 and on or about 17 February 2011; and again between 15 February 2011 and on or about 16 March 2011.

10. On 15 June 2011, the applicant consulted with counsel and was advised of the basis for the contemplated separation action, the possible effects of the discharge, and the rights available to him. He indicated he understood he could expect to encounter substantial prejudice in civilian life if an under honorable conditions (general) discharge was issued to him. He acknowledged he was not a victim of sexual assault for which an unrestricted report was filed within the past 24 months. He declined to submit a statement in his own behalf.

11. The applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c.

12. Consistent with the chain of command's recommendations, the separation authority approved the recommended separation action on 22 August 2011, and directed the applicant's discharge with his service characterized as under honorable conditions (general).

13. The applicant was discharged on 6 September 2011. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c, for misconduct (serious offense). His service was characterized as under honorable conditions (general). He was assigned Separation Code JKQ and Reentry Code 3. He completed 3 years, 2 months, and 4 days of net active service this period.

14. The applicant petitioned the Army Discharge Review Board requesting upgrade of his under honorable conditions (general) discharge. On 20 February 2013, the Board voted to deny relief and determined his discharge was both proper and equitable.

15. In the processing of the applicant's previous case, a search of the U.S. Army Criminal Investigation Division database was requested for a Report of Investigation and/or Military Police Report pertaining to the applicant. The search revealed no records pertaining to the applicant.

16. The applicant provides a VA summary of benefits letter that shows he was granted a combined 100% rating evaluation for a service connected generalized anxiety disorder.

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

18. MEDICAL REVIEW:

1. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service. On his DD Form 293, the applicant indicated that Other Mental Health Issues and Harassment are related to his request. He specifically identified his in-service trauma as being zip tied and picked up around the motorpool. 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 on 03 July 2008 as a 91B (Wheeled Vehicle Mechanic), 2) On 23 February 2011, a Physical Evaluation Board (PEB) determined he was physically unfit and recommended medical separation with a disability rating of 10% with entitlement to severance pay for his left knee arthropathy and heat intolerance, 3) the applicant underwent a Mental Status Evaluation (MSE) as part of his Chapter 14 proceedings on 06 April 2011. He was diagnosed with Adjustment Disorder and was psychiatrically cleared to participate in any administrative action deemed appropriate by command, 4) on 20 May 2011, the applicant's commander notified him that he was initiating actions to separate him under the provisions of AR 635-200, Chapter 14, paragraph 14-12c, for commission of a serious offense (noted as marijuana use), 5) on 15 June 2011 he consulted with counsel and the form shows he acknowledged he was not a victim of sexual assault for which an unrestricted report was filed within the past 24 months, 6) the applicant was discharged on 06 September 2011 under the provisions of AR 635-200, paragraph 14-12c, for misconduct (serious offense). He was assigned a separation code of JKQ and a reentry code of '3.' 7) the applicant petitioned the Army Discharge Review Board (ADRB) and on 20 February 2013 the Board denied relief, 8) A search of the U.S. Army Criminal

Investigation Division (CID) database was requested for a report of investigation and/or military police report and the search revealed no records of harassment.

2. The Army Review Boards Agency (ARBA) Behavioral Health 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 provided some in-service medical records for review as part of his application. The records were outlined in detail in the ROP and thus only a brief summary as it pertains to this Advisory will be discussed. The applicant's Report of Medical Examination for the purposes of Chapter (undated) noted his PULHES as 313111, indicating he was not on a BH profile at the time of the evaluation. The PEB proceedings form dated 07 March 2011 documented that his in-service diagnosis of Generalized Anxiety Disorder (GAD) was determined to meet medical retention standards and was not an unfitting condition. A memorandum dated 26 January 2012 documented that the PEB proceedings were terminated IAW the applicant's discharge orders dated 29 August 2011.

4. In-service medical records were available for review via JLV from 11 July 2008 through 02 September 2011. The applicant initiated BH services on 29 September 2009 as a walk-in after being referred by a medic following an incident where he 'fell out from weakness.' It was documented that the applicant experienced ongoing anxiety and memory problems which were noted to be present since childhood though worsened since joining the military. He endorsed the following symptoms: problems with sleep, concentration, anxiety, and panic attacks when people yell at him. He also reported a history of suicidal ideation in April of that year after he broke up with his girlfriend. The applicant endorsed a history of childhood sexual and physical abuse. It was noted that the applicant reported he was a slow learner and as a result his peers would tease him, and people would yell at him. The applicant was diagnosed with Adjustment Disorder with Mixed Emotional Features and GAD. During a follow-up appointment on 06 October 2009, it was documented that he reported a history of minor misconduct since joining the military to include being caught drinking by a noncommissioned officer (NCO) and arguments with coworkers though stated these issues had not resulted in any Article 15s or chapters. He also reported he had not drunk alcohol since the previous incident and denied any drug use. He was diagnosed with Adjustment Disorder with Anxiety and Depressed Mood. A case management note dated 16 February 2010 documented that the applicant reported a history of non-suicidal self-injury (e.g., cutting) which started when he was having problems during a long-distance relationship. The applicant completed a routine evaluation on 14 October 2010 as part of the MEB clearance process. He endorsed the following symptoms: difficulty with people, anxiety, problems with concentration, short-term memory loss, occupational stressors, anger,

difficulty sleeping, and some thoughts of suicide, noting that his problems with concentration and short-term memory loss increased after joining the military. It was documented that, prior to joining the Army, he cut his arm on two occasions as a suicide attempt noting he had severe family stressors and had difficulty coping at the time. It was documented that the attempts occurred between April to May 2009 [*Advisor's Note*: the applicant was in the military during this time and thus it is unclear if the dates of the attempts are incorrect or if there were additional suicide attempts]. He was diagnosed with Anxiety Disorder Not Otherwise Specified (NOS) at the time of the evaluation. On 10 November 2010, it was documented that the applicant was command-referred to the Army Substance Abuse Program (ASAP) due to a positive urinalysis for cannabis use. It was documented that, in effect, that the applicant reported accidental cannabis use while at a party. He denied any previous history of drug use and reported drinking alcohol approximately twice per month since February [2010]. On 20 November 2010, enrollment into ASAP and Prime for Life was recommended. His diagnoses through ASAP were initially recorded as Alcohol Disorders and Cannabis-Related Disorders though updated to Cannabis Abuse and Alcohol Abuse on 01 April 2011. The applicant was referred to BH by ASAP on 23 November 2010 due to reporting anxiety and depressed mood. The applicant was diagnosed with Adjustment Disorder with Anxiety and Depressed Mood noting stress due to MEB process and extra duty from recent Article 15, though it was also acknowledged he had unresolved issues from childhood. An MEB addendum dated 03 January 2011 documented that the applicant reported a history of treatment for Attention Deficit/Hyperactivity Disorder (ADHD) in childhood and was treated with Ritalin and Adderall. It was noted that he reported a history of excessive worry for the past two years noting he had difficulty controlling the worry, made attempts to control the worry, felt keyed up more days than not, was easily fatigued, decreased concentration, irritability, muscle tension, and difficulty falling asleep. The provider diagnosed the applicant with GAD and noted the condition existed prior to service (EPTS), was not in the line of duty, and was not service-aggravated. His MSE conducted on 06 April 2011 for the purposes of Chapter separation noted that the applicant met retention standards IAW AR 40-501 and was cleared for administrative separation. An ASAP note dated 03 May 2011 documented that the applicant was referred for a positive UA by his unit and was recommended for enrollment in Phase 1 Group sessions. On 10 June 2011, he was recommended for discharge from the ASAP program with his diagnoses noted as Alcohol Abuse and Cannabis Abuse. The applicant self-referred to BH on 24 August 2011 due to stress and was diagnosed with Adjustment Disorder with Anxiety. He attended an anger management group on 29 August 2011. His last in-service BH encounter on 02 September 2011 was clearance for out-processing.

5. A review of JLV shows the applicant is 100% service-connected through the VA with Neurosis, Generalized Anxiety Disorder. He is also service-connected for several other medical conditions. The applicant underwent an initial Compensation and Pension (C&P) evaluations through the VA on 05 February 2021 and had two reviews (08 June

2021 and 14 May 2022). At the time of his initial evaluation, he was diagnosed with PTSD and Generalized Anxiety Disorder with the stressor noted as being abused by a roommate after being discharged from the military. The provider checked the box that the symptoms or diagnosis related to the personal assault did not occur during military service. His subsequent C&P evaluations/reviews reaffirmed his diagnosis of Generalized Anxiety Disorder. It was documented that the applicant reported he smokes marijuana which he feels helps motivate him and helps with his anxiety. It was also noted that his alcohol use had decreased since he obtained a medical marijuana card for PTSD. A VA treatment record dated 16 September 2024 documented that the applicant denied a history of Military Sexual Trauma (MST). His military-related trauma was documented as heat casualty and his squad zip tying his hands and carrying him around the motorpool.

6. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence that the applicant had a condition in-service that is potentially mitigating. In-service BH records show that the applicant was diagnosed with several BH conditions to include GAD, Anxiety Disorder NOS, Adjustment Disorder with Anxiety and Depressed Mood, Adjustment Disorder with Anxiety, Adjustment Disorder with Mixed Emotional Features, Alcohol Abuse, and Cannabis Abuse. His Adjustment Disorder diagnoses and Anxiety Disorder NOS are subsumed under his diagnosis of GAD. Alcohol and Substance Use Disorders do not constitute mitigating conditions. Since being discharged from the military, the applicant has been diagnosed and 100% service-connected through the VA for GAD. As there is an association between avoidance behaviors, self-medicating with substances, and anxiety, there is a nexus between the applicant's diagnosis of GAD and his misconduct of marijuana use. As such, BH mitigation is supported.

7. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with GAD in-service and has been subsequently 100% service-connected through the VA for GAD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with GAD in-service and has been subsequently 100% service-connected through the VA for GAD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Review of in-service BH records shows the applicant was diagnosed with several BH conditions to include GAD, Anxiety Disorder NOS, Adjustment Disorder with Anxiety and Depressed Mood, Adjustment Disorder with Anxiety, Adjustment Disorder with Mixed Emotional Features, Alcohol Abuse, and Cannabis Abuse. His Adjustment

Disorder diagnoses and diagnosis of Anxiety Disorder NOS are subsumed under his diagnosis of GAD. Alcohol and Substance Use Disorders do not constitute mitigating conditions. Since being discharged from the military, the applicant has been diagnosed and 100% service-connected through the VA for GAD. Per the Kurta Memorandum, conditions that are determined to be EPTS and not aggravated by service are not required to be considered under Liberal Consideration. Although the MEB evaluation determined that the applicant's diagnosis of GAD was EPTS and not service-aggravated for the purposes of disability processing, there is some evidence of exacerbation of his anxiety given he reported no BH treatment for GAD prior to service and it was documented in his in-service treatment records that he self-reported a worsening of his symptoms since joining the military. As there is an association between avoidance behaviors, self-medicating with substances, and anxiety, there is a nexus between the applicant's diagnosis of GAD and his misconduct of marijuana use. As such, BH mitigation is supported.

8. It is of note that the applicant circled 'harassment' on his DD Form 293. However, it is unclear if he was indicating that he has a history of MST or harassment that does not constitute MST, particularly as his self-statement describing his in-service trauma did not detail a history of MST. Review of his available VA records indicate that he denied experiencing a history of MST. Thus, based on the available information, it is unclear to this Advisor if the applicant is requesting consideration of MST as part of his application.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted.
2. The Board carefully considered the applicant's contentions, the military record, and published DoD guidance pertaining to liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, the frequency and nature of his misconduct, his referral to ASAP, medical separation proceedings and the reason for his separation. The Board considered the review and conclusions of the medical advising official to include his in-service treatment and VA service-connected disability rating for Generalized Anxiety Disorder. The Board concurred with the advising official, finding a mitigating condition for his misconduct and determined, by a preponderance of evidence, that an upgrade of his discharge was warranted as a matter of liberal consideration.

BOARD VOTE:

Mr 1	Mr 2	Mr 3
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GRANT FULL RELIEF



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## GRANT PARTIAL RELIEF



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## GRANT FORMAL HEARING

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## DENY APPLICATION

**BOARD DETERMINATION/RECOMMENDATION:**

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 6 September 2011 to show in item 24 (Character of Service): Honorable

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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. Title 10, U.S. Code, Section 1556, 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. 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.

3. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Physical Disability Evaluation System (PDES) and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating. It provides for a medical evaluation board that is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501 (Standards of Medical Fitness), Chapter 3. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

a. Paragraph 2-1 provides that the mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of his or her office, rank, grade, or rating. The Army must find that a service member is physically unfit to reasonably perform his or her duties and assign an appropriate disability rating before he or she can be medically retired or separated.

b. Paragraph 2-2b (1) provides that when a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, reduction in force, relief from active duty, administrative separation, discharge, etc.), his or her continued performance of duty (until he or she is referred to the PDES for evaluation for separation for reasons indicated above) creates a presumption that the member is fit for duty. Except for a member who was previously found unfit and retained in a limited assignment duty status in accordance with chapter 6 of this regulation, such a member should not be referred to the PDES unless his or her physical defects raise substantial doubt that he or she is fit to continue to perform the duties of his or her office, grade, rank, or rating.

c. Paragraph 2-2b (2) provides that when a member is being processed for separation for reasons other than physical disability, the presumption of fitness may be

overcome if the evidence establishes that the member, in fact, was physically unable to adequately perform the duties of his or her office, grade, rank, or rating even though he or she was improperly retained in that office, grade, rank, or rating for a period of time and/or acute, grave illness or injury or other deterioration of physical condition that occurred immediately prior to or coincidentally with the member's separation for reasons other than physical disability rendered him or her unfit for further duty.

4. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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. 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 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. It states that action will be initiated to separate a Soldier for misconduct when it was clearly established that rehabilitation was impracticable or unlikely to succeed. Paragraph 14-12c (Commission of a Serious Offense) applied to commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense. First time offenders below the grade of sergeant, and with less than 3 years of total military service, may be processed for separation as appropriate.

5. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR), on 3 September 2014, 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.

6. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters

relating 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 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//