

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 October 2024

DOCKET NUMBER: AR20240001032

APPLICANT REQUESTS: upgrade of his under other than honorable conditions discharge to honorable and a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- Medical documents (10 pages)
- Verification of Military Experience and Training
- Newspaper clipping
- Awards
- Civilian Education Certificates
- Bachelor of Science in Accounting Certificate

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 wants to be granted access to his Montgomery G.I. Bill. He was a victim of a blindside assault while serving at Fort Bragg, NC, being struck repeatedly in the head and face with a blunt object. The result left him with closed head injury, broken nose, multiple lacerations to the face, and broken teeth. He developed post-traumatic stress disorder (PTSD) from this incident, distrust for his fellow soldiers and commanding officers and went on a downward spiral of mental and behavior health that was left untreated, despite asking for helping, until his poor choices led to his eventual release from service. He wished to leave the past where it belongs but after many years of shame and finally getting his educational affairs in order, he wishes to have his discharge status to be examined and upgraded to honorable. In a self-authored letter, he states:

a. In the beginning of his duty at Fort Bragg he steadily climbed in rank, was awarded an Army Achievement Medal for initiative and dedication during training events, acted as an ambassador for Army recruitment in New York and New Jersey while fresh out of training. Served diligently during Operation Noble Eagle processing over 1800+ mobilized reserve/national guard Soldiers following the events of 9/11. Obtained new skills and was certified as combat lifesaver, field sanitation team expert, and high mobility multipurpose wheeled vehicle/light medium tactical vehicle driver.

b. In the spring of 2022, he was a victim of a surprise assault, while in the confines of his barracks, being struck repeatedly with a blunt object in his head and face. This resulted in a closed head injury, multiple facial lacerations, a fractured nose, and three broke teeth. He also had a newfound fear of a blindside attack everywhere he went and a general anxiety disorder that he did not understand at the time. This sent him in a downward spiral, both in his mental health and behavior, with having extreme emotions of anxiety and a pure distrust and disdain for his fellow Soldiers and Commanding Officers, many of whom knew of the assailant and/or witnessed the aftermath although no one ever came forward nor was anyone ever charged. First hooked on the pain medications and alcohol he would eventually turn to narcotics.

c. He does not excuse his poor behavior from the assault, though a scared and misguided young man he still was in control of his choices. It took him many years and counseling to reestablish his mind set to what it was before. He would eventually go on and honor his earlier pledge to the C.W. Bill Young Department of Defense bone marrow program, donating in 2009. He has been a tax paying law-abiding citizen since his discharge with no criminal history, just a few speeding tickets. He has served his community and church with volunteer events, and has recently completed his bachelor's in accounting, his original goal for joining the service.

d. What happened is in the past and there is nothing than can be changed now, except for his discharge to be upgraded. He just wishes to have this black mark removed from his record and finally receive the Montgomery GI Bill that he paid into but has not been able to use. He asks, please, to have his discharge upgraded so that he can use his Montgomery GI Bill so he can fund the pursuit of further education.

3. The applicant enlisted in the Regular Army on 2 August 2000.

4. He received non-judicial punishment on 11 July 2002, for insubordinate conduct toward a noncommissioned officer. He was reduced to private (E-2). He appealed the punishment and submitted additional matters. The next higher commander determined the proceedings were conducted in accordance with law and regulation and the punishment imposed were not unjust nor disproportionate to the offense committed. His appeal was denied.

5. On 23 January 2003, his command was notified of a positive drug testing result for cocaine by the applicant.

6. On 12 February 2003, he underwent a separation physical in which he was found qualified for service/chapter 14.

7. On 13 February 2003, he underwent a mental status evaluation in which he was found psychiatrically cleared for any administrative action deemed appropriate by command.

8. On 19 February 2003, his command was notified of a positive drug testing result for Tetrahydrocannabinol by the applicant.

9. He received non-judicial punishment on 13 March 2003, for between on or about 9 December 2002 and 10 January 2003, wrongfully use marijuana. He was reduced to private (E-1).

10. On 18 March 2003, his immediate commander notified him that he was initiating action to separate him for a commission of a serious offense under the provisions (UP) of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 14, paragraph 14-12c. The reason for his proposed action was wrongful use of illegal drugs on two different occasions marijuana and cocaine. He acknowledged receipt on the same day.

11. On 21 March 2003, his intermediate commander recommended approval and that he be issued a general discharge.

12. On 27 March 2003, the separation authority approved separation UP of AR 635-200, chapter 14, paragraph 14-12c, for commission of a serious offense. He directed that his service be characterized as general.

13. Accordingly, he was discharged under honorable conditions on 14 April 2003, UP of AR 635-200, paragraph 14-12c. His DD Form 214 shows he completed 2 years, 8 months, and 13 days net active service this period. It also shows:

- Item 26 (Separation Code): JKQ
- Item 27 (Reentry Code): 3
- Item 28 (Narrative Reason for Separation): Misconduct

14. There is no evidence the applicant applied to the Army Discharge Review Board within the Board's 15-year statute of limitations.

15. The applicant provides:

a. Medical documents (10 pages) showing in part on 23 May 2002, he was seen for closed head injury, multiple facial lacerations, fractured lower anterior teeth, and nasal fracture. On 31 July 2002, he had Septorhinoplasty. His postoperative diagnosis was deviated nasal septum with external deformity. Also, dental records related to the same issues.

b. Verification of Military Experience and Training showing training he completed during his career.

c. Newspaper clipping titled Fort Bragg Accounting and Finance Specialist visit NYC.

d. Awards received while in service: Army Achievement Medal and Certificate of Achievement.

e. Civilian Education Certificates:

- Certificate in Bookkeeper from Ivy Tech Community College
- Certificate in Fundamental Payroll from Ivy Tech Community College
- Certificate in Business Administration from Ivy Tech Community College
- Associate of Applied Science in Accounting from Ivy Tech Community College
- Associate of Applied Science in Business Administration from Ivy Tech Community College
- Bachelor of Science in Accounting degree Certificate from Indiana Institute of Technology

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

17. By regulation, AR 15-185 (ABCMR) 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.

18. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service. He contends he experienced PTSD that mitigates his misconduct. 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 2 August 2000; 2)

On 18 March 2003, his immediate commander notified him that he was initiating action to separate him for a commission of a serious offense under the provisions of AR 635-200, chapter 14, paragraph 14-12c. The reason for his proposed action was wrongful use of illegal drugs on two different occasions marijuana and cocaine; 3) The applicant was discharged on 14 April 2003, Chapter 14-12c-Misconduct. His character of service was under honorable (general) conditions.

b. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) and hardcopy military records provided by the applicant were also examined.

c. The applicant asserts he was experiencing PTSD while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health disorder including PTSD, while on active service. On 13 February 2003, he underwent a mental status evaluation as part of his separation proceedings. He was not diagnosed with a mental health condition was found psychiatrically cleared for any administrative action deemed appropriate by command.

d. A review of JLV provided insufficient evidence the applicant has ever been diagnosed with a service-connected mental health condition, and he does not receive any service-connected disability for a mental health condition.

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

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced PTSD which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct while on active service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD, while he was on active service. The applicant did use illegal drugs, which could be avoidant behavior and a natural sequelae to PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. Yet, the applicant contends he was experiencing a mental health condition or an experience

that mitigates his misconduct, and per Liberal Consideration his contention alone 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.
2. The Board carefully considered the applicant's request and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement regarding PTSD, his record of service, the frequency and nature of his misconduct and the reason for his separation. The Board considered the post-service certificates he provided. The Board considered the review and conclusions of the medical advisor. The Board acknowledges the applicant's self-reported PTSD and that PTSD would mitigate his misconduct. The Board concurred with the medical official finding insufficient evidence of a diagnosis of a mitigating condition to overcome the misconduct. Based on a preponderance of evidence, the Board determined that the applicant's character of service was not in error or unjust.
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, 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 (AR) 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.
 - a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
 - b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 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.
3. AR 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to

their normal expiration of term of service. The regulation in effect at the time stated individuals in pay grades E-5 and above could be processed for separation upon discovery of a drug offense. Those in pay grades below E-5 could also be processed after a first drug offense and must have been processed for separation after a second offense. The issuance of a discharge under other than honorable conditions was normally considered appropriate.

a. Paragraph 3-7a (1) states 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b (1) states 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. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

4. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

5. The Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta Memorandum]. 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 (TBI), 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. 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.

a. Guidance documents are not limited to under other than honorable conditions discharge characterizations but rather apply to any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from general to honorable characterizations.

b. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.

c. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

6. 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. 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. 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//