

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 October 2024

DOCKET NUMBER: AR20240001377

APPLICANT REQUESTS: correction of his military records as follows:

- Change the narrative reason for separation from “In lieu of court-martial” to something more favorable
- Removal of the AWOL (absent without leave) from his records
- Promotion to private two (PV2)/E-2

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214, Certificate of Release or Discharge from Active Duty, 19 June 1997

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:

- AR20070014535 on 14 February 2008
- AR20090004965 on 14 June 2009
- AR20230001099 on 17 August 2023

2. The applicant was discharged in June 1997 under the provisions of chapter 10 of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) with an under other than honorable conditions discharge. He was denied an upgrade of his discharge in 2007 and in 2009. However, in ABCMR Docket Number AR2023001099, due to partial behavioral health mitigation, the Board voted to upgrade his character of service from under other than honorable conditions discharge to honorable. He was reissued a new DD Form 214 reflective of his upgraded character of service. He now states the narrative part on his discharge has not been corrected, his AWOL has not been removed, and his pay grade should be increased to E-2. He believes this to be very important as part of the Honorable upgrade that took place in AR20230001099. He suffered from a diagnosed and untreated mental health condition, including his post-

traumatic stress disorder(PTSD) related to the MDD (Major Depressive Disorder) while in service. [On his current DD Form 149, the applicant box checked PTSD is related to his request].

3. The applicant enlisted in the U.S. Army Reserve, in the grade of private (PVT)/E-1, under the delayed entry program (DEP) in San Juan, PR on 7 March 1996 for a period of 8 years.

a. He was discharged from the DEP and enlisted in the Regular Army on 1 May 1996 for a period of 3 years, also in grade PVT/E-1. He was transferred to Lackland Air Force Base, TX to undergo English Language Training.

b. He completed basic combat training at Fort Jackson, SC and was reassigned to Aberdeen Proving Ground, MD for completion of MOS training.

c. On 4 February 1997, while still in training at Aberdeen, the applicant was reported as AWOL. The DA Form 4187 (Personnel Action) that reported him AWOL reflects his grade as PVT/E-1.

d. The applicant turned himself in to the Bronx VA Hospital on 13 February 1997. He was transported to Walter Reed Army Medical Center on 2 March 1997 and was released to his unit on 18 March 1997. The DA Form 4187 that reported him hospitalized also reflects his grade as PVT/E-1.

e. Although a DD Form 458 (Charge Sheet) is not available for review, Special Court-Martial Order Number 4, 20 August 1997, shows the applicant was charged with the below charges and their specifications. The Special Court-Martial Order reflects his rank as "Private (E1)":

- one specification of being AWOL from on or about 4 February 1997 until on or about 13 February 1997
- one specification of larceny of private property
- twelve specifications of writing a cumulative total of 30 worthless checks

f. The court-martial proceedings were terminated on 6 June 1997, due to the applicant's request for voluntary discharge under the provisions of AR 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. The charges and specifications were dismissed. The applicant's request for voluntary discharge in lieu of trial by court-martial was approved on 6 June 1997, with the issuance of an under other than honorable conditions discharge

g. The applicant was discharged from active duty on 19 June 1997 in the rank/grade of PVT/E-1 (effective date of pay grade 1 May 1996). His DD Form 214 confirms he was

discharged under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. He was discharged in the lowest enlisted grade and his service was characterized as under other than honorable conditions, Separation Code KFS, Reenlistment Code 3. He completed 1 year, 1 month, and 10 days of net active service this period with 9 days of lost time.

4. On 29 May 2002, the Army Discharge Review Board determined that he was properly and equitably discharged. Accordingly, his request for a change in the character and/or reason of your discharge is denied.

5. On 14 February 2008, the ABCMR denied his request to upgrade his discharge. The Board stated in the absence of evidence to the contrary, it must be presumed that the applicant's voluntary request for separation under the provisions of AR 635-200, chapter 10, for the good of the service to avoid trial by court-martial, was administratively correct and in conformance with applicable regulations. Accordingly, the type of discharge directed, and the reasons therefore appear to be appropriate under the circumstances.

6. On 14 June 2009, the ABCMR reconsidered and denied his request to upgrade his discharge. The Board stated the applicant has not submitted any evidence to show that he was mentally incompetent when he requested discharge in lieu of trial by court-martial. It is reasonable to believe that since the applicant was returned to military control at WRAMC, if he was mentally incompetent, he would have been processed accordingly at that time. Therefore, it must be presumed that the applicant was in fact mentally competent at the time he requested discharge. Since there is no evidence to support the applicant's contention that he was mentally incompetent, there is no basis for granting his request.

7. On 17 August 2023, the ABCMR again reconsidered his request to upgrade his discharge, and this time granted relief.

a. Prior to adjudicating his case, the Army Review Boards Agency Behavioral Health (BH) Advisor reviewed this case. Based on the available information the Agency BH Advisor opined that there is sufficient evidence that the applicant was experiencing a mitigating condition during his time of service and during the time of misconduct. The BH Advisor found that while there is no evidence of a PTSD diagnosis during his time in service, he was diagnosed with MDD, with psychotic features at the time of misconduct. It's important to note, going AWOL is an avoidance behavior associated with the natural history and sequelae of depression, anxiety, and trauma. There is a nexus between his reported condition and this misconduct. There is typically no nexus between MDD, PTSD or other potential mood disorders and larceny or writing bad checks. However, the applicant was diagnosed with psychotic symptoms and evidenced difficulty with understanding the severity of consequences for much of his actions in the weeks leading up to his hospitalization and inpatient stay. Individuals with psychotic symptoms

may have impaired reality testing, delusional thinking, hallucinations, dysregulation, and impaired impulse control. The charges of writing bad checks and larceny are in the general time frame of when his psychotic symptoms started. Hence, his MDD with psychotic features also mitigates these charges, and therefore the basis of his separation.

b. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA BH Advisor.

(1) A majority of the Board concurred with the conclusion of the medical advising official regarding his misconduct being mitigated by MDD with psychotic features. Based on a preponderance of evidence, a majority of the Board determined the applicant's character of service should be changed to honorable.

(2) The member in the minority found insufficient evidence of in-service mitigating factors and did not concur with the conclusion of the medical advising official regarding his misconduct not being mitigated by MDD with psychotic features. Based on a preponderance of evidence, the member in the minority determined the character of service the applicant received upon separation was not in error or unjust.

c. The Board determined that the evidence presented was sufficient to warrant amendment of the ABCMR's decision in Docket Number AR20090004965 on 14 June 2009. As a result, the Board recommended reissuing his DD Form 214 to show his character of service is honorable.

8. On 30 August 2023, the applicant's original DD Form 214 was voided. He was reissued a new DD Form 214 that shows he was honorably discharged from active duty on 19 June 1997, in the rank/grade of PVT/E-1 under the provisions of AR 635-200, chapter 10, in lieu of trial by court-martial, Separation Code KFS and Reentry Code 3. He completed 1 year, 1 month, and 10 days of active service and had lost time from 4 February 1997 to 12 February 1997.

- Blocks 4a (Grade, Rate or Rank) and 4b (Pay Grade) PVT?E-1
- Block 12h (Effective Date of Pay Grade) 1996-05-01
- Block 26 (Separation Code) KFS
- Block 28(Narrative Reason for Separation) In Lieu of Trial by Court-Martial
- Block 29 (Dates of Time Lost During This Period) 1997-02-04 to 1997-02-12

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a correction of his military records to show a change to his narrative reason for separation. He contends in this applicant that he experienced mental health conditions including PTSD that mitigates his misconduct and discharge. 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 1 May 1996 after serving in the U.S. Army Reserve (USAR); 2) On 4 February 1997, while still in training at Aberdeen, the applicant was reported as AWOL; 3) The applicant turned himself in to the Bronx VA Hospital on 13 February 1997. He was transported to Walter Reed Army Medical Center on 2 March 1997 and was released to his unit on 18 March 1997; 4) Although a DD Form 458 (Charge Sheet) is not available for review, Special Court-Martial Order Number 4, 20 August 1997, shows the applicant was charged with: A) Being AWOL from 04-13 February 1997; B) on specification of larceny of private property; and C) twelve specifications of writing 30 worthless checks; 5) The applicant was discharged on 19 June 1997, Chapter 10, in lieu of trial by court-martial. His service was characterized as under other than honorable conditions; 6) On 29 May 2002 the ADRB reviewed and denied the applicant's request for an upgraded discharge; 7) On 14 February 2008 and 14 June 2009, the ABCMR reviewed and denied the applicant's request for an upgraded discharge; 8) On 17 August 2023, the ABCMR reviewed the applicant's request for an upgraded discharge. They determined to upgrade the character of service to honorable, and on 30 August 2023, a new DD214 that shows he was honorably discharged from active duty on 19 June 1997, chapter 10, in lieu of trial by court-martial, Separation Code KFS and Reentry Code 3. He completed 1 year, 1 month, and 10 days of active service and had lost time from 4 February 1997 to 12 February 1997.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical records were provided.

c. The applicant asserts he experienced mental health conditions including PTSD, which mitigate his misconduct. There is insufficient evidence the applicant reported or was diagnosed with PTSD while on active service. There was evidence the applicant was seen at the Bronx VA in the Emergency Department on 12 February 1997. The applicant admitted to going AWOL and visiting friends and family up and down the eastern part of the United States. He admitted to telling his family a false account of why he was not at his place of duty. Eventually, he went to New York City, but he admitted to running out of funds, feeling helpless/hopeless, and he contacted his mother for funds and a cousin, who lived locally. His cousin took him to the local Bronx VA Medical Center. The applicant reported depressive and suicidal ideations, and he described frustration with his decision to join the Army. He was reported to experience auditory hallucinations, but the only thoughts he described were suicidal or hopeless thoughts "inside his head." He was prescribed psychiatric medication and admitted to the

inpatient psychiatric treatment center, the applicant was reported to notably improved in less than two weeks with no continued report of “auditory hallucinations” or suicidality. He was released on 26 February 1996 and transferred to Walter Reed Medical Facility. His discharge diagnose was Major Depressive Episode with psychotic features.

d. A review of JLV provided insufficient evidence the applicant has engaged in any behavioral health treatment at the VA beyond being evaluated on 27 December 2023 for a Compensation and Pension Evaluation. As a result of this evaluation, the applicant was diagnosed with service-connected Bipolar Disorder (50%SC)

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a condition or experience that partially mitigates his misconduct. However, there is not sufficient evidence of a condition which warrants mitigation of any additional changes to his narrative reason for separation.

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 mental health conditions including PTSD while on active service that mitigates his misconduct and discharge. There is insufficient evidence the applicant has ever been diagnosed with PTSD while on active service or service-connected PTSD. The applicant was diagnosed by a VA in 1996 while being AWOL with Major Depressive Episode with psychotic features and later in 2023, the VA diagnosed the applicant with service-connected Bipolar Disorder.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD while on active service that mitigates his misconduct and discharge. There is insufficient evidence the applicant has ever been diagnosed with PTSD while on active service or service-connected PTSD. The applicant was diagnosed by a VA in 1996 being AWOL with Major Depressive Episode with psychotic features and later in 2023, the VA diagnosed the applicant with service-connected Bipolar Disorder.

(3) Does the condition experience actually excuse or mitigate the misconduct? Partial, there is insufficient evidence beyond self-report the applicant experienced PTSD, while on active service. The applicant was experiencing significant difficulty adjusting to the military and as a result, mental health symptoms. The applicant went AWOL, which is avoidant behavior that can be a natural sequelae to the applicant’s mental health symptoms. These symptoms were diagnosed as a Major Depressive Episode with psychotic features by a VA. While the applicant was described as experiencing “auditory hallucinations,” these symptoms were described as “thoughts in his head” which were reported to be predominately suicidal thoughts or preoccupation

with hopelessness. This is more consistent with depressive symptoms. In addition to going AWOL, the applicant was charged with larceny and writing multiple fraudulent checks. There is insufficient evidence the applicant was incompetent while on active service. This was demonstrated by his ability to present a false story to his family and friends about the reasons he was not at his duty station, his ability to travel to see friends and family, and his ability to contact family. Therefore, there is no nexus between his mental health conditions and his misconduct of larceny and writing bad checks: 1) these types of misconduct is not a part of the natural history his mental health condition; 2) His mental health conditions does not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct and discharge, 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and the medical review, the Board partially concurred with the advising official finding insufficient evidence beyond self-report the applicant experienced PTSD, while on active service. The opine noted, there is no nexus between his mental health conditions and his misconduct of larceny and writing bad checks. The Board considered the advising official finding sufficient evidence to support the applicant had a condition or experience that partially mitigates his misconduct. However, there is not sufficient evidence of a condition which warrants mitigation of any additional changes to his narrative reason for separation.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of larceny of private property and writing a cumulative total of 30 worthless check. The Board noted, the applicant provided no post service achievement of character letters of support for the Board to weigh a determination. The Board agreed, based on the preponderance of evidence the applicant's narrative reason was not in error or unjust. Evidence shows the applicant was AWOL for 1,021 days and removal of the AWOL (absent without leave) from his records and promotion to private two (PV2)/E-2 is without merit. Based on this, the Board denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20070014535 on 14 February 2008, AR20090004965 on 14 June 2009 and AR20230001099 on 17 August 2023.



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 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides 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. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised 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.

3. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to 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 that misconduct which led to the discharge.

4. 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 on the basis of 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.

5. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency

(ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

6. Army Regulation 635-5 (Separation Documents) at the time established the standardized policy for preparing and distributing the DD Form 214. The purpose of the separation document is to provide the individual with documentary evidence of their military service. Chapter 2 of the regulation in effect at the time contains guidance on the preparation of the DD Form 214. The version of the regulation in effect at the time stated:

a. Block 4 (Grade, Rate or Rank), enter active duty grade or rank and pay grade at time of separation from Enlisted Record Brief or Officer Record Brief.

b. Block 12h (h) Effective Date of Pay Grade. From the most recent promotion order (or reduction instrument), enter the effective date of promotion to the current pay grade.

c. Block 28 (Narrative Reason for Separation). This is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator Codes).

d. Block 29 (Dates of Time Lost During This Period). Verify that time lost as indicated by Defense Finance and Accounting Service agencies has been subtracted from Net Active Service This Period (block 12c) if the lost time was not "made good." If the ETS was adjusted as a result of lost time and the soldier served until ETS, the lost time was "made good." Lost time under 10 USC 972 is not creditable service for pay, retirement, or veteran's benefits. However, the Army preserves a record (even after time is made up) to explain which service between date of entry on active duty (block 12a) and separation date (block 12b) is creditable service. Time lost after ETS is non-chargeable time under 10 USC 972, but it must also be reported to ensure it is not counted in computation of total creditable service for benefits. For enlisted soldiers, show inclusive periods of time lost to be made good under 10 USC 972, and periods of non-chargeable time after ETS.

7. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) states that SPD codes are three-character alphabetic combinations which identify reasons for and types of separation from active duty. SPD code "KFS" is the correct code for Soldiers

voluntarily separating under the provisions of chapter 10 of Army Regulation 635-200 by reason of "In Lieu of Trial by Court-Martial."

//NOTHING FOLLOWS//