

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 October 2024

DOCKET NUMBER: AR20240001397

APPLICANT REQUESTS: Reconsideration of his previous request for upgrade of his under honorable conditions (general) discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Veterans Affairs (VA) documents
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 AR20190011536 on 13 May 2021.
2. The applicant states his military records are unjust because he was not offered or given any mental health intervention. He was reduced to E-1 and forced out of the Army by his chain of command. He is a disabled Veteran due to his mental health.
3. On 21 February 1997, the applicant enlisted in the Regular Army. Upon completion of training, he was awarded military occupational specialty 11B (Infantryman). He reenlisted on 1 March 1999, and 17 June 2000. The highest grade he attained was E-4.
4. The applicant received formal counseling on the following dates/for:
 - 4 September 2001; domestic violence incident
 - 16 September 2001; failure to obey a lawful order
 - 28 September 2001; failure to obey a lawful order
 - 6 October 2001; mutiny, communicating a threat, provoking speeches
 - 1 November 2001; failure obey orders
5. On 21 November 2001, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice, for failing to obey a lawful command from his superior commissioned officer, to stay away from the quarters and not to

contact his spouse, on or about 24 September 2001; and breaking restriction, on or about 15 September 2001. His punishment included reduction to E-1, forfeiture of \$521.00 pay per month for two months, and 45 days restriction and extra duty.

6. The applicant received additional counseling on 5 December 2001, for harassing his spouse.
7. On 13 December 2001, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.
8. A memorandum, from Headquarters U.S. Army Medical Department Activity, Fort Benning, GA, noted that on 31 January 2002, the applicant failed to keep his medical appointment – Army Substance Abuse Program (Diagnostic Evaluation).
9. On 6 February 2002, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
10. A DA Form 4466-R (Patient Progress Report) dated 11 February 2002, noted that the applicant was diagnosed with alcohol dependence.
11. The applicant's commander notified him on 26 March 2002, that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b, for a pattern of misconduct. As the specific reasons, the commander cited the applicant for disobeying a commissioned officer, breaking restriction, communicating a threat, and provoking speeches.
12. The applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, paragraph 14-12b.
13. The applicant acknowledged that he had been advised by counsel of 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 he was issued an under honorable conditions (general) discharge. He declined to submit a statement in his own behalf.
14. By legal review on 7 April 2002, the applicant's Chapter 14, separation action was found to be legally sufficient for further processing.
15. Consistent with the chain of command's recommendations, the separation authority approved the recommended discharge on 11 April 2002, and directed issuance of an under honorable conditions (general) discharge.

16. The applicant was discharged on 6 May 2002. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12b, for misconduct. His service was characterized as under honorable conditions (general). He completed 5 years, 2 months, and 16 days of net active service this period.

17. Additionally, his DD Form 214 shows he was awarded or authorized the Army Achievement Medal (2nd Award), Army Good Conduct Medal, Noncommissioned Officer's Professional Development Ribbon, and Army Service Ribbon.

18. The applicant petitioned the ABCMR requesting upgrade of his under honorable conditions (general) discharge. On 13 May 2021, the Board voted to deny relief and determined the overall merits of this case were insufficient as a basis for correction of the applicant's records.

19. The applicant provides VA documents that show he receives benefits for service-connected injuries to include adjustment disorder with mixed anxiety and depressed mood, chronic. His combined rating evaluation is 60%. These documents are provided in their entirety for the Board's review within the supporting documents.

20. 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.

21. 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. He contends he experienced an undiagnosed mental health condition that mitigates his misconduct.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted into the Regular Army on 21 February 1997 and reenlisted on 1 March 1999 and 17 June 2000.
- On 21 November 2001, the applicant accepted NJP for failing to obey a lawful command from his superior commissioned officer to stay away from the quarters and not to contact his spouse on 24 September 2001; and breaking restriction on 15 September 2001. The applicant received additional counseling on 5 December 2001 for harassing his spouse.
- The applicant's commander notified him on 26 March 2002, that he was initiating actions to separate him under the provisions of Army Regulation 635-200, paragraph 14-12b, for a pattern of misconduct. The commander cited the

applicant for disobeying a commissioned officer, breaking restriction, communicating a threat, and provoking speeches.

- The applicant was discharged on 6 May 2002 and completed 5 years, 2 months, and 16 days of net active 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 was not given any mental health intervention, and his military records are unjust because of this. The application included a VA Rating Decision letter dated 6 September 2023, which showed he is 50% service connected for Adjustment Disorder with mixed anxiety and depressed mood, chronic (claimed as anxiety, depression, and insomnia). A Report of Medical Examination dated 13 December 2001 showed no indication of any psychiatric symptoms, and A Report of Mental Status Evaluation dated 6 February 2002 showed that the applicant had capacity to understand the proceedings and was cleared for administrative action. No diagnosis was rendered. A medical record note dated 8 February 2002 showed that the applicant displayed symptoms of alcohol withdrawal and a "mild anxiolytic" was recommended. A progress note dated 11 February 2002 indicated he had been diagnosed with Alcohol Dependence. A commander's memorandum documented the applicant's missed appointment at ASAP on 31 January 2002. There was insufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed documentation of a community mental health visit on 29 November 2001, which noted "significant concerns for alcohol usage" and placement of a consult for ADAPCP (substance abuse program). It was noted that the applicant reported marital problems associated with his wife's adultery, and he requested counseling for stress management and alcohol abuse.

e. The applicant initiated treatment through the VA on 13 May 2005 requesting to be placed in an alcohol treatment program following legal problems, which included three upcoming court dates. He reported having been treated while in the military, and he was admitted to a residential program. He discharged after only one week due to a need to appear in court, and his next contact with VA mental health was in September 2013 when he again sought inpatient treatment for alcohol dependence. He reported a history of cocaine and alcohol abuse, multiple DUIs, imprisonment, and exposure to violence in his childhood. VA records show that the applicant had continued engagement in substance abuse treatment in 2015, 2019, and 2021.

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

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition at the time of the misconduct. Documentation from his time in service showed that he received services through the Army's substance abuse program while on active service.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed only minimal documentation of alcohol abuse treatment while on active service, and there is no evidence of service-related trauma exposure or any other mitigating experience from his time in service. The applicant is 50% service connected through the VA for an Adjustment Disorder and has utilized VA mental health services for treatment of Alcohol Dependence. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. However, the applicant contends he had a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record, and published DoD guidance for consideration of military upgrade requests, the Board found that relief was not warranted.
2. The Board carefully considered the applicant's contentions, his statement regarding his conditions, his record and length of service, the frequency and nature of his misconduct, the reason for his separation and the character of service he received when discharged. The Board considered the review and conclusions of the medical advising official, the applicant's VA service-connected conditions, his use of VA services and the Army substance abuse program services he received while in service. The Board found that: (1) He asserts that he had an undiagnosed mental health condition at the time of the misconduct that may mitigate it; (2) He asserts that he was experiencing a mental health condition at the time of service; (3) There was insufficient evidence, beyond his self-report, that he had a condition or experience while on active service that warrants an upgrade of his separation as a matter of liberal consideration. Based on a preponderance of evidence, the Board determined that his character of service was not

in error or unjust. The Board concurs with the corrections noted in the Administrative Notes below.

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, except for the corrections in the Administrative Notes that follow, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

6/10/2025

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214, for the period ending 6 May 2002, is missing important entries that affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following entries in item 18 (Remarks):

- CONTINUOUS HONORABLE SERVICE FROM 970221 UNTIL 000616

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE

REFERENCES:

1. 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.
2. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.
3. Army Regulation 635-8 (Separation Processing and Documents) provides: for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable, enter Continuous Honorable Active Service From" (first day of service for which DD Form 214 was not issued) until (date before commencement of current enlistment). Then, enter the specific periods of reenlistment as prescribed above.
4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the requirements for the administrative 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. 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.

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//