

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 November 2024

DOCKET NUMBER: AR20240001624

APPLICANT REQUESTS:

- upgrade of his under other than honorable conditions discharge to under honorable conditions (General)
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record), 31 January 2024
- Self-authored Statement, 30 January 2024
- District Court (State) Indictment Document, 4 December 2004
- Non Commissioned Officer's Association (NCOA) of the United States Certificate, 11 October 2006
- Enlisted Record Brief (ERB), 20 December 2007
- College Transcripts, Summer 2010
- State University Transcripts, Fall 2020
- State University Transcripts, Fall 2021
- Medical and Behavior Health/Psychiatry Progress Notes consisting of 159 pages
  - (Company) Progress Notes, 9 August 2022
  - (Company) Medicine Psychiatry Notes, 2023
  - (Company) Progress Notes, 28 March 2023
  - (Company) Progress Notes, 25 April 2023

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:

a. Trauma from his childhood led to alcoholism and bipolar disorder. It was not diagnosed during his service. He was a pathological liar in his earlier years. He was suffering from alcoholism secondary to childhood trauma and bipolar disorder.

b. The Army Discharge Review Board (ADRB) stated without his mental health records they were unable to take his word for it.

c. He provided mental health records as well as his post-service accomplishments in the hope that the Board will consider his request for an upgrade to general, under honorable conditions. He believes it is an injustice to hold those actions against him 15 years later given the circumstances surrounding his discharge.

d. In his self-authored statement, he chronicled his experiences with childhood trauma and how it led to alcoholism. He was drinking to escape troubles with his father. He served a few days in jail and released before his drill date. His father kicked him out of the house and gave him a ticket to live with his mother who had divorced him several years prior. He was in a relationship that was not working but he tried to salvage it. He attempted suicide several times in 2005 and 2006. He was diagnosed with bipolar disorder.

e. He should have called his Reserve unit, but it was the furthest thing from his mind. He was allowed to obtain a waiver to allow him to enlist in the active Army. On weekends he would get drunk. After Advanced Individual Training he asked to be stationed in Korea. He did well in physical training but would sneak off post to drink and did not have the money to keep up with his habit. He began writing checks that he could not cover. He received two nonjudicial punishments.

f. His bad checks caught up with him. He went to CID and filed a false report. They discovered his deception, and he admitted his false report but tried to have another Soldier destroy evidence for him. He was charged and after speaking to counsel decided to ask for a discharge.

g. He went to school and eventually helped him deal with his issues. He got married and his wife helped him change his behavior. He has three children. He is getting help for bipolar disorder. The complete details of his effort to improve with post-service accomplishments and mental health services is available for Board consideration.

3. The applicant provides:

a. A District Court document reflecting charges for public intoxication, 4 December 2004.

b. An NCOA Certificate, dated 11 October 2006, awarding him the Military Excellence Award as Honor Graduate of his class.

c. A copy of his ERB showing his assignments and promotions as of 20 December 2007.

d. Transcripts from three State Universities and one College reflecting the courses and studies he completed. These show collectively he completed Registered Nurse studies.

e. Medical progress notes and behavior health notes consisting of 159 pages, reflecting diagnosis of bipolar II disorder, anemia, environmental allergies, hypertension, and generalized anxiety disorder. The complete package of medical and behavioral health progress notes and associated documents are available for Board review.

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

a. On 2 December 2003, he enlisted in the U.S. Army Reserve (USAR).

b. A Statement of Understanding, dated 11 May 2006, reflects he agreed and accepted enlistment in the Regular Army with an understanding he would be assured CH-47 Helicopter Repairer training.

c. On 30 May 2006, he enlisted in the Regular Army for a period of 6 years. He attained to rank/pay grade private first class (PFC)/E-3.

d. On 30 October 2007, 6th Military Police Group (CID), U.S. Criminal Investigation Command, Camp Humphreys, issued a final Report of Investigation Number 0100-2007-CIDxxx-xxxx-xxxx, establishing a basis for disciplinary or administrative actions against the applicant for allegations of obstruction of justice, false official statements, and making and uttering worthless checks, with an estimated loss to the U.S. Government of \$5,693.00. The final report contained an agent's investigation report, a waiver certificate and statement from the applicant, copies of the applicant's leave and earning statements, front and backs of worthless checks, bank statements, transaction records, and Army and Air Forces Exchange Service (AAFES) correspondence. The supporting staff judge advocate opined that sufficient admissible evidence was available to prosecute the applicant for the offenses listed. This report further reflects his rank as private/E-1, however the nonjudicial punishment showing any reductions to this rank are not contained in the available records.

e. On 13 December 2007, court-martial charges were preferred against him. A DD Form 458 (Charge Sheet) reflects he was charged with:

(1) Charge I: One specification of violation of Article 107 of the Uniform Code of Military Justice (UCMJ): in that he did on or about 27 August 2007, at Humphreys Garrison, Republic of Korea, with intent to deceive, sign an official sworn statement which was totally false and then known by him to be so false.

(2) Charge II: Specification 1: in that he did at or near Humphreys Garrison, Republic of Korea, between on or about 3 January 2007 and 29 March 2007, with intent to defraud and for the procurement of lawful currency, wrongfully and unlawfully utter to Humphreys Garrison, AAFES, checks then knowing that he would not have sufficient funds in or credit with such bank for the payment of said checks; numbered, dated, and amounts as follows:

- 540, 27 January 2007, \$300.00
- 546, 8 February 2007, \$300.00
- 547, 11 February 2007, \$300.00
- 548, 15 January 2007, \$300.00
- 549, 12 February 2007, \$300.00
- 550, 13 February 2007, \$300.00
- 551, 18 February 2007, \$300.00
- 552, 27 February 2007, \$300.00

(3) Charge II: Specification 1: in that he did at or near Humphreys Garrison, Republic of Korea, between on or about 3 January 2007 and 29 March 2007, with intent to defraud and for the procurement of a computer, wrongfully and unlawfully utter to Humphreys Garrison, AAFES, check number 543 on 3 January 2007 in the amount of \$1,589.99, then knowing that he would not have sufficient funds in or credit with such bank for the payment of said check.

(4) Charge III: Specification: in that he did at or near Humphreys Garrison, Republic of Korea, between on or about 30 August 2007, wrongfully endeavor to impede a CID investigation in the case of himself by sending a text message to PFC AL\_\_\_\_, urging him to destroy a computer box which was located in his barracks room.

f. After consulting with legal counsel on 17 December 2007, he voluntarily requested discharge in lieu of trial by court-martial, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 10, in lieu of trial by court-martial. In doing so, he acknowledged that the charges preferred against him under the UCMJ, authorized the imposition of a bad conduct discharge or dishonorable discharge. He further acknowledged:

- he had not been subjected to coercion with respect to his request for discharge

- he had been advised of the implications that were attached to it
- by submitting the request, he was acknowledging he was guilty of the charges against him or of (a) lesser included offenses therein contained which also authorized imposition of a bad conduct or dishonorable discharge
- he could be discharged under other than honorable conditions and he could be ineligible for many or all benefits administered by the Veterans Administration (VA)
- he could be deprived of many or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he could expect to encounter substantial prejudice in civilian life by reason of an under other than honorable conditions discharge
- there was no automatic upgrading of or automatic review of a less than honorable discharge by any Government agency or the Army Board for the Correction of Military Records and that he must apply to either the Army Discharge Review Board or the Army Board for Correction of Military Records
- an act of consideration by either Board does not imply that his discharge would be upgraded
- he was advised he could submit any statements he desired in his own behalf, and elected not to do so

g. On the same date, the Staff Judge Advocate, Headquarters, 2D Combat Aviation Brigade, reviewed his request and noted the applicant's command recommended approval of his request.

h. On 19 December 2007, the separation authority approved his request for discharge, under the provisions of Army Regulation 635-200, chapter 10, in lieu of trial by court-martial. He directed the applicant's discharge with an under other than honorable conditions discharge.

i. On 29 December 2007, he was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200, chapter 10, in lieu of trial by court-martial, with a characterization of service of under other than honorable conditions. He completed 1 year and 7 months of active service. It further shows in:

- block 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) –
  - National Defense Service Medal
  - Global War on Terrorism Service Medal
  - Korea Defense Service Medal
  - Army Service Ribbon

- block 26 (Separation Code) – KFS
- block 26 (Reentry Code) – 4

5. On 15 September 2023, in ADRB Docket Number AR20210012473, the Board determined his separation was both proper and equitable and found no basis to grant his request for an upgrade.

6. 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.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service to general, under honorable conditions. In effect, the applicant asserts that trauma from his childhood led to 'alcoholism and Bipolar Disorder' which was not diagnosed during service. 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 U.S. Army Reserves (USAR) on 02 December 2003. On 30 May 2006, he enlisted in the Regular Army (RA), 2) on 13 December 2007, court-martial charges were preferred against the applicant for, in effect, providing a false official statement, writing bad checks, and attempting to impede a CID investigation, 3) on 29 December 2007 he was discharged under the provisions of Army Regulation (AR) 635-200, Chapter 10, in lieu of trial by court-martial, with a characterization of service of UOTHC, Separation Code of KFS, and reentry code of '4.' 4) on 15 September 2023, the Army Discharge Review Board (ADRB) found the applicant's discharge to be fair and equitable.

b. The Army Review Board Agency (ARBA) Medical 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.

c. In-service medical records were available for review via JLV from 05 July 2006 through 28 September 2007. On 21 September 2007, the applicant presented to BH for an intake noting he was referred by the Army Substance Abuse Program (ASAP). It was noted that he was told to go to ASAP after spending a night out drinking and not returning to post until the next morning. The provider documented he had previously received an Article 15 for underage drinking, and he had not been allowed to drink alcohol since July. He informed the provider he had filed a false report with CID about one month ago as he was trying to get of the Army to which he reported feeling guilty about his attempt to get kicked out of the Army. It was noted that the applicant reported

he was having difficulty staying asleep due to waking up 3-4 times per night and was having trouble concentrating because he was thinking about his pending UCMJ or 'other things.' He denied experiencing suicidal or homicidal ideation (SI/HI) at the time of the visit. Regarding his mental status, the provider noted his speech was normal, mood was noted as depressed, euthymic, and calm and that his affect was congruent with his mood. The provider indicated there were no hallucinations, his thought processes, thought content, and judgment were not impaired, and insight was noted to be intact. The applicant was not diagnosed with a BH condition, and it was noted that he did not feel as though he needed another BH appointment. There were no additional BH notes available for review via JLV.

d. Per review of JLV, the applicant is not service-connected for any conditions through the VA and there were no VA medical records available for review.

e. The applicant's self-statement is well-summarized in the ROP. As such, only a brief summary will be included in this Advisory. The applicant noted that he grew up in an abusive household and that he started drinking alcohol in order to cope with the problems with him and his father. In December 2004, he was arrested for public intoxication. Following the dissolution of a relationship in 2005, the applicant reported he became severely depressed and attempted suicide via overdose which resulted in admission to an intensive care unit (ICU). Despite his efforts to maintain the relationship, it again did not work out and he reported a second suicide attempt via overdose in 2006. While on active duty, he stated that he continued to drink to excess though did not have the money to 'keep up with this habit' and as a result began to write bad checks. In summary, the applicant asserts that his mental health problems existed before service and were exacerbated by his service.

f. Civilian records included as part of his application were reviewed. Records from a civilian health organization [unnamed on documents] were reviewed. On 26 October 2021, it was also noted that the applicant had quit his job 2 years ago and since that time had felt like the anxiety and stress in his life caused him to notice "he is more on edge, feeling depressed, and anxious." The provider documented the applicant's symptoms associated with hypomania (e.g., euphoric mood, egosyntonic sleeplessness, increased activity, impulsive/reckless behavior, racing thoughts, increased talkativeness, marked inability to focus, and excessive self-confidence) and anxiety (e.g., excessive worrying, restlessness, fatigue, difficulty concentrating, irritability, muscle tension, and disrupted sleep as a result of the anxiety). The provider diagnosed him with Bipolar Disorder and Generalized Anxiety Disorder (GAD) and was started on Lamictal (mood stabilizer) and Prozac (antidepressant). Records provided by the applicant through May 2023 show he was continuously prescribed these medications since his initial prescription in 2021. A note dated 04 May 2022 shows the applicant established care with a new provider after moving and he reported a history of heavy alcohol use from ages 17-33 years old. A follow-up note dated 05 July 2022

documented that, since starting his medication, he had stopped drinking. A note from DISCOVERYMD of Washington dated 09 August 2022 documented that the applicant had been diagnosed by his previous treating provider with Bipolar II Disorder in 2021. It was noted that he had quit his job in 2021 and decided to go to nursing school which is when his wife noticed that he had mood swings. The provider documented the applicant reported a history of two previous suicide attempts over 20 years ago and denied any history of head injuries or hospitalizations. It was also documented that the applicant stated his father was diagnosed with Bipolar I Disorder. The applicant was diagnosed with Bipolar II Disorder, GAD, and Posttraumatic Stress Disorder (PTSD), Unspecified. A psychiatry note from UW Valley Medical Center psychiatry note dated 28 March 2023 shows the applicant was establishing care with a new provider for treatment of Bipolar Disorder due to the previous practice being bought out. It was noted that during COVID when he was stuck at home he was depressed and would drink a lot. When he was not depressed, the provider noted that he said would be 'irritable, on edge, couldn't sit still, and overspending, felt some grandiosity,' required less sleep during those times, and used to be a road rage driver. These symptoms were noted to last less than one week. It was noted that he felt stable on his medication regimen of Lamictal and Prozac. He was diagnosed with Bipolar Disorder with a rule out of PTSD. Records also show a previous medication trial with Abilify (antipsychotic). The onset of his BH conditions was not specified throughout the available records nor were they associated with his military service by his treating providers.

g. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a condition or experience in-service that mitigated his misconduct. Review of the available in-service medical records shows a history of one BH note documenting that the applicant did not meet criteria for a BH condition and was released without limitations. Although the BH provider indicated the applicant was seen by ASAP while in-service, records were unavailable for review and it is unclear if the applicant was diagnosed with an alcohol-related condition. However, even if the applicant was diagnosed with an Alcohol Use Disorder, this does not constitute a mitigating condition. Furthermore, although the applicant stated that he experienced two suicide attempts due to relationship problems while in-service (i.e., 2005 and 2006) resulting in care through the ICU, records regarding these hospitalizations were not available as part of this review. The applicant is not service-connected through the VA for any conditions. Since being discharged from the military, civilian/non-VA records show the applicant has been diagnosed with Bipolar II Disorder and GAD in 2021 and PTSD in 2022. The available records did not specify the onset of his conditions nor associate any of his BH conditions with his service. As such, BH mitigation is not supported.

h. Kurta Questions:



(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to childhood trauma and Bipolar Disorder. Non-VA/Civilian medical records show the applicant has been diagnosed with Bipolar II Disorder, GAD, and PTSD since being discharged from the military.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Review of the available in-service medical records indicate the applicant was not diagnosed with a BH condition in-service and was not on a profile for BH reasons. Although there is evidence in the record that the applicant was evaluated through ASAP due to alcohol use, there were no records available for review as part of this Advisory. Despite the lack of information, it is of note that Alcohol Use Disorders do not constitute mitigating conditions. The applicant is not service connected through the VA for any conditions. Since being discharged from the military, civilian health records show the applicant was diagnosed with Bipolar II Disorder and GAD in 2021 and PTSD in 2022; however, the available records did not specify the date(s) of onset for those conditions nor were they associated with his service. As such, BH mitigation is not supported.

#### 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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with an offense, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted the applicant's contention of an alcohol use disorder; however, reviewed and concurred with the medical advisor's review finding an alcohol use disorder does not constitute a mitigating condition. The Board noted the applicant's diagnosis post-service of Bipolar II and generalized anxiety disorder as well as PTSD and noted the available record does not specify the dates of onset for those conditions or that they were associated with the applicant's service. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust and denied relief.

2. 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.

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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. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3-7 provides:

(1) An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 Soldier upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty training or where required under specific reasons for separation unless an entry level status separation (uncharacterized) is warranted.

(2) 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

b. Chapter 10 provided, that a member who has committed an offense or offenses for which the authorized punishment included a punitive discharge may submit a request for discharge 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.

4. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator "KFS" corresponded to "In Lieu of Trial by Court-Martial," and the authority, Army Regulation 635-200, chapter 10.

5. 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.

6. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

7. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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.

8. Section 1556 of Title 10, U.S. 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.

//NOTHING FOLLOWS//