

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 October 2024

DOCKET NUMBER: AR20240001979

APPLICANT REQUESTS: upgrade of his general, under honorable conditions discharge to honorable, and an appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record), 12 December 2023
- service records consisting of 321 pages of separation documents, many pages duplicated

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 indicates on his application post-traumatic stress disorder (PTSD) as an issue and/or a condition related to his request. He states:
 - a. His youngest brother was murdered in 2006, causing the onset of PTSD. Not being able to perform 100% for a short period, he was unjustly issued three separation packets. His legal counsel responded on his behalf that there was an abuse of power in the discharge process.
 - b. He was discharged 4 months before his expiration term of service (ETS) with no consideration of his commendations and letters of recommendation. He was not given a rehabilitative transfer to another unit.
3. The applicant provided his entire separation package consisting of 321 pages which contained multiple duplicates.
4. A review of his service records shows:

a. On 8 April 2004, the applicant enlisted in the Regular Army for a period of 4 years beginning in the rank/pay grade private first class (PFC)/E-3. He attained the rank/grade of specialist 4 (SP4)/E-4.

b. He was counseled on the following occasions:

- 20 April 2005, for reporting to physical training formation without his proper uniform for a road march, to which he disagreed in writing with the counseling
- 20 April 2005, for disrespect to a noncommissioned officer (NCO), to which he disagreed in writing with the counseling
- 26 April 2005, for failure to follow instruction, failure to be at the proper place of duty, and failure to be in the correct uniform by not bringing his load carrying equipment to a road march; to which he agreed in writing with the counseling
- 11 August 2005, for a verbal altercation, to which he agreed in writing with the counseling
- 9 December 2005, for failure to be at his appointed place of duty, to which he agreed in writing with the counseling

c. On 14 March 2006, he accepted company grade nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), for disobedience of a lawful order from an NCO on 10 March 2006; and for failure to go to his appointed place of duty at 0630 accountability formation and 0900 work call, on 10 March 2006. His punishment consisted of reduction to PFC/E-3, forfeiture of \$350.00 pay for 1 month, and 14 days extra duty. On the same date he appealed this punishment. On 20 March 2006, his battalion commander denied his appeal.

d. His enlisted record brief shows he was:

- promoted to SP4/E-4 on 1 October 2006
- flagged on 9 January 2007

e. A DD Form 261 (Report of Investigation (ROI) of a Line of Duty (LOD) of Misconduct Status), dated 28 March 2007, reflects the applicant was present for duty and was injured; intentional misconduct or neglect was the cause of an injury to his hand; he punched a hole in a wooden wall locker. A LOD synopsis, dated 9 January 2007, reflects self-inflicted injuries to the applicant's hand were found not to be in the LOD due to his own misconduct; his actions were the direct proximate cause of his injury.

f. On 30 July 2007, he underwent a mental status evaluation. A DA Form 3822 (Report of Mental Status Evaluation) reflects he was evaluated as requested by his command for chapter 14-12b processing. The examining psychologist found his

behavior was hostile, he was fully alert and fully oriented with clear thinking process and normal thought. The examining psychologist further opined he had the mental capacity to understand and participate in the proceedings, he was mentally responsible, and he met the retention requirements. He further diagnosed adjustment disorder with mixed emotions. He cleared him psychiatrically for any administrative action deemed appropriate by command.

g. On an unspecified date, he retained civilian counsel.

h. On 10 September 2007, his civilian counsel provided a memorandum to his commanding officer, Headquarters and Headquarters Company (HHC), 3d Brigade Special Troops Battalion (BSTB), acknowledging notification that separation action had been withdrawn based upon an instance of NJP proceedings being rescinded by his command. Counsel noted the applicant had entered a plea of not guilty during NJP and his commander found him "not guilty" of marijuana use. Counsel noted a new chapter action was being taken against the applicant and such action raised questions about the fairness of the process. Counsel further requested a rehabilitative transfer so the applicant could finish his last months before his ETS.

i. On 26 September 2007, his civilian counsel provided a seven-page memorandum with exhibits A through K, requesting he be given an honorable characterization of service based upon:

- documentation being over 2 years old being used in a pattern of misconduct chapter proceeding
- an absence of formal counseling since January 2007
- degrading counseling from 13 January 2007
- a LOD investigation in the separation packet which included statements serving no purpose other than piling on adverse information in addition to a pejorative counseling statement from an NCO
- presence of limited use information in the separation packet based upon his use of marijuana after he had identified himself to the Army Substance Abuse Program (ASAP) which included NJP, dated 6 September 2007, during which he was found "not guilty"
- two separate notification memoranda; one of which included a reference to marijuana use
- his command previously served him with separation paperwork which was withdrawn and resubmitted after his finding of "not guilty" during his NJP
- his history of service to the country was over 3 years and 5 months
- his younger brother was murdered in January 2006, and he had difficulty in dealing with his brother's murder
- a rehabilitative transfer not having been offered to the applicant in this case

j. On 8 November 2007, the commanding officer, HHC, 3d BSTB, notified him he was initiating action to separate him for a pattern of misconduct under the provisions of Paragraph 14-12b, Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) and advised him of his rights. His commander recommended he receive a general under honorable conditions characterization of service. He understood he had a right to consult with consulting military counsel or he may obtain civilian counsel at his own expense; he may submit statements in his own behalf; and he may obtain copies of the documents that would be sent to the separation authority supporting the proposed separation. His commander noted the following reasons for his proposed action were:

- disobeying an NCO on 10 March 2005
- failure to be at appointed place of duty on 9 December 2006, 10 March 2006, 2 May 2006, 3 May 2006, 12 May 2006, and 6 June 2006
- dereliction of duty by falling asleep while working the night shift on 16 October 2006 and 20 October 2006
- damage to government property by punching a hole in a wooden wall locker on 9 January 2007
- self-injury on 9 January 2007 without intent to avoid service by breaking his hand

k. On the same date, his commanding officer recommended his separation for a pattern of misconduct, and he recommended that the rehabilitative transfer requirement be waived. In this notification he reiterated the factual reasons for the recommended separation action; there was no reference to any NJP for marijuana use.

l. On 14 November 2007, he acknowledged receipt of his commander's separation notification, and he elected his rights. He elected to submit statements in his own behalf, and he elected to receive copies of the separation documents being sent to the separation authority. He understood that he may expect to encounter substantial prejudice in civilian life if a discharge general, under honorable conditions were issued to him. He further understood that as the result of issuance of a discharge general, under honorable conditions he may be ineligible for many or all benefits as a veteran under both Federal and State laws and that he may expect to encounter substantial prejudice in civilian life.

m. On the same date, his intermediate commander recommended his separation for a pattern of misconduct, and recommended his service be characterized as general under honorable conditions.

n. On 30 November 2007, the separation authority approved his separation under the provisions of Paragraph 14-12b, Army Regulation 635-200 for a pattern of misconduct with a characterization of service of under honorable conditions (general), and directed waiver of the rehabilitative transfer requirement.

o. On 17 December 2007, the applicant was discharged with a characterization of service of under honorable conditions (general). His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12b by reason of a pattern of misconduct. He completed 3 years, 8 months, and 10 days of active service during this period with no time lost. He was awarded or authorized:

- National Defense Service Medal
- Global War on Terrorism Service Medal
- Humanitarian Service Medal
- Iraq Campaign Medal
- Army Service Ribbon
- Parachutist Badge

5. On 8 June 2009 and in Docket Number AR20090000428, the Army Discharge Review Board determined his discharge was both proper and equitable and voted to deny relief.

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. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under honorable conditions (general) to honorable. He contends he experienced an undiagnosed mental health condition, including PTSD, 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 8 April 2004.
- The applicant received counselings on several occasions between April and December 2005, and he accepted NJP for disobedience of a lawful order from an NCO and for failure to go to his appointed place of duty on 10 March 2006. His appeal was denied by his battalion commander.
- On 8 November 2007, the commanding officer notified the applicant that he was initiating action to separate him for a pattern of misconduct (between March 2005 and January 2007) under the provisions of Paragraph 14-12b, Army Regulation 635-200, and the reasons were as follows: disobeying an NCO, failure to be at appointed place of duty on six occasions, dereliction of duty by falling asleep on two occasions, damage to government property by punching a

hole in a wall locker, and self-injury without intent to avoid service by breaking his hand.

- The applicant was discharged on 17 December 2007 and completed 3 years, 8 months, and 10 days of 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 his brother was murdered, causing the onset of PTSD, and he was unable to perform at 100% for a short time. He was discharged four months before his ETS. The application included a Report of Mental Status Evaluation dated 30 July 2007 that showed the applicant was mentally responsible, had the capacity to understand and participate in the proceedings, and met retention requirements. He was diagnosed with Adjustment Disorder with Mixed Emotions and was cleared for administrative action. A memorandum dated 16 January 2007 by a licensed clinical social worker showed that the applicant was evaluated for AWOL/Imminent Harm risk and was determined to be at minimal risk. A Report of Medical History dated 25 July 2007 showed the applicant endorsed symptoms of trouble sleeping, depression or excessive worry, and being evaluated or treated for a mental condition, and he noted medications, including Ambien, Naltrexone, and trazadone. He provided explanation for these symptoms and attributed them to the death of his younger brother, his mother's grief, and returning from Iraq, and he discussed severe stress levels associated with being told to return to Fort Bragg. He also confessed to smoking marijuana and drinking alcohol to cope with the stress and loss. An ASAP Outpatient Diagnostic Summary dated 1 May 2007 showed the applicant was referred by a medical provider and reported drinking liquor daily since the death of his brother on 23 January 2006 and deployment to Iraq from August 2006 to January 2007, and he self-identified marijuana use in January 2007. He was diagnosed with Alcohol Dependence and referred for intensive outpatient treatment. There was sufficient evidence that the applicant was diagnosed with a mental health 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 the applicant initially engaged mental health treatment on 16 February 2006 and was escorted by command due to difficulty with grief associated with his brother's murder three weeks prior. He was seen for two counseling sessions, and on 4 April 2006, he was prescribed an antidepressant medication by his primary care provider. They discussed deployability due to the applicant's stress level and difficulty with his unit, but the applicant insisted he wanted to deploy. On 26 May 2006, he presented to Family Advocacy reporting distress over his mother having surgery and his unit not allowing him to go to be with her, and he discussed continued and escalating problems with his unit. He was seen for four more counseling sessions prior to his deployment, and his diagnosis was Phase of Life Problem. In January 2007, he reengaged with mental health following redeployment and

the incident where he punched a wall locker, resulting in a broken hand. Documentation noted he reported feelings of depression related to the loss of his brother, and he discussed continued problems with command. His diagnosis was Adjustment Disorder with depressed mood, and he engaged in monthly counseling sessions while on medical hold at Walter Reed Medical Center. On 26 April 2007, he self-enrolled in ASAP and reported daily alcohol use to self-medicate his emotions related to his brother's death, his worries about his mother, and his problems with his unit, who were pursuing getting him assigned back to Fort Bragg, which would move him away from his mother, who lived in Maryland. The applicant routinely engaged in medication management, individual counseling, group therapy for anger and stress management, and ASAP. On 25 July 2007 he was referred for an emergency command directed evaluation following a report of homicidal ideation by the applicant toward his chain of command, and on 30 July 2007 he completed a Mental Status examination associated with being chaptered out of the military. He reported testing positive for marijuana, but the documentation contained several inconsistencies and noted that he was very uncooperative during the evaluation. He was diagnosed with Adjustment Disorder with Disturbance of Emotions and Conduct and Cannabis Abuse. His DoD mental health treatment concluded in September 2007.

e. The applicant initiated mental health through the VA on 31 October 2008, and he was evaluated, resulting in no diagnosis, in his pursuit to join the military again.

Documentation was unremarkable. On 7 April 2014 he was evaluated for mental health treatment and reported anger problems, hopelessness, fatigue, and depressed mood. He was diagnosed with Alcohol and Marijuana Dependence and PTSD, and he was referred to substance abuse treatment. He did not respond to scheduling efforts. In July 2019 he reported to his primary care provider that he had received a DUI and needed alcohol treatment per a court order, and he started an intensive outpatient treatment that day. He successfully completed this program and was shifted to weekly group therapy, which continued through November 2019. Documentation in November 2023 and February 2024 showed that the applicant was pursuing joining the military again and was going through MEPS, but he was disqualified.

f. The applicant is 30% service connected for PTSD through the VA. However, a Compensation and Pension evaluation dated 31 March 2008 indicated he did not meet criteria for this diagnosis because the identified stressor, the death of his brother and subsequent difficulty with his command, did not meet criteria for a traumatic experience. He was diagnosed with Adjustment Disorder and Alcohol Abuse.

g. 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.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had undiagnosed PTSD, at the time of the misconduct. DoD documentation showed that he was diagnosed with an Adjustment Disorder, Alcohol Dependence, and Cannabis Abuse. The applicant is 30% service connected for PTSD by the VA, but the evaluation showed that he met criteria for Adjustment Disorder and Alcohol Abuse.

(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. While the applicant did deploy to Iraq, his primary stressor was the death of his brother and subsequent difficulty with his command, which does not meet the required criteria of a trauma exposure for a PTSD diagnosis.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed a history of mental health diagnoses and treatment while on active service as well as a history of substance abuse. While the death of his brother is certainly a significant stressor and created a complicated grief reaction, this experience does not rise to the level of severity to constitute a PTSD diagnosis. Additionally, the applicant's pattern of misconduct spanned a period of time that predates his brother's death and extended well beyond a typical grief response, and grief does not affect one's ability to distinguish right from wrong and act in accordance with the right.

i. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. 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 statement, his record of service to include deployment, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA Behavioral Health Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the

medical advising official regarding his misconduct not being mitigated by PTSD. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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|---|---|---|----------------------|
| : | : | : | 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.

3/31/2025

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.

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 (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, paragraph 2-11 reads 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. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 1-16a provided guidance for counseling and rehabilitative requirements. Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation to soldiers. It is essential that soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed. Effective leadership is particularly important in the case of soldiers serving their initial enlistments. Except as otherwise indicated in this regulation, commanders must make maximum use of counseling and rehabilitation before determining that a soldier has no potential for further useful service and, therefore, should be separated. In this regard, commanders will ensure that adequate counseling and rehabilitative measures are taken before initiating separation proceedings for the following reason(s): minor disciplinary infractions or a pattern of misconduct.

d. Paragraph 1-16d provided for waivers.

(1) The rehabilitative transfer requirements in chapter 14 may be waived by the separation authority in circumstances where common sense and sound judgment indicate that such transfer will serve no useful purpose or produce a quality soldier. Such circumstances may include:

- two consecutive failures of the Army physical fitness test
- pregnancy while in entry-level status
- highly disruptive or potentially suicidal behavior, particularly in reception battalions
- active resistance of rehabilitative efforts
- soldiers assigned to small installations or at remote locations
- situations in which transfer to a different duty station would be detrimental to the Army or the soldier (for example, indebtedness, participation in the Alcohol and Drug Abuse Prevention and Control Program, Mental Health Treatment Program, and so forth

(2) Waiver of rehabilitative transfer may be granted at any time on or before the date the separation authority approves or disapproves the separation proceedings. Waiver authority may be withheld by a higher separation authority in a particular case, a class or category of cases, or all cases. Decision to withhold waiver authority will be announced in writing.

e. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

d. Paragraph 14-12b provides guidance for Soldiers subject to action for a pattern of misconduct. A pattern of misconduct consists of one of the following:

(1) Discreditable involvement with civil or military authorities.

(2) Discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

4. Army Regulation 635-5-1 (Separation Program Designators), in effect at the time, provided the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation code to be entered on the DD Form 214. It

identified the separation code "JKA" as the appropriate code to assign to enlisted personnel administratively discharged under the provisions of Army Regulation 635-200, paragraph 14-12b by reason of a pattern of misconduct.

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

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//