

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 November 2024

DOCKET NUMBER: AR20240002189

APPLICANT REQUESTS:

- an upgrade of his characterization of service from under honorable conditions (general) to honorable
- a personal appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- VA Form 21-0781 (Department of Veterans Affairs (VA) Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD)), 25 January 2024

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 his misconduct was related to a serious, traumatic incident that he experienced while on active duty.
3. The applicant provides VA Form 21-0781, dated 25 January 2024, which states as a military police officer he responded to a traffic accident off base near Fort Knox, KY on highway 31W and a young female child had been ejected through the windshield as a result of the accident. The child had been unrestrained by a seatbelt and her intoxicated father was driving and hit a cement water retainer. The applicant immediately went to the child to render aid, but she died in his arms. He has been horribly traumatized by this experience since the incident happened with horrible nightmares. His job performance was failing from the point of the incident, and he was also admitted to a psychiatric ward because he became suicidal.

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

a. The applicant enlisted in the Regular Army on 9 November 2000. The highest rank he held was private first class (PFC)/E-3.

b. The applicant was counseled for the following:

- 13 April 2001 – welcome to the platoon and guideline of expectations (initial counseling)
- 5 May 2001 – monthly counseling; duty performance was good.
- 3 June 2001 – monthly counseling; appearance and job performance started off weak/poor but improved. He was not late for any assigned tasks.
- 3 July 2001 – monthly counseling; appearance was unsuitable for the standards set for the team, his job performance had its ups and downs, and physical fitness seemed to be his weakest area and needed great improvement.
- 1 August 2001 – failure to report to training (all personnel)
- 26 August 2001 – monthly counseling; his appearance showed improvement, he was doing a good job with keeping himself informed on everything going on with the platoon, he showed a great deal of pride in his wartime mission, and he failed his diagnostic Army Physical Fitness Test (APFT).
- 11 September 2001 – monthly counseling; his appearance was acceptable, he showed great enthusiasm to become more persistent in his job, he did a good job applying what he learned in classes, and he did an outstanding job his first time working on day shift.
- 30 September 2001 – monthly counseling; boots and uniform kept up to standards, he received a coin from the bluegrass challenge supervisor, and his overall job performance was outstanding.
- 1 November 2001 – professional growth and development; his appearance was marginal for the month of October, he was unable to take the APFT due to a temporary profile, he accomplished tasks assigned, and he was enrolled in civilian education.
- 4 December 2001 – professional growth and guidance; his appearance improved slightly, impressed with effort displayed during his recovery, and interpersonal communication skills and the standards of conduct seemed to be weaknesses.
- 17 December 2001 – failure to maintain proper key control.
- 9 January 2002 – monthly performance counseling; several issues took place during the month of December that could jeopardize his successful future in the Army. There was a blatant lack of motivation displayed by the applicant.
- 18 January 2002 – financial indebtedness; charge and check cashing privileges revoked due to failure to make payment of \$29.00 on his military star account.

- 24 January 2002 – failure to obey lawful order; failed to attend special population physical training (PT), which he was ordered to be there Monday thru Friday at the appointed place and time.
- 4 February 2002 – monthly counseling; did not do well on the diagnostic APFT and he would have to attend special population PT until the next diagnostic or record APFT, and he was over his allowed body fat by 3 percent.
- 10 February 2002 – recommendation for action under Article 15, Uniform Code of Military Justice (UCMJ); he failed to report for duty on 9 February 2002. This was the third time in 21 days that he failed to be at his appointed place of duty.

c. On 13 March 2002, he accepted non-judicial punishment (NJP) under Article 15, UCMJ, for the following misconduct:

- on or about 22 January 2002, without authority, failed to go at the time prescribed to his appointed place of duty, to wit: 1800 for platoon special population PT.
- on or about 4 February 2002, without authority, failed to go at the time prescribed to his appointed place of duty, to wit: 1800 special population PT.
- on or about 9 February 2002, without authority, failed to go at the time prescribed to his appointed place of duty, to wit: 2130 for guard mount duty.
- on or about 26 July 2001, without authority, failed to go at the time prescribed to his appointed place of duty, to wit: 0700 sergeant's time training.

d. His punishment included to be reduced to the grade of private (PV2)/E-2 and restriction for 14 days to the limits of the Fort Knox installation.

e. The applicant was counseled for the following:

- 29 March 2002 – failure to report for duty on 25 March 2002
- 5 April 2002 – monthly counseling; appearance was up/down for the month of March, he showed the ability to do his job but his recent absences and tardies overshadowed this and it had become a problem that needed to be fixed, and he showed a new and improved level of motivation during special population PT.
- 15 April 2002 – failed to show up for special population PT from 8-10 April 2002
- 18 April 2002 – failure to report for duty and failure to use proper chain of command.
- 21 April 2002 – 40 minutes late for duty on 20 April 2002
- 23 April 2002 – failed record APFT on 22 April 2002

- 23 April 2002 – dereliction of duty; signed inmates out to a person who was not authorized by the facility to pick up inmates. He was relieved from the duty position.
- 25 April 2002 – failed APFT on 22 April 2002
- 6 May 2002 – failure to follow lawful orders.

f. The applicant underwent a mental status evaluation on 4 June 2002. The applicant was diagnosed with major depressive disorder. The psychologist indicated there was no evidence of mental defect, emotional illness, or psychiatric disorder of sufficient severity to warrant disposition through military medical channels. The applicant was mentally responsible for his behavior, could distinguish right from wrong, and possessed sufficient mental capacity to participate intelligently in any proceedings which may involve him. The applicant returned from the VA medical center after inpatient hospitalization warranted by suicidal ideation and plans. He responded well to treatment at the VA and was prescribed medication that appeared effective. He was cleared to return to duty and psychiatrically cleared for administrative actions as deemed necessary by the command. The applicant denied current thoughts, plans or intent for self-harm or harm to others.

g. On 3 July 2002, he accepted NJP under Article 15, UCMJ, for the following misconduct:

- on or about 8 April 2002, 9 April 2002, 10 April 2002, and 17 April 2002, without authority, failed to go at the time prescribed to his appointed place of duty, to wit: 1430 for platoon special population PT.
- on or about 21 April 2002, without authority, failed to go at the time prescribed to his appointed place of duty, to wit: 0530 PT formation.
- on or about 6 May 2002, willfully disobeyed a lawful order from a superior noncommissioned officer (NCO), to write a 2000 word “RBI” on accountability and to turn in the “RBI” on 6 May 2002
- on or about 6 May 2002, willfully disobeyed a lawful order from a superior NCO to write a 2500 word “RBI” on the seven Army values and to turn in the “RBI” on 6 May 2002
- on or about 22 April 2002, dereliction of his duties by willfully failing to check the access roster before allowing an unauthorized person to take prisoners outside of the Regional Corrections Facility, by allowing two inmates to return to the Regional Corrections Facility without properly logging them in, and by allowing an inmate to leave the Regional Corrections Facility without properly logging him out.

h. His punishment included reduction to the grade and rank of private (PV1)/E-1.

i. On 7 August 2002, the applicant underwent a medical examination and the doctor stated he was qualified for discharge.

j. On 12 September 2002, the applicant's immediate commander notified the applicant of his intent to initiate separation actions against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), paragraph 14-12b, by reason of pattern of misconduct. The commander informed the applicant he was recommending he receive a general, under honorable conditions discharge and explained his rights.

k. On 17 September 2002, the applicant acknowledged receipt of his commander's separation notification and after being advised by his consulting counsel of the basis for the contemplated action to separate him for pattern of misconduct under AR 635-200, chapter 14-12b, and its effects; of the rights available to him; and the effect of any action he took in waiving his rights.

(1) He understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him.

(2) He requested consulting counsel.

(3) He did not submit statements in his own behalf.

(4) He further understood that, if he received a discharge certificate/character of service which was less than honorable, he may make application to the Army Discharge Review Board (ADRB) or the ABCMR for upgrading; however, an act of consideration by either board did not imply that his discharge will be upgraded.

(5) He understood that he may, up until the date the separation authority approves the separation, withdraw the waiver and request that an administrative separation Board hear his case.

(6) He retained a copy of this statement.

l. On an unspecified date, the applicant's immediate commander recommended approval of the separation under the provisions of AR 635-200, chapter 14, paragraph 14-12b, patterns of misconduct, with a general, under honorable conditions discharge. The intermediate commander echoed this recommendation.

m. The separation authority approved the discharge and directed the applicant be issued a general, under honorable conditions discharge and not be transferred to the Individual Ready Reserve.

n. The applicant was discharged on 24 October 2002. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, paragraph 14-12b, by reason of pattern of misconduct, in the rank/grade of private (PV1)/E-1, and his service was characterized as under honorable conditions (general). He completed 1 year, 11 months, and 16 days of net active service during the covered period. His DD Form 214 shows he was awarded the Army Service Ribbon. This form also shows in:

- Item 26 (Separation Code): JKA
- Item 27 (Reentry Code): 3

5. On 29 July 2024, the Case Management Division, Army Review Boards Agency, requested the applicant provide a copy of the medical documents that support his issue of PTSD. The applicant was given a suspense of 13 August 2024 to provide the requested documents. The documents have not been provided to date.

6. There is no indication the applicant applied to the ADRB for review of his discharge processing within that Board's 15-year statute of limitations.

7. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

8. 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 undiagnosed 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 9 November 2000.
- The applicant accepted NJP on 13 March 2002 for four incidents of failing to be at his appointed place of duty. On 3 July 2002 he accepted NJP for five incidents of failing to be at his appointed place of duty, disobeying a lawful order (twice), and dereliction of duty. The applicant was notified of intent to initiate separation actions against him under the provisions of Army Regulation (AR) 635-200, paragraph 14-12b, by reason of pattern of misconduct.
- The applicant was discharged on 24 October 2002 and completed 1 year, 11 months, and 16 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts his misconduct was related to a traumatic incident that occurred while he was on duty, and he indicated PTSD as a mitigating factor in his discharge. A memorandum for the commander dated 4 June 2002 showed that the applicant was evaluated and diagnosed with Major Depressive Disorder but did not possess a psychiatric disorder of sufficient severity to warrant disposition through military medical channels. He was cleared for administrative action. It was noted that he had an inpatient hospitalization due to suicidal ideation, and he had responded well to medication treatment. A Report of Medical History and a Report of Medical Examination dated 7 August 2002 showed that the applicant endorsed sleep difficulty, depression/excessive worry, attempted suicide, and received counseling as well as a current prescription for an antidepressant. A VA claim document dated 25 January 2024 showed that the applicant reported an in-service incident involving a child victim of an auto accident that occurred prior to his hospitalization. There was sufficient 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 that the applicant was referred to the VA by Fort Knox Behavioral Health on 1 June 2002 due to suicidal ideation, relationship stressors, financial problems, trouble with work, and loss of rank. He also reported heavy alcohol use and general loss of interest in life, and it was noted that he had been in therapy over the previous four months through the behavioral health clinic at Fort Knox. He was diagnosed with Major Depression and started on an antidepressant, and at discharge four days later, he reported improvement in symptoms and coping.

e. The applicant is 70% service connected for PTSD by the VA. A civilian document showed the applicant has a current prescription for aripiprazole and escitalopram, and there is a prescription history that includes prazosin (for nightmares) and fluoxetine. There are no VA mental health treatment records.

f. An Initial PTSD Disability Benefits Questionnaire (DBQ) dated 5 June 2024 showed that the applicant endorsed the requisite number of symptoms to warrant a diagnosis of PTSD, and he reported trauma exposure as the auto accident he responded to where the young girl died in his arms. He was also diagnosed with Alcohol Use Disorder secondary to PTSD, and he reported history of two hospitalizations in 2002 and 2011. He indicated he sees a therapist "every three weeks" and engages in medication management with current prescriptions for Abilify and fluoxetine.

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient 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 an undiagnosed mental health condition, including PTSD, at the time of the misconduct. There is documentation that on 1 June 2002, he was hospitalized for suicidal ideation after four months of psychotherapy and was diagnosed with Major Depression.

(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. The applicant's monthly performance counseling's through 2001 showed some variability in his attention to detail, professionalism, and ability to pass the APFT, but there was a consistent decline in performance after 1 January 2002. Documentation showed he was hospitalized for suicidal ideation in June 2002 following four months of psychotherapy, and a Mental Status Evaluation immediately after the hospitalization noted improvement in symptoms with medication. The applicant asserts he experienced a traumatic event as a witness to the death of a child while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. A review of military medical and mental health records revealed the applicant was diagnosed with a mental health condition, Major Depression, resulting in hospitalization while on active service. He is service connected through the VA for PTSD and Alcohol Abuse secondary to PTSD, and he is currently on medication. The applicant's history of alcohol abuse, both while in service and following discharge, is a common self-medicating strategy for avoiding uncomfortable emotions and memories related to trauma exposure. Additionally, failure to report for duty, lack of attention to detail, and low motivation can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Given the nexus between trauma exposure, avoidance, and substance use and in accordance with liberal consideration, the basis for separation is mitigated.

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, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon reviewing the applicant's petition, military records, and medical evaluation, the Board considered the advising opinion of the Agency Behavioral Health Advisor, which indicated sufficient

evidence to support that the applicant had a condition or experience that may have mitigated his misconduct.

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2. However, despite the advisory opinion establishing a connection between trauma exposure, avoidance, and substance use as potential mitigating factors, the Board determined that the applicant's mental health conditions did not outweigh the extensive pattern of misconduct observed between April 2001 and July 2002. The applicant's infractions included failure of the Army Physical Fitness Test (APFT) and dereliction of duty, specifically the unauthorized release of inmates to an individual not authorized by the facility. As a result of the misconduct, the applicant was discharged and received an Under Honorable Conditions (General) characterization of service. Under liberal

consideration, the Board reaffirmed that this characterization was appropriate, as the applicant did not meet the standards of acceptable conduct and performance required for Army personnel to receive an Honorable discharge. Based on the preponderance of evidence, the Board denied the applicant's request for relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XX	XXX	XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. 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.

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

c. 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, conviction by civil authorities, desertion, or absences without leave. 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 considered appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

3. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, paragraph 14-12b for Misconduct-Pattern of Misconduct would receive a separation code of "JKA."

4. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.

- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification.

5. 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.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

7. 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.

8. 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, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//