

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 December 2024

DOCKET NUMBER: AR20240003465

APPLICANT REQUESTS: in effect,

- an upgrade of his Under Honorable Conditions (General) discharge to an Honorable discharge
- the narrative reason for his separation, corresponding Separation Program Designator (SPD) code, and Reentry Eligibility (RE) code be amended to reflect "Secretarial Authority" or "Convenience of the Government"
- removal of all derogatory documentation from his record
- to appear in person before the Board

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Counsel Brief and allied documents (38 pages)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 he chose to enlist in the Army because it gave him the best opportunity to choose the Military Occupational Specialty (MOS) that he really wanted, 68D (Operating Room Specialist).

a. His flight from California to Georgia for attendance of Basic Combat Training (BCT) was delayed by two days and caused him to miss being grouped with the other Soldiers who were pursuing the same MOS. This set off a chain of events that resulted in him arriving at Fort Sam Houston, TX, three days too late to attend Advanced Individual Training (AIT) with the group with whom he should have attended BCT. So, he spent nine months waiting for the next AIT cycle to begin for his MOS, and despised it because he was stuck cutting grass, organizing rocks, and processing fake paperwork. Once they began attending classes, he excelled and graduated with honors.

b. His first duty station was Fort Jackson, SC, and he detested being there. He had married his high school sweetheart before joining the Army and they were both excited when he received orders to be stationed in Germany. However, his wife had a serious medical condition which prevented her from going to Germany. They managed to get a compassionate reassignment to a place in Arizona for medical treatment and she made remarkable progress there. However, things took a turn for the worse when he came home one day and discovered she had moved out; after all he had done to support and care for her. They had decided to pay for her college tuition out of pocket to avoid student loan debt. As soon as she finished her last semester, she walked away. He ended up getting a divorce and seeking help from a military psychiatrist, who prescribed medications like Wellbutrin and Zoloft to help him cope with the emotional toll.

c. Working at the hospital, he was kind of out of sight, out of mind. He never saw his company commander and did not know anyone other than the people in his immediate section. As he was battling with depression, he was advised the Army was doing away with his MOS at his rank and skill level. He was told he had two weeks to choose a new MOS, or he would be assigned one based upon the needs of the Army.

d. The applicant chose to reclassify to MOS 25B (Information Technology Specialist). He was sent to Fort Gordon, GA, in a Temporary Duty (TDY) status to attend AIT for his new MOS. He made some mistakes while he was there which resulted in delaying his completion of the course. One evening, while he was hanging out and enjoying drinks with friends, one of the Soldiers accidentally left his wallet unattended. In a thoughtless moment, the rest of the group decided to use his credit card to order pizzas. Once the Soldier discovered this, he became extremely upset and reported the theft to the authorities. Admittedly, their actions were completely wrong, but he feels it was inappropriate to involve the authorities in such a trivial matter. Everyone involved was punished and reduced in rank as part of their punishment, even though they were willing to reimburse the Soldier whose credit card they had used.

e. When the applicant returned to his unit at Fort Jackson, SC, there was a new first sergeant (1SG), and she was livid that he had been TDY for nine months at the unit's expense and had gotten into trouble while there. She assigned him to the Soldier Readiness Processing (SRP) section where they were responsible for processing Soldiers who were being mobilized from the Individual Ready Reserve. His new supervisors told him to keep his mouth shut and to focus on doing well on his Army Physical Fitness Test scores and he would earn his rank back. After over a year, he was promoted to private first class (PFC)/E-3.

f. He was living off base and was notified that he needed to report to work. It was post 9-11 so, when he reached the gate he was advised that he needed to pull over so his vehicle could be searched. He showed his identification to the gate guard and informed him that he was in a hurry and needed to get to the hospital. They were

insistent that they needed to search his vehicle with mirrors. He got a bit argumentative and told the guard this was ridiculous because he passed through the gate three times a day and they knew who he was, they even played softball together. Two days later, his 1SG called him into her office and asked about the incident at the gate. He explained that it was just a minor disagreement. However, the military police (MP) were claiming that he had threatened them. The 1SG dismissed him and two days later his supervisor informed him the command decided to administratively separate him for a pattern of misconduct.

g. He was told he would receive a general discharge, and everything would be fine. However, when he went to the Department of Veterans Affairs (VA) to sign up for education benefits, he was told he did not qualify because of the type of discharge he received. He was really upset because he had enlisted so he could afford to pay for college. So, his six years in the Army was all for nothing; he got divorced and did not get to use the GI Bill.

h. Since his separation he earned an Associate's degree, worked in a prominent trauma hospital, and he met and married someone new. Unfortunately, their relationship did not work out and he now has two failed marriages.

i. The applicant indicates on his application, that Post-Traumatic Stress Disorder (PTSD) and other mental health conditions are related to his request. He also provides documents that show he was seeking help with a psychiatrist

3. Counsel provides a brief and allied documents which states, in part:

a. The appeal is based on three errors:

(1) the underlying basis of his separation was procedurally defective at the time of the discharge;

(2) the adverse action, to include the administrative discharge, was hasty and unfair at the time; and

(3) is unequitable now.

b. Under the 2014 Hagel Memorandum and the 2017 Clarifying Guidance, the ABCMR must inquire into whether the applicant's mental health condition excuses or mitigates his discharge. The ABCMR must grant liberal consideration that the misconduct leading to the discharge was a direct result of the PTSD and other mental health symptoms he suffered during his military service. In the interest of justice, the applicant's discharge warrants an upgrade to Honorable. He also respectfully requests

that this Board change the narrative reason for separation to "Secretarial Authority" or "Convenience of the Government," with corresponding separation and reentry codes.

c. Counsel provides the following documents in support of this petition, all of which are available in their entirety for the Board's consideration.

(1) Two Memoranda for Record rendered by Army doctors who made favorable comments regarding the applicant's performance while working in the orthopedics clinic as a medic and cast technician.

(2) A Standard Form (SF) 600 (Chronological Record of Medical Care) shows the applicant had a psychiatric therapy session on 11 June 2008 for Depression stemming from his relationship with his wife. The underlying theme was low self-esteem. He understood his life was currently consumed by his relationship and making the focus to fix himself for his wife. He was aware that his wife was afraid of his violence potential, even though they had never fought physically. They discussed a safety plan, which meant coming in as a walk-in, even if it might require another hospitalization. It was noted that he had been prescribed Sertraline (Zoloft equivalent) and Trazadone.

(3) An SF 600 shows the applicant had a psychiatric therapy session on 15 October 2008 during which he talked about his frustration with the military system and the illusion of having rights. He complained about the lack of a rebuttal system and how he could only hope for the best. He reported that he had stayed out of trouble but continued to vacillate between disbelief and frustration when he thought about his situation. He desired to go back to seeing his previous therapist. He had not begun to out-process and was devising a game plan for general and honorable discharge, to include writing a letter to Colonel H requesting to remain in the Army for his final six months. He complained about being flagged, which had kept him from going to school for the past 8 months. His scheduled court date was 29 October 2008, he then would have 6 months to negotiate with the other attorney before going to jury trial. He continued to feel like he had been unfairly accused. He and the therapist discussed what he does have control over in the situation, which was his attitude toward it and how he could look for some positive experiences, especially life lessons, from the whole situation.

(4) The Member Copy of the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty).

(5) Correspondence from the Army Review Boards Agency dated 25 May 2023, regarding his case under Army Discharge Review Board (ADRB) Docket Number AR20220010719.

(6) The applicant's annual performance evaluation for his civilian job.

4. The applicant enlisted in the Regular Army in the rank/pay grade of private (PV2)/E-2 on 27 January 2003 for a period of 6 years. He completed BCT at Fort Benning, GA and AIT at Fort Sam Houston, TX. Upon completion of initial entry training, he was assigned to a unit at Fort Jackson, SC. He was promoted to specialist (SPC)/E-4 on 1 October 2004, the highest rank he held.

5. On 29 June 2006, an administrative flag was imposed upon the applicant to prevent him from receiving favorable personnel actions while he was pending adverse action.

6. A DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)) shows the applicant accepted field grade nonjudicial punishment (NJP) under the provisions of Article 15, UCMJ on 21 August 2006 for, on or about 3 June 2006, stealing money totaling \$247.00 from another Soldier. His punishment was reduction to PV2/E-2 and forfeiture of \$717.00 per month for 2 months.

7. A DA Form 2627 shows the applicant accepted company grade NJP under the provisions of Article 15, UCMJ on 27 November 2007. His punishment was reduction to PV2/E-2, suspended to be automatically remitted if not vacated before 27 December 2007; and extra duty for 14 days, extra duty for 7 days suspended to be automatically remitted if not vacated before 27 December 2007. His offenses on or about 10 September 2007 were as follows.

a. Unlawfully assaulting Staff Sergeant (SSG) TB, a noncommissioned officer (NCO), then known to him to be an NCO who was then in the execution of his office, by pushing him in the chest with his hands and body.

b. Having received a lawful order for SSG TB, an NCO, then known to him to be an NCO, and order which was his to obey, willfully disobeying the same.

c. Being disrespectful in language towards SSG TB, an NCO, then known to him to be an NCO who was then in the execution of his office, by using profanity towards him.

8. On 14 May 2008, a company grade written reprimand was imposed upon the applicant for failing to take the necessary steps when receiving an order known to be illegal, wrongfully distributing a controlled substance, and making a false claim.

9. A police Incident Report shows on 29 July 2008, an unknown male pulled his vehicle in front of the vehicle of a woman and stopped. He got out of his vehicle and approached her vehicle. He stated, "You're smiling and laughing, you are a tough bitch." He then reached in the vehicle and began punching her in the face with a closed fist. The woman sustained a laceration to her lower lip. She was able to provide the license tag number to police and they identified the vehicle as belonging to the applicant.

a. A South Carolina warrant was issued for the applicant's arrest.

b. A DD Form 2873 (Military Protective Order) shows the Columbia, SC Police Department wanted to question the applicant for allegedly assaulting Drill Sergeant A off-post on 29 July 2008. A protective order was issued to the applicant restraining him from having any contact or communication with the victim and requiring him to remain at all times and places at least 100 feet away from her.

10. On 29 July 2008, an administrative flag was imposed upon the applicant to prevent him from receiving favorable personnel actions while he was pending adverse action.

11. The applicant was counseled on 3 September 2008 for failing to report to his appointed place of duty at the time prescribed. He was advised that continued behavior of this nature could result in punishment under the provisions of the UCMJ and/or initiation of actions to separate him from the Army and the potential impact of such a separation.

12. A DA Form 3975 (MP Report) shows the applicant was charged with violation of Article 92, of the UCMJ for failing to obey a General Order when he failed to stop for a security ramp check at an entry gate to Fort Jackson, SC on 12 September 2008. The applicant was escorted to the Provost Marshall's Office, processed, and released to his unit.

13. The applicant was counseled on four occasions between 15 September 2008 and 25 September 2008 for the following reasons. He was repeatedly advised that continued behavior of this nature could result in punishment under the provisions of the UCMJ and/or initiation of actions to separate him from the Army and the potential impact of such a separation.

- incident discussed in paragraph 12 above
- being recommended for administrative separation action
- failing to obey a lawful order by not attending the Post Safety Class on 17 September 2008
- being arrested by the Columbia, SC Police for Assault and Battery of a high and aggravated nature

14. The applicant underwent a pre-separation medical examination and was found to be qualified for administrative separation.

15. On 26 September 2008, the applicant underwent a mental status evaluation and was determined to have the mental capacity to understand and participate in the proceedings. He was mentally responsible. He met regulatory retention requirements. It was noted the applicant was originally seen at Community Mental Health Services on

26 October 2007 for homicidal ideation which resulted in inpatient psychiatric hospitalization and follow-on therapy sessions. He reentered treatment on 18 June 2008 and had been compliant with all treatment recommendations. At this point, the applicant was deemed to be capable of distinguishing right from wrong and adhering to the right. He continued to work on developing insight to his behaviors and seemed genuinely motivated for treatment. He and he was psychiatrically cleared for administrative action deemed appropriate by command. It was noted the applicant was potentially dangerous to others. His diagnostic impression was:

- Axis I - Depressive Disorder Not Otherwise Specified
- Axis II - Cluster B Personality traits

16. The applicant was counseled on 29 September 2008 for misconduct. He was advised that continued behavior of this nature could result in punishment under the provisions of the UCMJ and/or initiation of actions to separate him from the Army and the potential impact of such a separation. His specific offenses were:

- failure to obey a lawful order
- disrespect toward an NCO
- failure to report to his appointed place of duty at the time prescribed

17. A DA Form 2627-1 shows the applicant accepted field grade NJP under the provisions of Article 15, of the UCMJ on 29 September 2008. His punishment was reduction from PFC/E-3 to PV1/E-1; forfeiture of \$673.00 pay per month for 2 months; and 45 days of extra duty. His offenses were as follows:

- a. On of about 12 September 2008, failing to obey a lawful general regulation, by failing to stop for a ramp check at Gate 1.
- b. Having knowledge of a lawful order issued by an NCO to attend the Post Safety Class, an order which it was his duty to obey, on or about 17 September 2008, failing to obey the same by wrongfully not attending the class.
- c. On or about 2 September 2008, without authority, failing to go at the time prescribed to his appointed place of duty.

18. The applicant's immediate commander notified the applicant on 1 October 2008 of his intent to initiate actions to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, paragraph 14-12b, for a pattern of misconduct. The specific reasons for this action were the applicant's receipt of a written reprimand and multiple NJPs under Article 15, UCMJ. He was advised that he was being recommended for a General, under honorable conditions discharge, but the final determination of his characterization of service would

be made by the separation authority. The applicant acknowledged receipt of the proposed separation notification on 1 October 2008.

19. On 6 October 1998, the applicant acknowledged that he was advised of the reasons for separation and of the rights available to him. He accepted his right to consult with counsel but waived his right for consideration of his case by an administrative separation board. He elected to submit a statement in his own behalf wherein he requested the separation authority to consider not separating him because he only had eight months remaining on active duty. He admitted having several lapses in judgement which precipitated the separation action for which he took full responsibility. He stated that he excelled at his job at the hospital, was taking college classes at night, had volunteered hundreds of hours at a local church, was an asset to the local community, and had received letters of recognition from various physicians and commanders. He further requested that if it was decided to separate him, that he be issued an honorable discharge rather than a general, under honorable conditions discharge.

20. The applicant's immediate commander formally recommended his separation prior to the expiration of his term of service under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12b by reason of a pattern of misconduct. The interim commanders concurred with the recommendation.

21. The separation authority's approval of the recommended separation is not available for review. However, orders and the applicant's DD Form 214 show he was discharged on 25 November 2008, under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12b, by reason of Pattern of Misconduct, with separation code "JKA" and reentry code "3." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 5 years, 9 months, and 29 days of net active service this period. He did not complete his first full term of service.

22. The applicant petitioned the ADRB for relief. On 15 March 2012, he was informed that after careful consideration of his military records and all other available evidence, the ADRB determined that he was properly and equitably discharged and denied his petition.

23. The applicant petitioned the ADRB for relief again. On 25 May 2023, he was informed that after careful consideration the ADRB had once again determined that he was properly and equitably discharged and denied his petition.

24. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition. By regulation, applicants are not entitled to a personal appearance before the Board.

25. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his character of service from under honorable conditions (general) to honorable, a change of separation code, RE code, and a change of narrative reason from separation for Pattern of Misconduct to "Secretarial Authority" or "Convenience of the Government". The applicant selected PTSD and OMH on his application as related to his request.

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:

- Applicant enlisted into the Regular Army on 27 January 2003.
- A DA Form 2627 shows the applicant accepted company grade NJP under the provisions of Article 15, UCMJ on 27 November 2007. His offenses on or about 10 September 2007 were as follows:
 - Unlawfully assaulting Staff Sergeant (SSG) TB, a noncommissioned officer (NCO), then known to him to be an NCO who was then in the execution of his office, by pushing him in the chest with his hands and body.
 - Having received a lawful order from SSG TB, an NCO, then known to him to be an NCO, and order which was his to obey, willfully disobeying the same.
 - Being disrespectful in language towards SSG TB, an NCO, then known to him to be an NCO who was then in the execution of his office, by using profanity towards him.
- On 14 May 2008, a company grade written reprimand was imposed upon the applicant for failing to take the necessary steps when receiving an order, wrongfully distributing a controlled substance, and making a false claim.
- A Police Incident Report shows on 29 July 2008, an unknown male pulled his vehicle in front of the vehicle of a woman and stopped. He got out of his vehicle and approached her vehicle. He stated, "You're smiling and laughing, you are a tough bitch." He then reached in the vehicle and began punching her in the face with a closed fist. The woman sustained a laceration to her lower lip. She was able to provide the license tag number to police and they identified the vehicle as belonging to the applicant. A South Carolina warrant was issued for the applicant's arrest.
- A DD Form 2873 (Military Protective Order) shows the Columbia, SC Police Department wanted to question the applicant for allegedly assaulting Drill Sergeant A off-post on 29 July 2008. A protective order was issued to the applicant restraining him from having any contact or communication with the victim and requiring him to remain at all times and places at least 100 feet away from her.

- The applicant was counseled on 3 September 2008 for failing to report to his appointed place of duty at the time prescribed. He was advised that continued behavior of this nature could result in punishment under the provisions of the UCMJ and/or initiation of actions to separate him from the Army and the potential impact of such a separation.
- A DA Form 3975 (MP Report) shows the applicant was charged with violation of Article 92, of the UCMJ for failing to obey a General Order when he failed to stop for a security ramp check at an entry gate to Fort Jackson, SC on 12 September 2008. The applicant was escorted to the Provost Marshall's Office, processed, and released to his unit.
- The applicant was counseled on four occasions between 15 September 2008 and 25 September 2008.
- A DA Form 2627-1 shows the applicant accepted field grade NJP under the provisions of Article 15, of the UCMJ on 29 September 2008.
- The applicant's immediate commander notified the applicant on 1 October 2008 of his intent to initiate actions to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, paragraph 14-12b, for a pattern of misconduct.
- Orders and the applicant's DD Form 214 show he was discharged on 25 November 2008, under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12b, by reason of Pattern of Misconduct, with separation code "JKA" and reentry code "3." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 5 years, 9 months, and 29 days of net active service this period. He did not complete his first full term of service.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant reports issues with his MOS, medical concerns with his wife, at the time, and later abandonment/divorce as stressors during his time in service. He further explains his misconduct of theft as a joke and his assault as an interaction with an acquaintance where he became argumentative.

d. Active-duty electronic medical records available for review show the applicant was diagnosed with the following BH conditions: Adjustment Disorder; Depressive Disorder, NOS; Cluster B Personality traits; and Occupational Problem while in service. The applicant initially presented for BH services as a walk-in on 26 October 2007, stating he had homicidal ideation toward his chain of command but denied suicidal ideation. The applicant was psychiatrically hospitalized and diagnosed with Depression. On 8 November 2007, he was escorted by his unit and presented to BH for a safety assessment following his psychiatric hospital discharge. He indicated he was no longer

experiencing homicidal ideation and was being prescribed medication. The applicant reported that he was applying for two weeks leave with his unit's support. On 19 November 2007, the applicant was command directed to BH for an Intake Assessment and was diagnosed with Depression and Occupational Problems, he was instructed to continue his current psychiatric medications (sertraline, hydroxyzine). He denied SI/HI and contracted for safety. After an extended absence, the applicant returned to BH on 11 June 2008. It was noted that he had previously been diagnosed with Depressive Disorder, NOS. He reported he had discontinued taking his prescribed anti-depressant medication because it made him feel bland. He also reported the medication for sleep was not working well and reported disrupted sleep. He spoke about having violent fantasies but denied intent or plan and was able to contract for safety. He agreed to medication changes and reported working with a civilian counselor. His diagnosis remained Depressive Disorder. On 30 July 2008, the applicant reported feeling angrier and more aggressive since his medication changes but denied SI/HI. His psychiatrist made some additional medication changes at this time. Applicant continued to meet with his psychiatrist monthly. During a BH encounter on 25 September 2008, the applicant reported that he had just been released from jail, however, the reason for incarceration was not documented in the record.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected, and there is no evidence he has been treated by the VA for any BH condition.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a behavioral health condition during military service. However, his BH condition would not mitigate 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 PTSD and OMH as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant was diagnosed with Adjustment Disorder and Depressive Disorder. The applicant is not service connected.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was discharged due to multiple incidents of assault, theft, wrongfully distributing a controlled substance, and making a false claim. While in service the applicant was diagnosed with Adjustment Disorder and Depressive Disorder. An Adjustment Disorder is a transient reaction to stress and does not provide mitigation in the absence of another mitigating BH condition. The applicant's diagnosis of Depressive

Disorder would not mitigate his pattern of misconduct. There is no nexus or natural sequelae between Depression and his repeated physical assaults, theft, wrongfully distributing a controlled substance, and making a false claim. Specifically, Depression does not impair an individual's ability to know right from wrong, understand consequences, and make purposeful, conscious decisions.

BOARD DISCUSSION:

1. The Board determined 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.
2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. Character of service upgrade: Deny. The applicant displayed a pattern of misconduct in the form of multiple NJPs, extensive negative counseling, reprimand, and other misconduct. As a result, his chain of command initiated separation action against him. The applicant was discharged with an under honorable conditions (general) characterization of service. The Board found no error or injustice in his available separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board agreed with the medical reviewer's finding that based on available information/evidence, there is sufficient evidence to support the applicant had a behavioral health condition during military service. However, the Board also noted that his behavioral health condition would not mitigate his misconduct. Also, the applicant provided insufficient evidence of post-service achievements or letters of reference in support of a clemency determination. Therefore, based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. Narrative Reason for Separation and associated codes: Deny. The narrative reason for separation is governed by specific directives. The applicant was discharged under the provisions of Chapter 14, Paragraph 14-12b, AR 635-200. The narrative reason specified by Army Regulations for a discharge under this paragraph for an enlisted Soldier is "Misconduct," the separation code is "JKA", and the reentry code is "RE 3." AR 635-8, Separation Documents, governs preparation of the DD Form 214, and dictates that entry of the narrative reason for separation, separation code, and RE Code, of the DD Form 214 will be entered exactly as listed in AR 635-5-1, Separation

Program Designator (SPD) Codes. The Board found no mitigating factors that would merit a change to the applicant's narrative reason for discharge or associated codes. Therefore, the Board determined that the reason for discharge and associated codes are proper and equitable and there is no reason to change any.

c. Removal of derogatory information from his service record: Deny. There is a substantial number of documents that may be considered derogatory in the applicant's service records, and include multiple NJPs, letter of reprimand, Military Police Incident Report and allied documents, administrative FLAG, and his separation packet. Each of these documents is governed by a certain regulation and each is appropriately filed in the applicant's service record as required by its governing regulation. The Board determined the applicant failed to specify which documents should be removed and failed to provide the necessary documentation that supports or justifies removal of a particular document.

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.

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

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, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. 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 regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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.

4. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. Paragraph 3-7b states 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. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). 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; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

5. Army Regulation 635-5-1 (SPD Codes) implements the specific authorities and reasons for separating Soldiers from active duty. It also prescribes when to enter SPD codes on the DD Form 214.

a. Paragraph 2-1 provides that SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of Department of Defense and the Military Services to assist in the collection and analysis of separation data. This analysis may, in turn, influence changes in separation policy. SPD codes are not intended to stigmatize an individual in any manner.

b. Table 2-3 provides the SPDs and narrative reasons for separation that are applicable to enlisted personnel. It shows, in part, SPD "JKA" is the appropriate code to assign to an enlisted Soldier who is voluntarily separated under the provisions of Army Regulation 635-200, Chapter 14, due to misconduct

6. Army Regulation 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

7. Army Regulation 600-37 (Unfavorable Information) sets forth policies and procedures to authorize placement of unfavorable information about Army members in individual official personnel files; to ensure that unfavorable information that is

unsubstantiated, irrelevant, untimely, or incomplete is not filed in individual official personnel files; and to ensure that the best interests of both the Army and the Soldiers are served by authorizing unfavorable information to be placed in and, when appropriate, removed from official personnel files.

8. 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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury; sexual assault; or sexual harassment. Boards are 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 misconduct that led to the discharge.

9. 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//