

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 December 2024

DOCKET NUMBER: AR20240003946

APPLICANT REQUESTS: an upgrade of his Under Honorable Conditions (General) characterization of service, and to appear before the Board via video/telephone.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

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

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, in effect, he disagrees with the characterization of his discharge. When they returned from Iraq the brigade commander told them they would have the next three days off. Then they called a surprise formation at 0500 hours. He was charged with dereliction of duty when the whole platoon was off. Somehow, he was the only one who received nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ). The applicant indicates on his DD Form 149, that past-traumatic stress disorder (PTSD) is related to his request.
3. The applicant enlisted in the Regular Army on 17 May 1995 in the rank/grade of private (PV1)/E-1 for a period of 3 years. Upon completion of initial entry training, he was assigned to a unit at Fort Stewart, GA.
4. On 24 October 1995, the applicant was counseled by his first sergeant (1SG) regarding leaving his wall locker unsecured and the uncleanness of his barracks room, which was a violation of one of the Commanding General's Policy Letters. It was noted that he was counseled previously about securing his wall locker because he had just lost \$450.00 to barracks larceny two weekends prior to this event. He was advised that continued misconduct could result in punishment under the UCMJ.

5. On 16 January 1996, the applicant was counseled by his 1SG regarding disobeying a lawful order and failing to be prepared for a barracks inspection. During the inspection, the applicant's room was found to be unclean, unhealthy, and unsanitary. He had been counseled about this before. Therefore, he was advised that he would be referred to command with a recommendation that UCMJ action be taken. He was advised that continued misconduct could result in a bar to reenlistment and/or administrative separation.
6. On the same date, the applicant accepted summarized company grade NJP under the provisions of Article 15 of the UCMJ. His punishment was restriction for 14 days and extra duty for 7 days.
7. He was advanced to private (PV2)/E-2 on 1 February 1996, the highest rank he held.
8. On 17 April 2007, the applicant was counseled by his 1SG regarding his failure to meet Army standards on the Army Physical Fitness Test (APFT) due to failing the running event. He was advised that an administrative flag was being imposed upon him to prevent his receipt of any favorable personnel actions and placed into the company's remedial physical training program to assist him preparing for a retest. The 1SG told the applicant he would take a record APFT in 30 days. Failing to do so could result in him being eliminated from the service.
9. On 12 March 1996, the applicant was counseled by his supervisor regarding his failure to properly maintain his bank account and indebtedness. He was advised that continued misconduct could result in punishment under the UCMJ, a bar to reenlistment and/or administrative separation, and the potential consequences of such a separation. He was further advised that he had until the end of the month to pay his \$220.00 debt, or he would be prosecuted by the Court of Hinesville, GA.
10. On 15 August 1996, the applicant was counseled by his supervisor for dereliction in the performance of his duties, being drunk on duty, and failing to obey a lawful order. He was advised that it would be recommended that all leave/pass privileges and all other favorable actions be suspended or revoked and that he receive the maximum punishment under the UCMJ for his offenses.
11. On 12 September 1996, the applicant accepted company grade NJP under the provisions of Article 15, of the UCMJ for, on or about 15 August 1996, being incapacitated for the proper performance of his duties, as the result of overindulgence in intoxicating liquor or drugs. His punishment was reduction to private (PV1)/E-1, forfeiture of \$204.00, extra duty for 14 days, and restriction for 14 days.

12. On 20 September 1996, the applicant was enrolled into the Army Alcohol and Drug Abuse Prevention and Control Program due to a diagnosis of alcohol dependence.
13. On 16 October 1996 a bar to reenlistment was imposed upon the applicant.
14. On 21 October 1996, the applicant was counseled by his 1SG regarding his attempt to go absent without leave (AWOL) on 20 October 1996.
15. The applicant underwent a separation medical examination on 6 November 1996 and was found to be qualified for administrative separation.
16. The applicant underwent a mental status evaluation on 12 November 1996. It was determined that he had the mental capacity to understand and participate in the proceedings, was mentally responsible, and met regulatory retention requirements. There was no evidence of any psychiatric condition which would warrant disposition through medical channels. He was psychiatrically cleared for any administrative action deemed appropriate by command.
17. On 20 November 1996, the applicant's immediate commander notified the applicant of his intent to initiate action to separate him under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 14, paragraphs 14-12b and 14-12c for Patterns of Misconduct and Commission of a Serious Offense. He was advised that he was being recommended for an Under Honorable Conditions (General) discharge. The specific reasons for this action were the applicant's dereliction of duty, incapacitation for duty, AWOL attempt, and rendering bad checks.
18. On 20 November 1996, the applicant acknowledged receipt of the notification and that he was advised of the reasons for separation and of the rights available to him. He elected not to submit statements in his own behalf.
19. On 21 November 1996, 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, paragraphs 14-12b and 14-12c by reason of Patterns of Misconduct and Commission of a Serious Offense. The intermediate commander concurred with the recommendation the same day.
20. On 22 November 1996, the separation authority approved the recommendation. He directed the applicant's service be characterized as General Under Honorable Conditions.

21. Orders and the applicant's DD Form 214 show he was discharged in the grade of E-1 on 4 December 1996, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of Misconduct with separation code "JKQ" and reentry code "3." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 1 year, 6 months, and 18 days of net active service this period. He did not complete his first full term of service.

22. The applicant's record is void of evidence he deployed to Iraq or any other Imminent Danger Pay area during his period of service.

23. On 18 September 2024, a member of the Army Review Boards Agency staff requested the applicant provide medical documentation in support of his PTSD condition. To date, he has not responded.

24. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance. By regulation, an applicant is not entitled to a hearing before the Board.

25. 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 17 May 1995.
- The applicant was counseled on a number of occasions between October 1995 and August 1996. The infractions included leaving his wall locker unsecured and unclean, disobeying a lawful order and failing a barracks inspection, failure to meet Army physical fitness standards, and failure to properly maintain his bank account and indebtedness.
- On 12 September 1996 he accepted NJP for being incapacitated for the proper performance of his duties, as the result of overindulgence in intoxicating liquor or drugs, and he was referred to the Army Alcohol and Drug Abuse and Control Program (ADAPCP).
- He was counseled again in October 1996 for attempting to be AWOL, and on 20 November 1996, the applicant's commander notified him of his intent to initiate action to separate him under the provisions of Army Regulation 635-200, Chapter 14, for Patterns of Misconduct and Commission of a Serious Offense. The

specific reasons for this action were the applicant's dereliction of duty, incapacitation for duty, AWOL attempt, and rendering bad checks.

- The applicant was discharged on 4 December 1996 and was credited with completion of 1 year, 6 months, and 18 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 he was charged with dereliction of duty after a surprise formation was called, and he indicated PTSD as a mitigating factor in his misconduct. An ADAPCP Rehabilitation Team Agreement dated 20 September 1996 showed a diagnosis of Alcohol Dependence and enrollment in the program. A Report of Medical History and a Report of Medical Examination both dated 6 November 1996 showed no indication of any psychiatric symptoms, and a Report of Mental Status Evaluation dated 12 November 1996 showed that the applicant met retention requirements and was psychiatrically cleared for administrative action deemed appropriate by command. There was insufficient evidence that the applicant was diagnosed with PTSD or another 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 the applicant initiated mental health services through the VA on 2 October 2014, and he reported a history of medication for ADHD, which was his primary concern. He also indicated he had taken mood stabilizing medications in the past, and he reported trauma history as a car accident while in service. He was referred for neuropsychological testing but did not respond to scheduling efforts, and he did not show up for follow up. His next encounter was in January 2019, and he reported flashbacks and nightmares related to witnessing the death of a peer in 1996 while deployed to Iraq and expressed having sleep difficulty, social isolation, anxiety, depression, and difficulty concentrating. He engaged in three behaviorally based psychotherapy sessions and completed a psychiatry intake in April 2019 where he reported increased irritability, poor sleep, nightmares, and flashbacks associated with witnessing a friend killed from an accidental weapons discharge when he was in the service. He was diagnosed with Depression and Anxiety with a rule out diagnosis of Bipolar Disorder, and he was started on medications for mood and sleep. He did not follow up despite efforts to reach him. Documentation from 12 April 2023 showed that the applicant sought mental health services through the ER, and reported he had been receiving mental health treatment through a local Vet Center and medication management through his non-VA primary care provider (PCP), but he wanted to engage with VA again. Documentation from 14 April 2023 showed that a Vet Center staff member contacted VA mental health because the applicant had made verbal threats of self-harm and walked out of their facility after being told that he was ineligible for continued services. After multiple scheduling attempts, he was seen for an intake on 4 August 2023, and he reported continued social isolation, low mood, and inability to work due to a physical health condition. He discussed in-service trauma

exposure as witnessing a friend's accidental shooting and having to tell the family, and he reported marijuana abuse and requested services for PTSD. He engaged with outpatient psychotherapy and medication management. In December 2023 he completed a neuropsychological evaluation, including psychological testing, and he was diagnosed with ADHD and PTSD by history. Notably, this evaluation extensively outlined his mental health history, which included two hospitalizations for homicidal ideation and a suicide attempt "25 years ago." Documentation showed that he continued to routinely engage in psychotherapy with a focus on improving daily functioning and anger management, and his medication was changed to a mood stabilizer. On 22 July 2024 he completed an intake for a PTSD and substance abuse residential program, and he endorsed the requisite number of symptoms for a diagnosis of PTSD. His primary trauma exposure was described as, "I served in Iraq, I saw some things that eat me alive" and childhood emotional and physical trauma. He was admitted into the program in September 2024 following a detox from alcohol and marijuana, and he engaged primarily in group therapy and medication management. He discharged on 15 November 2024 with medications for mood stabilization, sleep, and nightmares, and his most recent psychotherapy session on 27 November 2024 noted continued PTSD symptoms but no alcohol use.

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

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had undiagnosed PTSD at the time of the misconduct. A Mental Status Evaluation from his time in service did not indicate the presence of any mental health symptoms. The applicant has utilized the VA for mental health treatment, and he has been diagnosed with ADHD and PTSD.

(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. Documentation by VA mental health providers showed the applicant reported trauma exposure of witnessing the accidental shooting of a friend while deployed to Iraq. However, his service records do not show foreign service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. Although the applicant has been treated for ADHD and PTSD by the VA, there is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. However, the applicant contends he had a mental health condition or an

experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. 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. The applicant displayed a pattern of misconduct (dereliction of duty, incapacitation for duty, AWOL attempt, rendering bad checks, and other misconduct). As a result, his chain of command presumably initiated separation action against him. He 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 insufficient evidence to support that the applicant had a condition or experience that mitigates 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.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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

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



REFERENCES:

1. Title 10, 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 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. 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 (Personnel Separations - Enlisted Personnel) 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. 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 post-traumatic stress disorder; 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.

6. 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//