

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2025

DOCKET NUMBER: AR20240004074

APPLICANT REQUESTS:

1. Correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 27 March 2009, to show:

- item 4a (Grade, Rate or Rank) – Corporal (CPL)
- item 12c (Net Active Service This Period) – 0003 (years) 00 (months) 00 (days)
- change of his Reentry (RE) code
- change of his narrative reason for separation

2. A personal appearance before the Board via video and or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- Army Review Board Agency (ARBA) Letter to Applicant, 7 April 2024
- Army Discharge Review Board (ADRB) Case Report and Directive for AR20230009603, 3 April 2024
- Self-Authored Statement

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 requests a change of his rank because he had three years total service and was supposed to be a CPL. His years of service should be changed to three years total service; he also requests a correction of his RE code and narrative reason for separation if possible. Because of the circumstances surrounding his discharge he provided the letter that was provided by ARBA because he thinks the ADRB did not fully understand what he went through when he was discharged.

3. A review of the applicant's official record shows the following:

a. DD Form 214 shows that the applicant entered active duty this period on 11 October 1994 and was released from active duty on 23 November 1994 for fraudulent entry with a RE code of 3 and received an uncharacterized character of service.

b. DD Form 4 (Enlistment/Reenlistment Document - Armed Forces of the United States) shows the applicant enlisted in the Georgia Army National Guard (GAARNG) on 9 March 2001.

c. Orders Number 047-2 dated 12 March 2001, issued by the Department of Defense, Atlanta Military Entrance Processing Station, ordered him to Initial Active Duty Training (IADT) for approximately 22 weeks.

d. National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) an automated document of the separation document with the effective date of 30 May 2001, shows he was discharged from the GAARNG with an uncharacterized character of service.

e. Orders Number 194-10 dated 10 October 2001, issued by the Department of Defense, Atlanta Military Entrance Processing Station, ordered him to IADT for approximately 17 weeks with a report date of 22 January 2002.

f. NGB Form 22 shows the applicant entered service this period on 9 March 2001 and was discharged from the GAARNG on 18 March 2003 for failure to report to Phase 1 or Phase 2 of IADT, with an uncharacterized character of service.

g. NGB Form 22 shows the applicant entered service this period on 13 July 2004 and was discharged from the GAARNG on 2 May 2005 for failure to report to active duty, with an uncharacterized character of service.

h. He enlisted in the Regular Army (RA) on 11 January 2008.

i. On 26 January 2009, the applicant submitted a request for discharge in Lieu of Court-Martial, and at the time of submission of the request the applicant was in the rank/grade of private (PVT)/E-1. The applicant absented himself from his organization from 8 October 2008 until he surrendered to military authorities on 19 January 2009 at Aberdeen Proving Grounds, MD. Consistent with the chain of command the approval authority approved his request for discharge on 9 March 2009. He was issued an Under Other Than Honorable Conditions characterization of service and the approval authority directed that if he was not serving in a pay grade above E-1 at the time of this action, he would be reduced to Private E-1 (PVT) prior to execution of the discharge.

j. Enlisted Record Brief dated 12 March 2009, shows the applicant was flagged for adverse action, effective 8 July 2008. The applicant was reduced from PVT/E-2 PVT/E-1, effective 9 March 2009.

k. A corrected DD Form 214 for the period ending 27 March 2009, shows in block 12a that the applicant entered active duty this period on 11 January 2008 and was discharged for misconduct (minor infractions) with a RE code of 4. It also shows 103 days (Absent Without Leave, 8 October 2008 - 18 January 2009) of lost time and in:

- Block 4a; PV1
- Block 4b (Pay Grade) E01
- Block 12a (Date Entered Active Duty this Period) 11 January 2008
- Block 12b (Separation Date this Period) 27 March 2009
- Block 12c (Net Active Service this Period) 11 months and 6 days
- Block 12d (Total Prior Active Service) "00"

4. The applicant provides:

a. ARBA decision letter from the ADRB to the applicant dated 7 April 2024, informing him of the Board's decision on his request to upgrade his characterization of service to honorable, change his Separation Program Designator (SPD) code and the narrative reason for separation on his DD Form 214.

b. ADRB Case Report and Directive dated 3 April 2024 that details the applicant's requests for relief under reference number AR20230009603. The Board, based on the applicant's length of service, and the circumstances surrounding the discharge (Post-Traumatic Stress Disorder (PTSD) mitigating the absent without leave basis for separation), determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and directed the issue of a new DD Form 214 changing the separation authority to Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the RE code is proper and equitable and voted not to change it. The rationale for the decision:

- The Board voted to change the applicant's characterization of service to Honorable because the applicant's PTSD mitigated the applicant's misconduct of absent without leave
- The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate; the SPD code associated with the new reason for discharge is JKN

- The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation

c. A self-authored statement detailing his medical condition, family members health situations, perceived harassments, and threats to him while serving in which these events led up to him deciding to absent himself from his organization. He states he has now matured and takes full responsibility of his actions and asks for the right thing to be done and change his discharge to honorable, his medical file should show that he has sufficient evidence to support his diagnosis of PTSD and that he has expressed all facts in this letter of explanation surrounding his discharge.

5. On 8 January 2025, Headquarters, U.S. Army Human Resources Command, Chief, Enlisted Promotions – Promotions Branch, provided an advisory opinion which stated:

a. After review of the applicant's application for correction of military records, it has been determined that his request for correction of military records should be denied.

b. AR 600-8-19, dated 20 March 2008, was the regulation in effect at the time of the applicant's separation and paragraph 2-3 b. (5) outlines that any Soldier reduced must be fully qualified (without waiver) for promotion to the next higher grade.

c. Review of the supporting documents submitted with the application does not authorize the reinstatement of rank and pay grade. There is no documentation in the applicant's Army Military Human Resources Record to support his request.

d. The applicant is not eligible for promotion to CPL.

6. On 14 January 2025, the applicant was provided with a copy of the advisory opinion for comment or rebuttal. He did not respond.

7. ADRB:

a. On 23 August 2018, the ADRB reviewed the applicant's discharge processing but found it proper and equitable. Accordingly, his request for a change in the character and/or reason of his discharge was denied. The ADRB denied his request for an upgrade of his discharge.

b. On 27 July 2023, ADRB reviewed the applicant's application, military records, and all other available evidence, the ADRB determined that he was properly and equitably discharged. Accordingly, his request for a change in the characterization of service and/or narrative reason of his discharge was denied.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting correction of his DD Form 214 for the period ending 27 March 2009, to show: item 4a (Grade, Rate or Rank) – Corporal (CPL), item 12c (Net Active Service This Period) – 0003 (years) 00 (months) 00 (days), change of his Reentry (RE) code, and change of his narrative reason for separation. Requested changes to his grade, rate or rank and net active service are outside of the scope of this Advisory and will not be addressed. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) the applicant's service records show previous periods of service prior to the DD Form 214 in question, 2) the applicant enlisted in the Regular Army (RA) on 11 January 2008, 3) on 26 January 2009, the applicant submitted a request for discharge in Lieu of Court-Martial. The applicant absented himself from his organization from 8 October 2008 until 19 January 2009, 4) a corrected DD Form 214 for the period ending 27 March 2009, shows in block 12a that the applicant entered active duty this period on 11 January 2008 and was discharged for misconduct (minor infractions) with a RE code of 4, 3) on 03 April 2024, the Army Discharge Review Board (ADRB) granted relief as the applicant's diagnosis of PTSD mitigated his misconduct of going absent without leave (AWOL). His characterization was upgraded to Honorable, the separation authority was changed to AR 635-200, paragraph 14-12a, the narrative reason for separation was updated to Misconduct (Minor Infractions), and the separation code was changed to JKN. The Board determined the RE code was proper and equitable and voted not to change it, 4) On 8 January 2025, Headquarters, U.S. Army Human Resources Command, Chief, Enlisted Promotions – Promotions Branch, provided an advisory opinion stating that the applicant's request for correction of military records should be denied as review of the supporting documents submitted with the application does not authorize the reinstatement of rank and pay grade, 5) the applicant's previous petitions to the ADRB on 23 August 2018 and 27 July 2023 were denied.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) and Veterans Benefits Management System (VBMS) were also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. In-service medical records were available for review via JLV from 15 January 2009 through 01 April 2009. Review of records were void of any in-service BH diagnoses or treatment history.

d. The applicant's previous ADRB medical advisory in Docket Number AR 20230009603 was reviewed. A summary of his medical records submitted as part of that application were included as part of the Advisory and as such only a brief summary

will be included here. It was documented that the applicant submitted records from 2016 showing he was diagnosed with service-related Posttraumatic Stress Disorder (PTSD), Major Depressive Disorder (MDD) and Unspecified Anxiety Disorder. The Advisor opined that the applicant's misconduct was mitigated based on the nexus between trauma and avoidance.

e. A review of JLV shows the applicant is not service-connected through the VA for any conditions. A VA Compensation and Pension (C&P) examination available via VBMS conducted on 30 July 2024 was reviewed and noted that he did not meet criteria for PTSD. Various VA Rating Decision letters available via VBMS (03 November 2021; 09 June 2022; 01 May 2024; 20 August 2024; and 02 November 2024) show that his claims for service-connection for PTSD were denied; however, it is noted that the VA Rating Decision letter dated 02 November 2024 documented that he was diagnosed with PTSD during a VA examination dated 05 September 2024. Review of his VA clinical records shows a BH comprehensive assessment note dated 24 October 2024 documenting that he was diagnosed with PTSD, Depression, and Anxiety.

f. Based on the available information, it is the opinion of the Agency Medical Advisor, consistent with his previous ADRB medical advisory, that the applicant has been diagnosed with PTSD, Depression, and Anxiety. This Advisor concurs with the previous ADRB Medical Advisor's finding that the applicant's misconduct of AWOL was mitigated for BH reasons. Regarding his current request, this Advisor contends that there is sufficient evidence to support considering an update to his re-entry code.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed with PTSD, MDD, and Unspecified Anxiety Disorder by both a non-VA/civilian BH provider as well as through the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed with PTSD, MDD, and Unspecified Anxiety Disorder by both a non-VA/civilian BH provider as well as through the VA.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Review of the applicant's in-service medical records were void of any BH diagnosis or treatment history. The previous ADRB medical advisory documented he was diagnosed with service-related PTSD, MDD, and Unspecified Anxiety Disorder by a non-VA/civilian provider. His recent VA clinical records also show he was diagnosed with PTSD, Depression, and Anxiety. Consistent with Liberal Consideration, the applicant's misconduct of AWOL was previously mitigated by his diagnosis of PTSD. This Advisor concurs with the ADRB Advisor's finding that the applicant's misconduct was mitigated for BH reasons.

h. Pertaining to the applicant's current request, the applicant's narrative reason for separation and separation code, Misconduct (minor infractions) and JKN, are consistent with the reason for discharge and there is insufficient evidence to recommend an update to this information from a BH perspective. Regarding his request to update his re-entry code, the applicant has not been service-connected through the VA, of which service-connection would be indicative of permanent disability. Per DoDI 6130.03, his diagnoses of PTSD, Depression, and Anxiety do not meet the standard for enlistment or induction and would require a waiver. Per AR 40-501, Chapter 3, his BH diagnoses are not automatically unfitting from a retention perspective. As such, from a BH perspective, consideration of upgrading his re-entry code to 'RE-3' is consistent with current guidelines.

BOARD DISCUSSION:


1. After reviewing the application, all supporting documents, the evidence found within the military record, and Department of Defense Guidance for consideration of discharge upgrade requests, the Board found that relief was not warranted.
2. The Board carefully considered the applicant's request and contentions, his military record, the date he entered active duty, the frequency and nature of his misconduct, his rank at the time of his request for discharge in lieu of court-martial, the reason for his separation and the character of service upon discharge. The Board considered the ADRB personal appearance and the resultant changes to the applicant's discharge as a matter of liberal consideration. The Board considered the review and conclusions of the HRC Promotions advising official and the review and conclusions of the Agency medical advisor including the applicant's diagnosed conditions. Based on a preponderance of evidence the Board found: the applicant's rank on his DD Form 214 was not the result of his separation and is therefore not in error; the period of service on his DD Form 214 accurately reflects his time on service and is not in error or unjust, and; the medical advisor's recommendation notwithstanding, there was insufficient evidence to determine that the narrative reason and RE code on his DD Form 214 were in error or unjust.
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:	XX:	XX:	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.


X //SIGNED//

 CHAIRPERSON

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

REFERENCES:

1. Title 10, USC, 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. Title 10, USC, section 1553, (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge

Review Boards when considering discharge upgrade requests by Veterans claiming PTSD, Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

3. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

4. 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, 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, on 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.

5. AR 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.

6. AR 601-210 (Regular Army and Army Reserve Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the RA and the United States Army Reserve. Table 3-1 included a list of the RA RE codes. RE codes are numbered 1, 3, and 4.

- RE-1 applies to Soldiers completing their term of active service who are considered qualified to reenter the U.S. Army; they are qualified for enlistment if all other criteria are met
- RE-3 applies to Soldiers who are not considered fully qualified for reentry or continuous service at the time of separation, but the disqualification is waivable; those individuals are ineligible unless a waiver is granted
- RE-4 applies to Soldiers ineligible for reentry

7. AR 600-8-19 (Enlisted Promotions and Reductions), prescribes policies and procedures governing promotion and reduction of the Army enlisted personnel. And paragraph 2-3 b. (5) outlines that any Soldier reduced must be fully qualified (without waiver) for promotion to the next higher grade.

8. AR 635-8 (Separations Processing and Documents) DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

a. Block 4: verify that active duty grade or rank and pay grade are accurate at time of separation.

b. Block 12c: This Period is the amount of service this period, computed by subtracting block 12a from 12b. Lost time under Title 10, USC, section 972 and noncreditable time after expiration term of service, if any, are deducted. Lost time will be listed in block 29; other noncreditable time will be identified in block 18. If Soldier was released from active duty because of voided enlistment, enter "00 00 00." Enter double digit zeros in the year, month, and day blocks.

c. Block 27, RE Code, AR 601–210 determines reentry eligibility and provides regulatory guidance on reentry codes. These codes are not applicable to officers, U.S. Military Academy cadets who fail to graduate, or to Reserve Component Soldiers being separated for other than cause.

d. Block 28, Narrative Reason for Separation is based on regulatory or other authority and can be checked against the cross reference in AR 635–5–1.

9. AR 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

b. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. Only a general court-martial convening authority may approve an honorable discharge or delegate approval authority for an honorable discharge under this provision of regulation.

//NOTHING FOLLOWS//