

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 January 2025

DOCKET NUMBER: AR20240004282

APPLICANT REQUESTS: an upgrade of his Under Honorable Conditions (General) characterization of service, and an appearance before the Board.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Rating Decision (Page 1)

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 during his deployment, his wife at the time decided to be unfaithful several times. Since she was his childhood sweetheart and they had a child together, this tore him apart and he lost his bearing. Now that he is older and wiser he wishes to seek employment. He loves his country and needs some help getting his life in order. At the time of his misconduct, he was under the effects of post-traumatic stress disorder (PTSD) and did not know how to handle the situation. He was a decent Soldier and wishes to be remembered by that rather than the mistake he made when his heart was broken. The applicant indicates on his DD Form 149 that other mental health conditions are related to his request.

3. The applicant enlisted in the Regular Army on 12 February 1999 in the rank/pay 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 Campbell, KY. He was advanced to private (PV2)/E-2 effective 12 August 1999 and that was the highest rank he held.

4. Changes to the applicant's duty status were reported as follows:

- From Present for Duty (PDY) to Absent Without Leave (AWOL) effective 20 February 2001

- From AWOL to Dropped from Rolls (DFR) and reported as a deserter effective 21 March 2001
- From DFR to PDY following his surrender to military authorities effective 15 September 2001
- From PDY to AWOL effective 3 January 2002
- From AWOL to DFR and reported as a deserter effective 2 February 2002
- From DFR to PDY effective 12 September 2006 following his apprehension by civil authorities on 7 September 2006

5. The applicant underwent a separation medical examination on 19 September 2006 and was found to be qualified for administrative separation.

6. The applicant underwent a mental status evaluation on 20 September 2006. 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.

7. On 8 January 2007, an administrative flag was imposed upon the applicant to prevent him from receiving any favorable personnel actions while he was pending field initiated elimination.

8. On 11 January 2007, 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 (Active Duty Enlisted Administrative Separations), Chapter 14, paragraph 14-12c for Commission of a Serious Offense. He was advised that he was being recommended for an Under Honorable Conditions (General) discharge. The specific reason for this action was the applicant's period of AWOL from 3 January 2002 until 12 September 2006.

9. On 11 January 2007, 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 waived his right for consideration of his case by an administrative separation board and elected not to submit statements in his own behalf.

10. On 11 January 2007, 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, paragraph 14-12c by reason of Commission of a Serious Offense. The intermediate commander concurred with the recommendation on 16 January 2007.

11. On 16 January 2007, the separation authority approved the recommendation. He directed the applicant's service be characterized as General, Under Honorable Conditions.

12. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show he was discharged in the rank/pay grade of PV1/E-1 on 24 January 2007, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of Misconduct (Serious Offense) with separation code "JKQ" and reentry code "3." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 2 years, 8 months, and 9 days of net active service this period. He had time lost due to AWOL from 20 February 2001 until 14 September 2001 and from 3 January 2002 until 11 September 2006. He did not complete his first full term of service.

13. The applicant provides the first page of a VA Rating Decision letter, dated 10 October 2023, which shows, in part, he was awarded service connection for PTSD with an evaluation of 50 percent effective 31 May 2023.

14. 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.

15. 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 12 February 1999.
- The applicant was AWOL from 20 February 2001 until 15 September 2001 and again from 3 January 2002 until 12 September 2006.
- On 11 January 2007, the applicant's immediate commander notified him of his intent to initiate action to separate him under the provisions of AR 635-200, Chapter 14, paragraph 14-12c for Commission of a Serious Offense. The specific reason for this action was the applicant's period of AWOL from 3 January 2002 until 12 September 2006. He waived his right for consideration of his case by an administrative separation board and elected not to submit statements in his own behalf.

- The applicant was discharged on 24 January 2007 and was credited with completion of 2 years, 8 months, and 9 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 that PTSD and other mental health as mitigating factors in his misconduct. He explained that while deployed his wife was unfaithful and this tore him apart, and he lost his bearing. A VA Rating Decision letter dated 10 October 2023 showed that the applicant is 50% service connected for PTSD. A Report of Medical History dated 19 September 2006 showed that the applicant reported nervous trouble/anxiety/panic attacks, trouble sleeping, and depression or excessive worry, and he noted panic attacks, problems sleeping due to anxiety, and depression. The evaluator annotated the onset of symptoms being in 2001, that the symptoms had been evaluated and treated, and that the applicant did not consider the symptoms to be a current problem. An undated Report of Medical Examination showed that the applicant was considered qualified for service, and a Report of Mental Status Evaluation dated 20 September 2006 indicated he had the mental capacity to understand and participate in the proceedings and met retention standards. 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 DoD documentation of a mental status evaluation conducted on 20 September 2006 and a chapter 14, phase 2 physical completed on 4 October 2006.

e. A VA Initial PTSD Disability Benefits Questionnaire (DBQ) was completed on 18 August 2023, and documentation from the evaluation noted that the applicant's DD214 was not available for review. The applicant reported a history of two deployments (Iraq 2003; Afghanistan 2006) and described trauma exposure, which was documented as "multiple combat exposures across 2 deployments; faced multiple enemy threats, close friend KIA." When asked about his discharge from the military, he reported having received misdemeanor assault charges resulting in court marital. He endorsed the requisite number of symptoms to warrant a diagnosis of PTSD.

f. In March 2024 the applicant engaged VA for mental health treatment through the Veterans Crisis Line and discussed being overwhelmed by life stressors. On 29 March 2024 he completed an intake for medication management where he reported depressed and anxious mood with irritability, intrusive memories, avoidance, and hyperarousal symptoms. He was started on an antidepressant medication and referral for psychotherapy was recommended. A comprehensive psychological evaluation for psychotherapy was completed on 2 July 2024, and the applicant reported his primary concerns related to financial problems, unemployment, and anger. PTSD symptoms

were assessed, and he identified his primary trauma-related stressor as “my roommate became the sergeant major’s driver. They were ambushed and mowed down. I had to go for clean up and saw my friend.” He also discussed frustration with his 2006 deployment to Iraq when he became aware of U.S. soldiers who raped a girl, killed her family, and burnt down their home. He denied MST. He was diagnosed with PTSD, chronic, and Major Depressive Disorder, moderate. Documentation showed several scheduling attempts, but there is no indication of follow up for psychotherapy. His most recent contact with mental health was via secure messaging on 30 December 2024, which indicated continued medication management.

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. The applicant asserts PTSD and mental health problems following a deployment as well as infidelity by his wife. Medical and mental health documentation from his separation process in 2006 showed that he endorsed symptoms of anxiety and depression, which started in 2001 and had mostly resolved. He is 50% service connected through the VA for PTSD and has attributed his trauma experience to two deployments in 2003 and 2006. However, this is inconsistent with military records, which show he was AWOL during those years. Additionally, there is no other documentation supporting a deployment history. Although there is in-service evidence of mental health symptoms, there is a marked inconsistency in his trauma related stressor resulting in his 2023 diagnosis of PTSD.

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. Documentation from 2006 showed that the applicant reported mental health symptoms during his separation physical following four years of being AWOL, but there is no mental health diagnosis from his time on active service. The applicant is 50% service connected through the VA for PTSD, and he is currently treated with medication management.

(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. He reports a deployment history, but VA documentation showed his report of deployment was during the time in which he was AWOL. Additionally, no military records were provided showing a history of deployment.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed the applicant reported mental health symptoms during his separation examinations, but there was no indication of a mental health diagnosis. VA records show a diagnosis of PTSD based on

deployment related trauma exposure. However, there are no military records to show that the applicant deployed, and his report of deployment to VA providers was during the timeframe in which military records show he was AWOL. Therefore, there is insufficient evidence to support a nexus between his VA diagnosed mental health condition and his misconduct.

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

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the over 4 year AWOL leading to the applicant's separation, the AWOL ending by ways of apprehension, and the following findings outlined in the medical review (related to a lack of mitigation):

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes.

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? No.

the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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. 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. 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//