

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 January 2025

DOCKET NUMBER: AR20240004501

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (General) characterization of service to honorable
- a change of his reentry eligibility (RE) code to an unspecified, presumably more favorable code
- to appear before the Board via video/telephone

APPLICANT'S SUPPORTING DOCUMENT CONSIDERED BY THE BOARD:

DD Form 149 (Application for Correction of Military Record)

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 does not completely understand why he received a General discharge and was assigned an RE code of 3. Of course, a few Driving Under the Influence (DUI) incidents are reason to send a Soldier home, but he is hoping the Board will understand what he was going through as a young Soldier. He hopes to get a job to continue serving America, but he cannot move forward with his current discharge and RE code. The applicant indicated on his DD Form 149 that mental health conditions were related to his request.
3. The applicant enlisted in the Regular Army on 29 September 2005 in the rank/pay grade of specialist (SPC)/E-4 for a period of 3 years and 2 months. Upon completion of initial entry training, he was assigned to a unit in Germany.
4. On 19 November 2007, the applicant was reassigned to another unit with the same battalion.

5. A U.S. Army Garrison, Kaiserslautern, Army Substance Abuse Program (ASAP) Landstuhl memorandum, Subject: Synopsis of ASAP Rehabilitation Activities, dated 11 December 2007, shows the applicant was command referred to the Landstuhl ASAP on 6 June 2007 as a result of a 2 June 2007 apprehension for Drunken Driving, Traffic Accident, Driving with a Suspended License, and Failure to Obey an Order. As a result, he was enrolled for out-patient treatment.

a. Since referral, the applicant had participated in one screening interview, two Rehabilitation Team Meetings, six individual sessions, fourteen group counseling sessions, and completed nine homework assignments. Since referral, he had failed to attend seven scheduled group counseling sessions.

b. The applicant's response to treatment had been demonstrated as poor. Since being in treatment, he was involved in two alcohol related incidents known to this clinic. On 16 July 2007, he was found on duty under the influence of alcohol and on 30 November 2007, he was apprehended for drunken driving.

c. The applicant had been inconsistent with attending weekly Group counseling appointments. Given his disregard to program requirements, Individualized Treatment Plan requirements, continued use of alcohol during the course of treatment, and poor attendance, his prognosis for remaining free of alcohol related incidents was poor.

6. On 18 March 2008, the applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for on or about 30 November 2007, DUI of alcohol and violating a lawful regulation by wrongfully driving without a valid vehicle registration. His punishment included: reduction to the rank/pay grade of private (PV1)/E-1; restriction for 45 days; and extra duty for 45 days.

7. On 5 May 2008, 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 14-12b for a Pattern of Misconduct. He was advised that he was being recommended for a discharge Under Other than Honorable Conditions. The specific reasons for this action were follows:

- physically controlling a vehicle while drunk on three occasions
- physically controlling a vehicle without a valid registration
- leaving the scene of a vehicle collision
- wrongfully committing and indecent act with Airman First Class CC
- committing adultery by wrongfully engaging in sexual intercourse with a woman not his wife

8. On 5 May 2008, the applicant acknowledged receipt of the notification and that he was advised of the reasons for separation and of the rights available to him.
9. 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 14-12b by reason of Patterns of Misconduct.
10. On 12 May 2008, the applicant submitted a request for a conditional waiver. He voluntarily waived consideration of his case by an administrative separation board contingent upon him receiving a characterization of service of description of separation no less favorable than general, under honorable conditions. He elected not to submit statements in his own behalf.
11. The applicant's intermediate commanders concurred with the request for a conditional waiver with a General discharge.
12. On 15 May 2008, the applicant's separation packet underwent a legal review and was found to be legally sufficient.
13. On 19 May 2008, the separation authority approved the applicant's request for a conditional waiver and directed the applicant's service be characterized as general, under honorable conditions.
14. 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 2 August 2008, under the provisions of Army Regulation 635-200, paragraph 14-12b, by reason of Pattern of Misconduct with separation code "JKA" and RE code "3." His service was characterized as under honorable conditions (General). He completed 2 years, 8 months, and 2 days of active service. He did not complete his first full term of service.
15. 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.
16. By regulation, an applicant is not entitled to a hearing before the Board.

17. MEDICAL REVIEW:

- a. The applicant is applying to the ABCMR requesting an upgrade of his Under Honorable Conditions (General) characterization of service to honorable and to change his reentry code to an unspecified, presumably more favorable code. On his DD Form 149, the applicant indicated Other Mental Health Issues are related to his request. 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 enlisted in the Regular Army (RA) on 29 September 2005, 2) a memorandum from the Army Substance Abuse Program (ASAP) dated 11 December 2007 shows the applicant was command referred to the program on 06 June 2007 and ultimately enrolled in outpatient treatment as a result of drunken driving, traffic accident, driving with a suspended license, and failure to obey an order. 3) on 18 March 2008, he received an Article 15 for, on or about 30 November 2007, DUI of alcohol and violating a lawful regulation by wrongfully driving without a valid vehicle registration, 4) On 5 May 2008, 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, paragraph 14-12b for a Pattern of Misconduct. The specific reasons for this action were follows: physically controlling a vehicle while drunk on three occasions, physically controlling a vehicle without a valid registration, leaving the scene of a vehicle collision, wrongfully committing and indecent act with an Airman First Class, and committing adultery by wrongfully engaging in sexual intercourse with a woman not his wife, 5) the applicant was discharged on 02 August 2008 under the provisions of AR 635-200, paragraph 14-12b, by reason of Pattern of Misconduct with a separation code of "JKA" and RE code of "3."

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) was 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 25 October 2005 through 29 May 2008. There were two encounters from the Family Advocacy Program (FAP) dated 04 February 2008 and 06 February 2008. The applicant was noted as the alleged offender of spouse abuse with the diagnosis noted as Other Specified Family Circumstances. He was seen by BH for a Chapter 14-12b Mental Status Evaluation (MSE) on 06 February 2008. He was diagnosed with Alcohol Dependence and was released without limitations. A Report of Medical History dated 02 January 2008 for the purposes of separation shows the applicant marked 'no' to all BH-related items (17a-i).

d. As part of his application packet, a memorandum from the Army Substance Abuse Program (ASAP) dated 11 December 2007 was provided for review and outlined the applicant's ASAP rehabilitation activities. It was documented that he was command referred to ASAP on 06 June 2007 as a result of apprehension on 02 June 2007 for drunken driving, traffic accident, driving with a suspended license, and failure to obey an order. It noted the Rehabilitation Team Meeting (RTM) on 14 June 2007 enrolled him in the program for outpatient treatment with alcohol being the primary basis for enrollment. His response to treatment was documented as 'poor' and it was noted that he had been involved in two alcohol-related events that were known to the clinic (16 July 2007-on duty while under the influence of alcohol and 30 November 2007-drunken driving and operating a vehicle without a license). The ASAP counselor noted that, due to

inconsistent attendance in group counseling, disregard to program requirements, individualized treatment plan requirements, and continued use of alcohol during the course of treatment, and poor attendance, his prognosis to remain free of alcohol-related incidents was determined to be 'poor.'

e. A review of JLV shows the applicant is 10% service-connected through the VA for Foot Pain (10%) and Migraine Headaches (0%). He is not service-connected for any BH conditions. Review of his records were void of any BH diagnosis or treatment through the VA.

f. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends that his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of records shows the applicant was diagnosed with Alcohol Dependence in-service and was enrolled in ASAP for treatment of alcohol use; however, it is of note that alcohol use disorders do not constitute mitigating conditions. In absence of documentation supporting his assertion there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

**BOARD DISCUSSION:**

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

record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for a pattern of misconduct with the commander citing multiple infractions. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board reviewed and concurred with the medical advisor's review finding insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. Based on a preponderance of the evidence, the Board concluded that the characterization of service and corresponding RE code the applicant received upon separation was appropriate.

2. 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:**

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.

4/10/2025

X

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 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 (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 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

6. 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.

7. 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//