

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 January 2025

DOCKET NUMBER: AR20240004511

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) characterization of service.

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

- DD Form 149 (Application for Correction of Military Record)
- Bachelor of Business Administration, [REDACTED] dated 20 December 2013
- Department of Veterans Affairs (VA), Healthevet Personal Information Report, dated 5 March 2024

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 service he had mental health problems that were undiagnosed. At the time of his separation, he was going through a bipolar manic episode. He notes post-traumatic stress disorder (PTSD) and other mental health as conditions related to his request.
3. The applicant enlisted in the Regular Army on 15 November 2007, for a 4-year period. The highest rank he attained was private/E-1.
4. The applicant was formally counseled on 28 November 2007. He was recommended for transfer to the Physical Training Rehabilitation Program (PTRP) following an Open Reduction and Internal Fixation (ORIF) for a fractured elbow. The PTRP was an active training unit, with modified training for Soldiers with a medical condition. Transfer to the PTRP was not to facilitate his separation from the military.
5. He was formally counseled on 5 May and 6 May 2008. Areas of emphasis covered in the counseling included:

- failure to obey a lawful order or regulation on two occasions
- conduct of a nature to bring disrespect upon the Armed Forces
- not living up to the seven Army Values
- recommendation for a company grade Article 15
- not being at his appointed place of duty
- willful disobedience of a noncommissioned officer
- possible separation for misconduct

6. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 7 May 2008 for being absent from his unit without authority (AWOL), from on or about 4 May 2008 until on or about 5 May 2008. His punishment consisted of forfeiture of \$290.00 pay and extra duty and restriction for 14 days.

7. The applicant underwent a medical examination on 14 May 2008. The relevant DD Form 2808 (Report of Medical Examination) and the corresponding DD Form 2807 (Report of Medical History) show the applicant reported a right humerus fracture with ORIF. He was treated at Fort Gordon, GA, Eisenhower Hospital on 26 November 2007. The examining provider recommended the applicant continue rehabilitation and cleared him for separation.

8. A DA Form 3822-R (Report of Mental Status Evaluation), dated 15 May 2008, shows the applicant was psychiatrically cleared to participate in any administrative action deemed appropriate by his command.

9. The applicant's commander notified the applicant on 16 May 2008 of his intent to initiate administrative action to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 13, by reason of unsatisfactory performance. The commander noted the applicant lacked the necessary motivation, adaptability, self-discipline, ability, or attitude to become a productive Soldier. He did not put forth any effort in the rehabilitation process. On the same date, the applicant's commander advised him of his rights, and the applicant acknowledged receipt of the notification.

10. The applicant's service record contains a blank election of options.

11. A DA Form 4187 (Personnel Action), shows the applicant was reported AWOL on 19 May 2008.

12. 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 13, by reason of unsatisfactory performance. The intermediate commander concurred with the recommendation and further recommended a waiver of

rehabilitative transfer requirements and an under honorable conditions (general) characterization of service.

13. A memorandum from Headquarters, 120th Adjutant General Battalion (Reception), Fort Jackson, SC on 21 May 2008, states the applicant went AWOL after acknowledging receipt of his notification of separation, under the provisions of Army Regulation 635-200, paragraph 2-2d(2) and paragraph 2-13, being AWOL after acknowledging receipt constitutes a waiver of all rights. The separation action could be processed for completion.

14. On 21 May 2008, the separation authority approved the recommended separation action, waived the rehabilitation requirements, and directed the issuance of a General Discharge Certificate.

15. The applicant was discharged on 28 May 2008, under the provisions of Army Regulation 635-200, Chapter 13, by reason of unsatisfactory performance. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his service was characterized as under honorable conditions (General), with separation code JHJ and reentry code RE-3. He completed 6 months and 14 days of active service.

16. The Army Discharge Review Board considered the applicant's request for an upgrade of his character of service on or about 9 November 2010. After careful consideration, the Board determined the applicant was properly and equitably discharged. His request for relief was denied.

17. The applicant provides a copy of his Bachelor of Business Administration degree, from [REDACTED] dated 20 December 2013. He also provides a VA HealthEVET Personal Information Report, dated 5 March 2024, which will be reviewed and summarized, in pertinent part, in the "MEDICAL REVIEW" portion of this Record of Proceedings (ROP).

18. Soldiers may be separated under the provision of Army Regulation 635-200, Chapter 13 when it is determined that they are unqualified for further military service because of unsatisfactory performance.

19. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

20. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service. He indicated Posttraumatic Stress Disorder (PTSD) and Other Mental Health Issues are related to his request.

More specifically, he noted that at the time of his discharge he was going through a Bipolar Manic episode. 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 15 November 2007, 2) he was formally counseled on 05 and 06 May 2008 for the following: failure to obey a lawful order or regulation on two occasions, conduct of a nature to bring disrespect upon the Armed Forces, not living up to the seven Army Values, recommendation for a company grade Article 15, not being at his appointed place of duty, willful disobedience of a noncommissioned officer, and possible separation for misconduct. 3) he received an Article 15 on 07 May 2008 for being absent from his unit without authority (AWOL) from 04-05 May 2008, 5) on 14 May 2008 he was medically cleared for separation, 6) on 15 May 2008 he underwent a Mental Status Evaluation (MSE) and was psychiatrically cleared for administrative action deemed appropriate by his command, 7) on 16 May 2008 the applicant's commander notified the applicant of his intent to initiate administrative action to separate him under the provisions of Army Regulation 635-200, Chapter 13, by reason of unsatisfactory performance. The commander noted the applicant lacked the necessary motivation, adaptability, self-discipline, ability, or attitude to become a productive Soldier and that he did not put forth any effort in the rehabilitation process. It was also noted that he received an Article 15 for being AWOL from 04-05 May 2008, 8) a DA Form 4187 shows the applicant was reported as AWOL on 19 May 2008, 9) the applicant was discharged on 28 May 2008 under the provisions of AR 635-200, Chapter 13, by reason of unsatisfactory performance with a separation code of JJJ, and reentry code of 'RE-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 16 November 2007 through 15 May 2008, none of which were BH-related. The applicant provided some in-service medical records as part of his application. His Report of Medical Examination dated 14 May 2008 shows psychiatric was 'normal' on clinical evaluation and his PULHES showed 'S' for psychiatric as '1,' indicating he was not on a BH profile at the time of separation. His Report of Medical History for the purposes of separation shows he marked no to all BH-related items (17a-i). His MSE conducted on 15 May 2008 due to misconduct shows all domains of the MSE were within normal limits (WNL). Furthermore, the evaluating provider documented that he had the mental capacity to understand and participate in proceedings, was mentally responsible, met retention standards in accordance with (IAW) AR 40-501, and was psychiatrically cleared for administrative action deemed appropriate by command. He was not diagnosed with a BH condition at the time of the evaluation.

d. A review of JLV shows the applicant is 90% service-connected through the VA overall, 50% for Major Depressive Disorder (MDD). The applicant underwent a BH Compensation and Pension (C&P) examination on 24 July 2020 and was diagnosed with Major Depressive Disorder, Recurrent, Moderate. As part of his application, the applicant provided a My HEALTHEVET printout pertaining to his VA treatment dated 05 March 2024 which shows that he has been diagnosed and treated for Bipolar Disorder and Insomnia through the VA. These records are consistent with his VA medical records available in JLV. However, the onset of Bipolar Disorder was not specified in the available medical records and there is no current indication in the available records that he has been service-connected through the VA for Bipolar Disorder.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant has been diagnosed post-discharge with a potentially mitigating BH condition, MDD. Although his in-service medical records were void of any BH diagnosis or treatment history, since being discharged from the military the applicant has been diagnosed and service-connected through the VA with MDD. As such, this Advisor would contend that the applicant's misconduct is mitigated by his diagnosis of MDD.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant is 50% service-connected for MDD through the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant is 50% service-connected for MDD through the VA. Service connection establishes that the condition existed in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. In-service medical records were void of any BH diagnosis or treatment history. Since being discharged from the military, the applicant has been diagnosed and service-connected through the VA with MDD. As there is an association between lethargy, lack of motivation, anhedonia, difficulty with concentration and decision making and the reasons identified for separation (e.g., lacking necessary motivation, adaptability, self-discipline, ability, or attitude to become a productive Soldier, not putting forth any effort in the rehabilitation process, and receiving an Article 15 for going AWOL), there is a nexus between his diagnosis of MDD and the misconduct associated with his separation. As such, BH mitigation is supported. Regarding applicant's assertion of PTSD, while there is no evidence to support this diagnosis, the applicant's self-assertion of PTSD alone merits consideration by the board.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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 unsatisfactory performance. The Board noted the applicant's provided documentation to support his request, including his Bachelor's Degree in reference to his post-service achievements. The Board noted the applicant's contention of an other mental health issue/condition and concurred with the medical advisor's review finding sufficient evidence that the applicant has been diagnosed post-discharge with a potentially mitigating behavioral health condition, major depressive disorder. Based on a preponderance of the evidence, the Board concluded that an upgrade from under honorable conditions (General) to honorable was warranted.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3
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<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	GRANT FULL RELIEF
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:	:	:	GRANT FORMAL HEARING
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:	:	:	DENY APPLICATION
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BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 28 May 2008 to show an honorable characterization of service.

4/10/2025A large black rectangular redaction box covering a signature.CHAIRPERSON
A horizontal black redaction line.

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, U.S. Code (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 Army Board for Correction of Military Records (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. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions, and reviews to ABCMR applicants prior to adjudication.
3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 13 of this regulation provides for separation due to unsatisfactory performance when, in the commander's judgment, the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, is unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation will be characterized as honorable or under honorable conditions.
 - b. Paragraph 2-2d(2) provides that when the reason for separation requires the notification procedure, the commander will notify the Soldier in writing that his/her separation has been recommended per this regulation. If the respondent is in civil confinement or absent without leave, the relevant notification procedures apply.
 - c. Paragraph 2-13 (Processing in absence of Soldier) and 2-15 provide when proceedings have been initiated against a Soldier who is absent without leave or confined by civil authorities, the case may be processed in his/her absence. If the general court-martial convening authority or higher authority determines that separation is otherwise appropriate under this regulation, a Soldier may be separated without return to military control if the Soldier is absent without authority after receiving notice of initiation of separation processing.

d. 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.

e. 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.

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 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. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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. 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//