

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 January 2025

DOCKET NUMBER: AR20240004658

APPLICANT REQUESTS: upgrade of his under honorable conditions (General) discharge, and a different narrative reason for separation.

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

- DD Form 293 (Application for Review of Discharge) – Online
- Veterans Affairs (VA) medical documents

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20220010548 on 24 May 2023.

2. In a new argument the applicant states:

a. His discharge should be changed because he was suffering from undiagnosed post-traumatic stress disorder (PTSD) and mental health issues related to tasks being performed while awaiting a trial by court-martial. He did not have this information on his last appeal, but he has since been officially diagnosed by the VA. He now receives the treatment he has needed.

b. He was scheduled to proceed to his next duty assignment, but he was held back due to an investigation. He was given temporary duties which included being in charge of funeral details and memorial ceremonies. He was told that his pending case was not a priority and that he could either keep performing his temporary duties or accept an administrative discharge. He accepted the administrative discharge; however, he did not realize the ramifications. Had he not been suffering from PTSD; he would have continued to serve and fight for an honorable discharge.

3. The applicant enlisted in the U.S. Army Reserve (USAR) on 23 March 1992.

4. On 5 June 1994, the applicant enlisted in the USAR Control Group (ROTC) and elected to participate [REDACTED] University ROTC program.

5. He was appointed as a Reserve Commissioned Officer in the Infantry Branch, on 12 December 1995.
6. The applicant was ordered to active duty to attend the Infantry Officer Basic Course, with subsequent assignment to Korea. He reported for training, on 9 March 1996.
7. An Officer Evaluation Report for the period of 11 October 2004 through 31 May 2005 shows the applicant received an unsatisfactory performance evaluation. His rater commented that the applicant was relieved from command for mismanagement of unit funds.
8. A Criminal Investigation Division law enforcement report dated 1 December 2005, established probable cause to believe that the applicant committed the offenses of larceny of government funds, wire fraud and making and uttering worthless checks when he utilized a unit family readiness group bank account for personal expenditures for approximately \$17,000.00; and probable cause to believe he committed the offense of false swearing when he provided sworn statements which contained false information that he knew to be false.
9. The available record is void of a complete separation packet containing the specific facts and circumstances surrounding the applicant's discharge processing.
10. The applicant was discharged on 25 March 2006. He completed 10 years and 17 days of active service this period. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows in:
 - Item 24 (Character of Service) – under other than honorable conditions (UOTHC)
 - item 25 (Separation Authority) – AR [Army Regulation] 600-8-24, paragraph 3-13
 - item 26 (Separation Code) – DFS
 - item 27 (Reentry Code) – N/A
 - item 28 (Narrative Reason for Separation) – in lieu of trial by court-martial
11. Additionally his DD Form 214 shows he was awarded or authorized the:
 - Army Commendation Medal (2nd Award)
 - Army Achievement Medal
 - National Defense Service Medal (2nd Award)
 - Global War on Terrorism Service Medal
 - Korea Defense Service Medal
 - Army Service Ribbon
 - Overseas Service Ribbon
 - Ranger Tab
 - Expert Infantryman Badge

- Parachute Rigger Badge
- Parachutist Badge
- Air Assault Badge

12. The applicant petitioned the Army Discharge Review Board (ADRB) requesting upgrade of his UOTHC discharge. On 8 July 2020, the Board voted to deny relief and determined his discharge was both proper and equitable.

13. The applicant petitioned the ADRB a second time, requesting upgrade of his UOTHC discharge. On 6 December 2021, the Board voted to deny relief and determined his discharge was both proper and equitable.

14. The applicant petitioned the ABCMR requesting upgrade of his UOTHC discharge. On 24 May 2023, the Board determined that based on the preponderance of evidence provided by the applicant's counsel that demonstrated an error occurred, the Board granted partial relief with an upgrade to under honorable (General) conditions.

15. On 2 July 2023, the applicant was issued a new DD Form 214 to show he was discharged under honorable conditions (General).

16. The applicant provides various VA documents that show he has received treatment for various injuries and illnesses, including PTSD.

17. 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.

18. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service and a different narrative reason for separation. He contends he was suffering from undiagnosed Posttraumatic Stress Disorder (PTSD) and mental health issues related to tasks being performed while awaiting a trial by court-martial. 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 U.S. Army Reserve (USAR) on 23 March 1992, 2) He was appointed as a Reserve Commissioned Officer on 12 December 1995. The applicant was ordered to active duty to attend the Infantry Officer Basic Course and reported to training on 09 March 1996, 3) an Officer Evaluation Report (OER) for the period of 11 October 2004 through 31 May 2005 shows the applicant received an unsatisfactory performance evaluation and his rater commented that the applicant was relieved from command for mismanagement of unit funds, 4) A CID law enforcement report dated 1 December 2005, established probable cause to believe that

the applicant committed the offenses of larceny of government funds, wire fraud and making and uttering worthless checks when he utilized a unit family readiness group bank account for personal expenditures; and probable cause to believe he committed the offense of false swearing when he provided sworn statements which contained false information that he knew to be false, 5) the available record is void of a complete separation packet containing the specific facts and circumstances surrounding the applicant's discharge processing, 6) the applicant was discharged on 25 March 2006, under the provisions of Army Regulation (AR) 600-8-24, Paragraph 3-13 with a separation code of DFS and narrative reason for separation noted as "in lieu of trial by court-martial." 6) the ADRB denied the applicants previous petition(s) for relief on 08 July 2020 and 06 December 2021, 7) on 24 May 2023, the ABCMR granted the applicant partial relief with an upgrade to under honorable (general) conditions.

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. Limited in-service medical records were available for review via JLV from 07 August 2000 through 16 March 2006, none of which were BH-related.

d. A review of JLV shows the applicant is 100% service-connected through the VA for numerous medical conditions, to include 30% for Chronic Adjustment Disorder. He underwent an Initial PTSD Compensation and Pension (C&P) examination on 26 February 2024. The evaluating provider diagnosed the applicant with Adjustment Disorder, Chronic, and documented that the applicant did not meet criteria for PTSD. He completed a subsequent C&P examination on 13 June 2024 and was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood, Chronic. As part of his application the applicant provided a printout of his VA treatment records available via My HealtheVet. He completed a Mental Health Intake on 29 September 2023 to which the provider noted that he reported experiencing PTSD symptoms related to exposure to the deaths of his Soldiers from their deployments. It was also documented that while he was awaiting discharge from the Army, he was put on funeral detail and was attending 2-3 funerals per week. A psychiatry note dated 22 January 2024 shows he was prescribed Escitalopram (antidepressant) for treatment of PTSD though was later switched to Fluoxetine (antidepressant). His diagnoses were noted as Chronic PTSD and Alcohol Intake Above Recommended Sensible Limits. VA records show he has continued to follow-up with psychiatry through the present day for treatment of PTSD.

e. The applicant's previous ABCMR Medical Advisory dated 24 May 2023 was reviewed. At the time of the Advisory, it was noted that there was insufficient evidence beyond self-report that the applicant was experiencing symptoms of a mental health

condition, to include PTSD, while in-service. Moreover, the Advisor noted that there is not a nexus between PTSD and larceny of government funds, wire fraud, writing bad checks, and making false statements as these behaviors are not a normal sequela to his reported mental health conditions, including PTSD. As such, BH mitigation was not supported.

f. 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 two potentially mitigating BH conditions, Chronic Adjustment Disorder and PTSD. However, this Advisor would contend that, consistent with the previous ABCMR Medical Advisory, there is not a nexus between PTSD or Chronic Adjustment Disorder and his misconduct of larceny of government funds, wire fraud, writing bad checks, and making false statements as these behaviors are not a normal sequela to Chronic Adjustment Disorder or PTSD. As such, BH mitigation is not supported.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant is 30% service-connected through the VA for Chronic Adjustment Disorder. He has also been diagnosed by his VA treating psychiatrist with PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant is 30% service-connected through the VA for Chronic Adjustment Disorder. Service connection establishes that the condition existed in service. He has also been diagnosed by his VA treating psychiatrist with PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant's in-service medical records were void of any BH diagnosis or treatment history. Post-discharge, the applicant has been diagnosed and 30% service-connected through the VA with Chronic Adjustment Disorder. He has also been diagnosed by his VA treating psychiatrist with PTSD. However, there is not a nexus between PTSD or Chronic Adjustment Disorder and his misconduct of larceny of government funds, wire fraud, writing bad checks, and making false statements as these behaviors are not a normal sequela to Chronic Adjustment Disorder or PTSD. Moreover, Chronic Adjustment Disorder and PTSD do not interfere with the ability to distinguish between right and wrong and adhere to the right. As such, BH mitigation is not supported.

BOARD DISCUSSION:

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 cited for mismanagement of unit funds and separated in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted the applicant's discharge was previously upgrade to under honorable conditions (General). The Board further reviewed and concurred with the medical advisor's review finding that although he was diagnosed with post-service PTSD, there was no behavioral health nexus between his misconduct and diagnosis. The Board concluded that the upgraded characterization of service the applicant received was not in error or unjust. Additionally, the Board determined there was no error or injustice as it relates to the applicant's request to amend his narrative reason for separation.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>
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:	:	:	GRANT FORMAL HEARING
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<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DENY APPLICATION
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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

 _____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, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal 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 (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.
2. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.
3. Army Regulation 600-8-24 (Officer Transfers and Discharges) sets forth the basic authority for officer transfers from active duty (AD) to the Reserve Component and discharge functions for all officers on AD for 30 days or more. The version in effect at the time provided that:
 - a. An Honorable characterization of service. An officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty.
 - b. General (under honorable conditions) characterization of service. An officer will normally receive an under honorable conditions characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Paragraph 3-13 provided that an officer could submit a resignation for the good of the service in lieu of general court-martial (GCM) under the following circumstances:
 - (1) Court-martial charges have been preferred against the officer with a view toward trial by GCM.
 - (2) The officer is under a suspended sentence of dismissal.

4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. At the time, this regulation prescribed the separation code "DFS" as the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 600-8-24, in lieu of trial by court-martial.
5. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR), on 3 September 2014, 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.
6. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, 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 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.
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//