

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 December 2024

DOCKET NUMBER: AR20240004673

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Letter addressed to the Board
- Medical documents
- Three Command memoranda
- Two DD Forms 458 (Charge Sheet) (page 2 of 2)

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:

a. He is applying for an upgrade for the second time. His reason for this application is to receive Veterans Affairs (VA) compensation for disabilities that occurred while on active duty. He is also applying because he was told by the VA that he has a dishonorable discharge, but his DD Form 214 says "other than honorable discharge." Furthermore, VA representatives have said, over the phone, that he could use his appeal; however, he does not believe he should have to use an appeal for a clerical error when it could be corrected by a representative.

b. He enlisted in March 2010 and was assigned to Fort Sill for training. During his time in Fort Sill, he was having severe knee pain. Although he was given minimal medical care, he was still expected to carry out his duties in training. He spent most of his training time in physical therapy in order to get him to successfully pass a physical test and move on to his duty station at Fort Polk, LA. During his time at Fort Polk, his knee injury worsened. He informed his chain of command of the situation.

c. In August of 2010, he went absent without leave (AWOL) because he was not confident that he would survive a deployment. He wanted to speak to a psychologist because he thought it was all in his mind. When he seen a psychologist, he was barely listening, as he kept nodding off. While assigned to Fort Polk, his unit did a 24-mile hike. During that hike, he had so much pain in his knee, which is why he decided to leave. He left at the end of August 2010 and while he was AWOL, he thought about how he left and how it was not becoming of a Soldier.

d. In October 2010, he contacted his platoon sergeant to let him know he wanted to return. He was told by his platoon sergeant to wait until the unit deployed as his return would delay the process. When he returned to Fort Polk in December 2010, he was asked if he wanted to deploy, which he responded with a "yes." He was given a full mental evaluation, taken to an off-post hospital because an MRI needed to be done because of the constant discomfort. When his results came back, he was told he was non-deployable because he had arthritis in both knees.

e. Prior to being placed in a non-deployable status, the commander suggested a Field Grade Article 15 for going AWOL. Since he was non-deployable, the punishment would consist of a special court martial and possibly up to 18 months in prison, with a felony placed in his military and civilian record. He informed the Judge Advocate General (JAG) officer what his platoon sergeant said regarding his potential return. When it was revealed that the platoon sergeant issued that order, the punishment was changed to a summary court martial.

f. Due to the JAG officer failing to show up to the trial, he represented himself. Although he had several noncommissioned officers (NCOs) testify on his behalf regarding his character, he was sentenced to serve time in a civilian jail. When he needed medical treatment, his unit had to be contacted as they were 45 minutes away. In the meantime, he would have to wait in pain. On 21 April 2010, while incarcerated, he was experiencing debilitating back pains; he could not move. He alerted the guards of his situation, and they contacted his unit. He could barely move and was wheel chaired from his cell. When some Soldiers arrived to take him to the hospital, he was given medication for pain and a CT scan was done. He was not made aware of any results.

g. In 2018, he was working at Amazon and had pain in his neck and uncontrollable movement in his left hand. He went to the doctor, where imaging was ordered. The results revealed degeneration between the C5 and C6 vertebrae. He requested his medical records from his time in service. When he received his medical records, he found out that on 21 April 2011 it was determined that he had degeneration between C5 and C6 of the cervical spine and disc bulging at L4 - L5 and L5 - S1 of the lumbar spine.

h. On 18 May 2022, he underwent surgery to repair the cervical spine at C5 and C6. This injury was the reason that he could no longer do manual labor or activities that could potentially aggravate it. Since then, he has become a substitute teacher. The upgrade in his discharge will allow him to receive treatment from the VA and hopefully get him closer to receiving a rating and possibly compensation. Had he been diagnosed early on, he could have been released from the Army. He does not believe that one incident should sum up his military service as he had no other disciplinary issues.

3. The applicant provides:

a. Medical documents (26 pages) available in their entirety for the Board to review and summarized by the medical advisor in the medical review portion of this Record of Proceedings.

b. Three Command memoranda, which show:

(1) Commander, Headquarters, 5th Battalion, 25th Field Artillery, 4th Brigade Combat Team, 10th Mountain Division (Light Infantry), dated 2 February 2011, reflects that after reviewing the evidence pertaining to the alleged misconduct committed by the applicant, it was recommended that the case be referred to a Special Court-Martial empowered to adjudge a Bad Conduct discharge.

(2) Commander, Headquarters, 4th Brigade Special Troops Battalion, 4th Brigade Combat Team, 10th Mountain Division (Light Infantry), dated 2 February 2011, reflects that after reviewing the evidence pertaining to the alleged misconduct committed by the applicant, it was recommended that the case be referred to a Special Court-Martial empowered to adjudge a Bad Conduct discharge.

(3) Commander, Headquarters, United States Garrison, Fort Polk, dated 16 February 2011, reflects that after reviewing the evidence pertaining to the alleged misconduct committed by the applicant, it was recommended that the case be referred to a Special Court-Martial empowered to adjudge a Bad Conduct discharge.

c. Two DD Forms 458 (Charge Sheet) (page 2 of 2) which reflect the following:

(2) The accused (Applicant) was informed of the charges against him on 1 February 2011. The sworn charges were received at 1118 on 2 February at 4th Brigade, (R)(p), 10th Mountain Division (LI). The charges were referred for trial to the Special Court-Martial convened by CMCO #4, dated 18 October 2010, empowered to adjudge a Bad-Conduct Discharge.

(2) The accused (Applicant) was informed of the charges against him on 1 February 2011. The sworn charges were received at 1118 on 2 February at 4th

Brigade, (R)(p), 10th Mountain Division (LI). The charges were referred for trial to the Summary Court-Martial convened by this detail of MAJ [REDACTED] as Summary Courts-Martial.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 18 March 2010.

b. The applicant's duty status changed as follows:

- From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 17 August 2010
- From AWOL to Dropped From Rolls (DFR), effective 16 September 2010
- From DFR to PDY, effective 9 December 2010

c. On 18 May 2011, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c(1), commission of a serious offense – absent without leave.

d. The applicant acknowledged receipt of the commander's intent to separate him and consulted with legal counsel on 19 May 2011. He was advised of the basis for the contemplated separation action for misconduct, the type of discharge he could receive and its effect on further enlistment or reenlistment, the possible effects of this discharge, and of the procedures/rights available to him. He elected to submit a statement in his own behalf. He acknowledged he:

- understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him
- understood he could be ineligible for many or all benefits as a veteran under Federal and State laws as a result of the issuance of a discharge under other than honorable conditions
- understood if he received a discharge characterization of less than honorable, he could make an application to the Army Discharge Review Board (ADRB) or the ABCMR for an upgrade, but he understood that an act of consideration by either board did not imply his discharge would be upgraded

e. On 27 May 2011, the separation authority approved the applicant's discharge under the provisions of AR 635-200, paragraph 14-12c, commission of serious offense – absent without leave, with his service characterized as under other than honorable conditions.

f. His DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects he was discharged on 6 June 2011, under the provisions of AR 635-200, paragraph 14-12c(1), misconduct (AWOL), separation code JKD, reentry code of 3, with his service characterized as under other than honorable conditions. He completed 10 months and 26 days of active service this period, with lost time from 17 August 2010 to 9 December 2010.

4. The applicant applied to the Army Discharge Review Board (ADRB) for an upgrade of his discharge on 5 March 2012. The ADRB determined the discharge was both proper and equitable and voted to deny relief.

5. AR 635-200 states, action will be taken to separate a member for misconduct such as commission of a serious offense. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. Soldiers separated under AR 635-200, paragraph 14-12c(1), misconduct – absent without leave, are assigned the separation code JKD and the reentry code of RE-3.

6. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests discharge upgrade from Under Other Than Honorable Conditions. He stated that he sustained a knee injury while in training and for which he contends that he received minimal care and that this injury and associated mental health symptoms contributed to his becoming AWOL.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant entered the final period of service 18Mar2010. He was credited with 4 months of prior active service. His MOS was 13B Cannon Crewmember. The DD 214 did not show foreign service. The applicant was discharged almost 11 months later on 06Jun2011 under provisions of AR 635-200, chapter 14-12c(1) for commission of a serious offense. He was adjudged guilty of and plead guilty to the charge of being absent without leave (AWOL) from 20100817 to 20101209 by summary court-martial on 08Apr2011. In addition to the Under Other Than Honorable Conditions discharge, he was sentenced to 30 days confinement.

3. Summary of medical records. It should be noted that while the applicant submitted records concerning his neck and back conditions, these did not develop until after he went AWOL and will not be included in this review. Review of the applicant's records indicated that the neck and back conditions did not contribute to the reason he went AWOL or the reason he remained AWOL for almost 4 months. The review will focus on the knee condition and the behavioral health (BH) condition.

a. The applicant was seen for left knee pain in early 2010. He was 30 years old at the time. He was placed on serial profiles which included restrictions of no run, jump, march profile and/or PT at own pace and tolerance. He underwent physical therapy in April, May, and June 2010. He was released without limitation and returned to duty 11Jun2010 after completing a trial running test on a treadmill. Later, he passed an APFT on 20Jul2010.

b. A sick slip in December 2010 (after his return to military service from being AWOL) indicated he was still having knee pain, and he was placed on profile again. A 21Jan2011 MRI of both knees revealed bilateral mild diffuse chondral thinning. In March 2011, he was placed on the final 30-day physical profile (DA Form 3349) for PFPS (Patellofemoral Pain Syndrome) without any functional activity limitations.

c. The applicant submitted an outside right knee MRI record from August 2017 (6 years after service), completed after experiencing unspecified trauma, which showed full thickness cartilage erosion. Then 5 more years later, an 26Oct2022 MRI again showed the right knee cartilage loss; early degenerative changes; possible small tear in the body of the lateral meniscus; and very mild MCL (medial collateral ligament) sprain.

4. Behavioral health condition: The applicant was seen for a few visits for chest pain in July 2010 including one visit to the emergency room. The cardiology and pulmonary work up were negative. On 12Aug2010, the applicant self-referred to behavioral health services for symptoms of anger, irritability and decreased libido related to various situational stressors which began in AIT after he re-enlisted after 8 years of reserve time. He agreed to therapy to improve coping skills but deferred medication. Diagnosis: Adjustment Disorder with Disturbance of Emotions. He was deemed mentally Fit for Duty. He became AWOL a few days later. A sick slip in December 2010 (after his return to military service from being AWOL) indicated he reported chest pain of 2 months duration at the time. During a BH visit in May 2011, his chest pain was attributed to anxiety/stress (26May2011 Psychology Clinic Baynes-Jones ACH). During the 07Apr2011 Report of Mental Status Evaluation, his anxious mood/affect was observed. The rest of the mental health evaluation was normal, to include behavior, thought process/content and memory. He was deemed mentally responsible. He was able to distinguish right from wrong and adhere to the right. TBI and PTSD screenings were negative. He was again diagnosed with an adjustment disorder (Adjustment Disorder with Anxiety and Depressive Features). He was deemed to meet retention

standards of AR 40-501 chapter 3 and was approved for any administrative activity to include separation. During the 22Apr2011 Report of Medical History (DD Form 2807-1), the applicant reported chest pain off and on since July 2010 and trouble falling asleep for a number of years. In May2011, he was diagnosed with Adjustment Disorder with Depressed Mood. He received counseling (May and June 2011) for sleep issues and anger symptoms largely due to his feeling that his 30-day incarceration was not justified or was excessive.

5. Summary/Opinion

a. In his application to ABCMR, the applicant stated that while stationed at Ft Polk, his knee was in so much pain after a 24-mile hike, that he decided to become AWOL. He did not submit records showing treatment for his knee during the time that he was AWOL; however, he sought treatment for his knee shortly after he returned. During the final physical therapy assessment on 14Mar2011, the applicant described the left knee pain as intermittent, lateral, dull, and throbbing. The physical therapist noted mild decrease in strength in the left knee and established a plan for rehab and assessed that his rehab potential was 'good'. Despite his issues with knee pain and to a lesser extent neck and back pain; he endorsed being in good health during the Report of Medical History (DD Form 2807-1).

b. Concerning the BH condition, the Army diagnosed an adjustment disorder in August 2010 that began at least in part as a result of his knee injury during training. The condition became chronic (persisted more than 6 months) while he was in service. It should also be stated that based on records available for review, the applicant did not have a physical or mental health condition which failed retention standards of AR 40-501 chapter 3 at the time of separation. Liberal Consideration guidance was considered as below.

6. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant sustained knee injury during training which contributed to the development of a chronic adjustment disorder at the time.

(2) Did the condition exist, or did the experience occur during military service? Yes. The applicant developed a chronic adjustment disorder during service which developed at least in part due to an in-service knee injury.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant stated that his knee pain contributed to his mental health distress and the reason for his discharge, which the record corroborated with his being diagnosed with Adjustment Disorder with Disturbance of Emotions just prior to his becoming AWOL.

Symptoms of 2 months duration were noted in December 2010; and again, during the April 2011 Report of Mental Status Evaluation; and finally in May 2011 with reported worsening of his mental health symptoms due to the prior incarceration. The record showed a nexus between the applicant's chronic, intermittent knee pain and the development of his chronic adjustment disorder which is mitigating for the AWOL offense. In addition, under Liberal Consideration, the applicant's contention alone is sufficient to merit consideration for upgrade by the Board as well as change in the narrative reason for separation.

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 Board reviewed and concurred with the medical advisor's review finding sufficient evidence to support the applicant had a knee condition which contributed to his mental health distress. Based on a preponderance of the evidence, the Board concluded an upgrade to under honorable conditions (General) was warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

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 6 June 2011 to show an under honorable conditions (General) characterization of service.

3/25/2025

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, U.S. Code, 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. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a states 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, of the version in effect at the time, established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. It provided that action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally appropriate for a Soldier discharged under this chapter. However, the separation authority could direct an honorable discharge if merited by the Soldier's overall record.
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 post-traumatic stress disorder (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, 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, 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 Discharge Review Boards and Boards for Correction of Military/Naval Records (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. 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 based on equity, injustice, or clemency grounds, BCM/NRs 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. 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//