

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 March 2025

DOCKET NUMBER: AR20240004822

APPLICANT REQUESTS:

- an upgrade of his general, under honorable conditions discharge to honorable
- a change in the narrative reason for separation to reflect Secretarial Authority

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

- DD Form 149 (Application for Correction of Military Record)
- Attorney Statement
- Legal Brief
- Medical Records
- Psychiatric Evaluation
- Initiation of Separation
- VA Form 21-526EZ (Application for Disability Compensation and Related Benefits)
- Department of Veterans Affairs (VA) Benefits Rating Decision Letter
- Character Letters

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. Counsel states, on behalf of the applicant:

a. The applicant served in the Regular Army from 18 April 1996 to 8 April 1998. He did well in basic training but shortly thereafter, he began exhibiting signs of bipolar disorder, a diagnosis he would not receive until years later. Despite a suicide attempt, the Army did not treat him for his mental health issues. Instead, his minor infractions and a civil offense of writing bad checks were disciplinary action rather than the result of a serious illness that warranted treatment. As a result, he received a General (Under Honorable Conditions) discharge with the narrative reason listed as Misconduct.

b. Since his discharge, he has taken steps to address both the conduct stemming from his mental illness and the underlying causes. He chose not to have a bank account so he could no longer write bad checks and earned an associate's degree in computer programming. He has held a number of jobs since his discharge, but his mental health condition made retaining those jobs challenging. In 2021, he was seen by a private physician who diagnosed him with bipolar disorder and anxiety with a tendency towards schizophrenia. A VA examiner confirmed the diagnosis of bipolar I disorder (severe), with psychotic features and panic disorder. The VA was able to determine that his bipolar disorder began while he was in the service and was service-connected. He is now receiving treatment and doing much better.

c. Currently, he is engaged to be married and maintains a relationship with his ten-year old daughter who lives in another state. He also does volunteer work, helping several food banks with their computer issues. A discharge upgrade would help him financially provide for his ten-year-old daughter, as well as help contribute to household expenses that he shares with his fiancée, as he is not able to maintain a job given both his diagnosis and the side effects from medicine he takes for his illness. Since he was young, he always wanted to be in the Army. A discharge upgrade would serve as validation that the issues he encountered with bad check writing and minor infractions during his enlistment were a result of his illness, not of personal failings. Counsel's full brief is available for review by the Board.

3. The applicant provides the following:

a. His medical records (20 pages) show he was examined on 30 December 2021 and includes the Medical Opinion Disability Benefits Questionnaire .

b. VA Form 21-526EZ, dated 14 September 2021 outlines the details of his requests to VA for disability compensation and benefits.

c. A VA Rating Decision shows on 5 January 2022, the applicant received a 100% disability rating for service-connected bipolar one disorder with psychotic features and panic disorder.

d. Character Letters from his fiancé and the Chief Executive Officer of Clay County, Indiana Food Pantry expressing his behavior, since receiving medical treatment for his mental health, as responsible and reliable with regard to his work and personal life.

4. A review of the applicant's available service record reflects the following:

a. On 18 April 1996, he enlisted in the Regular Army.

b. On 13 May 1997, he was arrested on warrants for theft by check for writing 41 checks totaling \$2,313.20 of insufficient funds.

c. On 12 August 1997, he reported having thoughts of suicide and was referred to the community mental health building.

d. An Alcohol and Drug Abuse Prevention and Control Program slip shows he was scheduled for a mandatory evaluation and required to abstain from alcohol and drug use and attend Alcoholics Anonymous meetings.

e. On 18 August 1997, the applicant underwent a mental evaluation. The DA Form 3822-R (Report of Mental Status Evaluations) shows the applicant had no duty limitations due to behavioral health reasons, met medical retention standards, and was cleared for administrative action.

f. On 15 October 1997, the applicant underwent a second mental evaluation. The DA Form 3822-R shows the applicant had no duty limitations due to behavioral health reasons, met medical retention standards, and was cleared for administrative action.

g. On 20 January 1998, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12c, for commission of a serious offense. The reason for his proposed action was for the applicant writing 41 bad checks totaling \$2,313.20 and having a warrant for his arrest issued. He recommended that his period of service be characterized as general, under honorable conditions.

h. After waiving consultation with legal counsel, the applicant acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a general discharge under honorable conditions discharge is issued to him
- he may apply to the ADRB or the ABCMR for upgrading
- he may be ineligible to apply for enlistment in the U.S. Army for a period of 2 years following discharge
- he elected not to submit matters

i. On 23 January 1998, the immediate commander initiated separation action for commission of a serious offense. The commander recommended a general, under honorable conditions discharge. The intermediate commander recommended approval.

j. On 18 February 1998, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation, under the provisions of Chapter 14, AR 635-200, paragraph 14-12c for

commission of a serious offense. He would be issued a general, under honorable conditions characterization of service.

k. On 8 April 1998, he was discharged from active duty with general, under honorable conditions characterization of service. His DD Form 214 shows he completed 1 year, 8 months, and 25 days of active service. He was assigned separation code JKQ and the narrative reason for separation listed as "Misconduct". It also shows he was awarded or authorized:

- Army Service Ribbon
- Expert Marksmanship Qualification Badge with Grenade Bar
- Expert Marksmanship Qualification Badge with Rifle Bar

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

6. By regulation, (AR 635-200) action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

7. By regulation (AR 635-8), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designators (SPD)).

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

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his general, under honorable conditions discharge and a change to his narrative reason for separation. He contends he experienced mental health conditions that mitigates his misconduct. 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 on 18 April 1996; 2) On 13 May 1997, he was arrested on warrants for writing 41 checks totaling \$2,313.20 of insufficient funds; 3) The applicant was discharged on 8 April 1998, Chapter 14-12c, Misconduct-

Commission of a Serious Offense. His service was characterized as Under Honorable Conditions (General).

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) and military and VA medical documentation provided by the applicant were also reviewed.

c. The applicant asserts he was experiencing mental health conditions, which mitigates his misconduct. After being arrested for writing bad checks, Military Police noted, on 13 August 1997, the applicant was reporting suicidal thoughts, and he was admitted into psychiatric inpatient treatment for five days. Upon his discharge, he was referred to Community Mental Health Services for substance abuse treatment and another follow-up appointment on 20 August 1997. He was diagnosed with an Adjustment Disorder with disturbance of emotion and conduct and alcohol dependence. The applicant was also prescribed Antabuse for his alcohol dependence. There is additional evidence the applicant underwent substance abuse treatment in the military as he was provided a referral slip to ADAPCP, which was the Army substance treatment program at the time. The applicant underwent his first Mental Status Evaluation on 18 August 1997. He was again diagnosed with an Adjustment Disorder, and he was psychiatrically cleared for any action deemed appropriate by Command. The applicant was noted to have a follow-up appointment at the mental health clinic. He was seen again on 15 October 1997 for another Mental Status Exam as part of his administrative separation. The applicant was again not diagnosed with a mental health condition and was psychiatrically cleared for any administrative action deemed appropriate by command.

d. A review of JLV provided evidence the applicant completed a Compensation and Pension evaluation on 30 December 2021 for mental health conditions. The applicant was diagnosed with service-connected Bipolar Disorder with Panic Disorder. However, there is insufficient evidence the applicant was formally diagnosed with Bipolar Disorder till 2020. He is currently treated by the VA for service-connected Bipolar Disorder (100%SC) and other mental health conditions.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence to support the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced mental health conditions including Bipolar Disorder that mitigates his misconduct. There is evidence the applicant

has been diagnosed with service-connected Bipolar Disorder by the VA in 2021. He was also diagnosed with an Adjustment Disorder while on active service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including Bipolar Disorder while on active service that mitigates his misconduct. There is evidence the applicant has been diagnosed with service-connected Bipolar Disorder by the VA in 2021. He was also diagnosed with an Adjustment Disorder while on active service.

(3) Does the condition/experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing a mental health condition while on active service. Initially after the applicant was arrested for writing over 40 bad checks, there is evidence he was reporting suicidal ideation and alcohol dependence. There is sufficient evidence that he underwent behavioral health treatment both in an inpatient and outpatient setting. In addition, there is evidence he was provided medication to assist him with his alcohol dependence and substance abuse treatment. He was evaluated by multiple behavioral health providers, and he was diagnosed with an Adjustment Disorder during his active service, not Bipolar Disorder. The applicant was not diagnosed formally with Bipolar Disorder till 2020, which was determined due to his history of mental health symptoms and misconduct, to be service-connected in 2021. The applicant did repeatedly write bad checks, and overspending can be a symptom of Bipolar Disorder. Therefore, per Liberal Consideration, the applicant has been diagnosed with a mental health condition, which was determined to be service-connected, and some of his misconduct has been associated as a natural sequelae of this condition.

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. One potential outcome discussed was to grant relief based upon the misconduct leading to the applicant's separation and the mitigation for such misconduct as outlined in the medical review. However, based upon the pattern of misconduct leading to the applicant's separation and the information reflected on the applicant's DD Form 214 showing he received a General Discharge at the time of separation, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service. The Board found the current characterization of service is fair and just based upon the available documentation.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:	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.

//SIGNED//

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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 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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 (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

3. Army Regulation 635-5 (Separation Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designators (SPD)).

4. 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.

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 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.

6. 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.

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 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.

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.

7. Section 1556 of Title 10, United States Code, 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 (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.

//NOTHING FOLLOWS//