

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2025

DOCKET NUMBER: AR20240005421

APPLICANT REQUESTS: Upgrade of his under honorable conditions (general) discharge. Additionally, he requests favorable change to his narrative reason for separation.

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

DD Form 293 (Application for the Review of Discharge)

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 believes that the circumstances surrounding his discharge warrant a reconsideration due to Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI). He served in infantry and experienced traumatic events that resulted in significant psychological and physical injuries. These injuries have been diagnosed by qualified medical professionals and had a profound impact on his ability to perform his duties. Unfortunately, at the time of his discharge, the full effects of these injuries were not properly recognized or considered. His discharge status has significant adverse consequences on his civilian life. He knows his service to the country was honorable.
3. On 16 February 2006, the applicant enlisted in the Regular Army, for 3 years and 16 weeks. The highest grade he attained was E-4.
4. He served in Afghanistan from 12 March 2007 until 15 September 2007; and from 17 January 2008 until 13 July 2008.
5. The applicant received formal counseling on the following dates/for:
 - 17 July 2008; driving under the influence
 - 25 August 2008; violating restriction, disobeying a lawful order

- 10 October 2008; failing to obey a lawful regulation

6. On 24 October 2008, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for failing to go at the time prescribed to his appointed place of duty, on or about 17 July 2008; disobeying a lawful order by consuming alcohol, on or about 25 August 2008; and disobeying a lawful order by not signing in at the Charge of Quarters desk, on or about 18 July 2008. His punishment included reduction to E-1, forfeiture of \$673.00 pay per month for two months, and 45 days extra duty.

7. The applicant received additional counseling on 2 December 2008, for being drunk on duty, failing to report, assault, and debt.

8. A letter dated 9 December 2008, from the Army Substance Abuse Program (ASAP) Clinical Director to the applicant's commander provided a synopsis of the applicant's rehabilitation activities. The Clinical Director noted:

a. On 29 August 2006, the applicant was command referred to the ASAP for being drunk on duty. According to his command, the applicant had recurrent drunk on duty incidents. An alcohol and other drug (AOD) assessment was accomplished and the applicant's command in collaboration with the ASAP staff determined that alcohol and drug abuse prevention training (ADAPT) was the most appropriate level of intervention. The applicant did not complete the ADAPT requirement.

b. On 25 July 2008, the applicant was again command referred to the ASAP for driving under the influence and being drunk on duty. An AOD assessment determined that outpatient rehabilitation was the most appropriate level of intervention.

c. On 29 November 2008, the applicant was apprehended for drunk and disorderly conduct. His command in collaboration with the ASAP staff determined that the applicant demonstrated poor rehabilitation progress as evidenced by continued alcohol use and lack of motivation; his potential for continued military service was poor; and further rehabilitative efforts could not be justified.

9. On 12 January 2009, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

10. On 28 January 2009, the applicant accepted NJP under Article 15 of the UCMJ, for failing to pay a debt, on or about 29 November 2008; assaulting W_W_ by striking him with a closed fist, on or about 29 November 2008; failing to go at the time prescribed to his appointed place of duty, on or about 29 November 2008; and being incapacitated for the performance of his duties due to his overindulgence of alcohol, on or about

29 November 2008. His punishment included forfeiture of \$699.75 pay per month for two months, and 45 days extra duty and restriction.

11. The applicant's commander notified him on 25 March 2009, that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), paragraph 14-12b, for a pattern of misconduct. As the specific reasons, the commander cited the applicant's multiple incidents involving alcohol, his multiple instances of disobeying lawful orders, and his recent incident of assault.

12. The applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, paragraph 14-12b.

13. On 2 April 2009, the applicant acknowledged that he had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to him. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a discharge/character of service that was less than honorable was issued to him. He submitted a statement in his own behalf; however, the available record is void of his statement.

14. Consistent with the chain of command's recommendations, the separation authority approved the applicant's discharge and directed issuance of an under honorable conditions (general) discharge.

15. The applicant was discharged on 30 April 2009. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12b, for a pattern of misconduct. His service was characterized as under honorable conditions (general). He was assigned Separation Code JKA and Reentry Code 3. He completed 3 years, 2 months, and 15 days of net active service this period.

16. Additionally, his DD Form 214 shows he was awarded or authorized the Afghanistan Campaign Medal with campaign star, Army Commendation Medal (2nd Award), Purple Heart, National Defense Service Medal, Global War on Terrorism Service Medal, Army Service Ribbon, Overseas Service Ribbon, North Atlantic Treaty Organization Medal (2nd Award), and Combat Infantryman Badge.

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:

1. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service and a favorable change to his narrative reason for separation. On his application, the applicant indicated that Posttraumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI) 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 16 February 2006, 2) he served in Afghanistan on two occasions from 12 March 2007 to 15 September 2007 and from 17 January 2008 to 13 July 2008, 3) the applicant was counseled on three occasions between 17 July 2008 and 10 October 2008 for driving under the influence, violating restriction, disobeying a lawful order, and failing to obey a lawful regulation, 4) the applicant received an Article 15 on 24 October 2008 for failing to go at the time prescribed to his appointed place of duty, disobeying a lawful order by consuming alcohol, and disobeying a lawful order by not signing in at the Charge of Quarters desk, 5) he was counseled on 02 December 2008 for being drunk on duty, failing to report, assault, and debt, 6) A letter dated 9 December 2008, from the Army Substance Abuse Program (ASAP) Clinical Director to the applicant's commander provided a synopsis of the applicant's rehabilitation activities. In effect, after several alcohol-related incidents and referrals to the ASAP program between August 2006 and November 2008, his command in collaboration with the ASAP staff determined that the applicant demonstrated poor rehabilitation progress and further rehabilitative efforts could not be justified, 7) on 28 January 2009 he received an Article 15 for failing to pay a debt, assault, failing to go at the time prescribed to his appointed place of duty, and for being incapacitated for the performance of his duties due to his overindulgence of alcohol, 8) the applicant was notified by his commander on 25 March 2009 that he was initiating actions to separate him under the provision of AR 635-200, paragraph 14-12b, for a pattern of misconduct. As the specific reasons, the commander cited the applicant's multiple incidents involving alcohol, his multiple instances of disobeying lawful orders, and his recent incident of assault, 9) The applicant was discharged on 30 April 2009 under the provisions of AR 635-200, paragraph 14-12b, for a pattern of misconduct. His service was characterized as under honorable conditions (general). He was assigned Separation Code JKA and Reentry Code 3. Additionally, his DD Form 214 shows he was awarded or authorized the Afghanistan Campaign Medal with campaign star, Army Commendation Medal (2nd Award), Purple Heart, National Defense Service Medal, Global War on Terrorism Service Medal, Army Service Ribbon, Overseas Service Ribbon, North Atlantic Treaty Organization Medal (2nd Award), and Combat Infantryman Badge.

2. 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.

3. In-service medical records were available for review via JLV from 21 February 2006 through 13 January 2009.

- A post-deployment assessment dated 24 September 2007 conducted by a social worker documented that there were “no issues at this time” and the applicant was released without limitations. A post-deployment assessment dated 25 July 2008 documented that he reported experiencing no significant events and he was released without limitations.
- The applicant underwent a BH evaluation on 12 January 2009 for the purposes of Chapter 14 separation. The provider noted the applicant displayed a pattern of misconduct and as a result was being considered for chapter separation. The provider documented that the applicant denied having any “ongoing concerns and reported he had no need for MHS [Mental Health Services]”. The applicant was diagnosed with Alcohol Abuse-Episodic and Job Problems or Incidents. The associated DA Form 3822 (Mental Status Evaluation (MSE)) shows all domains of the MSE were within normal limits (WNL). The provider further documented that he did not meet DSM-IV criteria (the diagnostic manual at the time of the applicant’s evaluation) for PTSD or m/TBI. It was noted that the applicant had the mental capacity to understand and participate in proceedings, that he met retention requirements of Chapter 3, AR 40-501 and did not meet criteria for a psychiatric condition that warranted disposition through medical channels. He was released without limitations.
- An ASAP memorandum dated 9 December 2008 included as part of his application shows that the applicant was referred to ASAP on three occasions (29 August 2006; 25 July 2008, and 29 November 2008) due to several alcohol-related incidents (drunk on duty, driving under the influence, and drunk and disorderly). At the time of his initial referral, it was determined that Alcohol and Drug Abuse Prevention Training (ADAPT) was the most appropriate intervention, though he did not complete the requirement. At the time of his second referral, outpatient rehabilitation was recommended and the basis for his enrollment was documented as Alcohol Abuse. On 29 November 2008, his command in collaboration with the ASAP staff, determined that the applicant demonstrated poor rehabilitation progress as evidenced by continued alcohol use and lack of motivation, his potential for continued military service was poor, and further rehabilitative efforts could not be justified.

4. A review of JLV shows the applicant is 100% service-connected through the VA for numerous conditions to include 70% for PTSD. The applicant underwent a VA Compensation and Pension (C&P) on 16 October 2017. The evaluating provider determined that he met criteria for PTSD, Major Depressive Disorder, Recurrent,

Moderate, and Alcohol Dependence. The provider also noted Traumatic Brain Injury ICD Code: S06.2 as a medical diagnosis relevant to understanding the management of his mental health conditions. The provider noted that the applicant's symptoms related to TBI were not clearly outlined in the available records but that there was an overlap in symptoms as it pertains to memory impairment, mood lability, overall cognitive functioning, and confusion. The stressor associated with his diagnosis of PTSD was documented as "several instances of being near death and/or experiences where he observed his peers dying." A VA C&P review examination dated 28 January 2020 shows his diagnoses of PTSD, MDD, and Alcohol Use Disorder (AUD), Mild were reaffirmed. Regarding behavioral observations, the provider documented that his "insight and judgment appeared adequate." The provider noted that he was service-connected for PTSD with TBI, MDD, and AUD and further indicated that he had "impaired impulse control with recurrent episodes of unprovoked irritability and a single episode of violence." The applicant underwent a VA C&P examination for TBI on 04 January 2018 showing that the applicant met criteria for TBI and that experienced five different blast encounters while on active duty. The provider documented that since the impact, the applicant reported he has "progressively had memory issues, problems [with] concentration, and also had anger management issues." The provider documented his judgment as "normal." It was also noted that the applicant stated he believed he had anger issues but that he "did not get violent and was able to control himself around his family." The provider documented that the applicant's reported injuries were mild and did not prevent him from performing general tasks. A review of TBI residuals C&P examination was conducted on 27 January 2020, showing that he met criteria for TBI (date of diagnosis: 2018) and Post Traumatic Migraines (date of diagnosis: 2018). At the time of his subsequent evaluation judgment was determined to be mildly impaired and that he reported experiencing moodiness, irritability, impulsivity, as well as verbal aggression that impacted his work performance and interactions with colleagues.

5. 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 with three potentially mitigating BH conditions, PTSD, MDD, and TBI. This Advisor would contend that the applicant's misconduct is partially mitigated.

6. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed and is 70% service-connected through the VA for PTSD with TBI and MDD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed and is 70% service-connected through the VA for PTSD

with TBI and MDD. Service connection establishes that the condition(s) existed in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. The applicant's in-service medical records show a history of ASAP treatment for Alcohol Abuse, which does not constitute a mitigating BH condition. It was documented during an in-service MSE at the time of discharge that he did not meet criteria for PTSD or TBI and all domains of the MSE were within normal limits. Since being discharged from the military, he has been diagnosed and 70% service-connected through the VA for PTSD with TBI and MDD. While he has also been diagnosed with AUD through the VA, this is not a mitigating condition. Excessive alcohol use may be used to avoid and mask symptoms which can be associated with the natural history and sequelae of numerous conditions, to include trauma, depression, and head injury. As there is an association between self-medicating with alcohol, trauma, difficulty with authority figures, and having alcohol-related incidents, there is a nexus between his misconduct of having multiple incidents involving alcohol and disobeying lawful orders and his diagnosis of PTSD. However, assault is not part of the natural history and sequelae associated with PTSD, MDD, or TBI, nor do these conditions impact the ability to distinguish between right and wrong and adhere to the right. Furthermore, the seriousness of the misconduct outweighs the relief offered under Liberal Consideration. As such, BH mitigation is partially supported for his misconduct of having multiple alcohol-related incidents and disobeying lawful orders.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record, and published Department of Defense policy for consideration of discharge upgrade requests, the Board found that relief was not warranted.
2. The Board carefully considered the applicant's contentions, his military record, his deployment, the frequency and nature of his misconduct, his referral to ASAP, the reason for his separation and the character of service he received upon separation. The Board considered the applicant's statement regarding PTSD, his VA service-connected ratings and the review and conclusions of the medical advisor. The Board found: (1) the applicant has been diagnosed and is 70% service-connected through the VA for PTSD with TBI and MDD; (2) the applicant has been diagnosed and is 70% service-connected through the VA for PTSD with TBI and MDD and that service connection establishes that the condition(s) existed in-service; (3) the Board determined that the applicant's in-service medical records show a history of ASAP treatment for Alcohol Abuse, which does not constitute a mitigating BH condition. It was documented during an in-service Mental Status Evaluation (MSE) at the time of discharge that he did not meet criteria for PTSD or TBI and all domains of the MSE were within normal limits.


While the Board sees a nexus between his misconduct of having multiple incidents involving alcohol and disobeying lawful orders and his diagnosis of PTSD, assault is not a natural sequela associated with PTSD, MDD, or TBI, nor do these conditions impact the ability to distinguish between right and wrong and adhere to the right. The Board determined that the seriousness of that misconduct outweighs the relief offered under Liberal Consideration. Based on a preponderance of evidence, the Board determined that neither the applicant’s character of service or narrative reason were in error or unjust and that an upgrade was not warranted as a matter of liberal consideration.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XX:	XX:	XX:	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.



X //SIGNED//

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. 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.
3. 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 "JKA" is the appropriate SPD code to assign Soldiers separated under the provisions of Army Regulation 635-200, for a pattern of misconduct.
4. Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - a. 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. 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 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. It states that action will be initiated to separate a Soldier for misconduct when it was clearly established that rehabilitation was impracticable or unlikely to succeed.

5. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval 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, TBI, 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//

