

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2025

DOCKET NUMBER: AR20240006148

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (general) discharge to honorable
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Letter addressed to the Board
- DA Form 2627 (Record of Proceedings of Under Article 15, UCMJ)
- Medical documents
- Lanier Technical College Certificate of Credit
- Chattahoochee Technical General Student Record

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, via letter to the Board:

a. He was fully committed to becoming a Soldier at the time of his enlistment. Although he faced emotional and mental health issues during his teenage years, he felt a strong connection to military service and maintained his sobriety for a significant period. He completed his Advanced Individual Training (AIT) at Fort Sill, Oklahoma, feeling motivated and optimistic upon graduation. He was then assigned to Fort Lewis, Washington, where he encountered an atmosphere that was not conducive to his growth as a Soldier, including instances of hazing.

b. About a month into his service at Fort Lewis, he approached staff sergeant (SSG) S.P. and expressed his concerns and anxieties regarding his declining mental health. He was encouraged to push through and continued to follow orders. A week

later, he was allowed to speak with the First Sergeant (1SG) and was referred to the Army Psychologist, where he was prescribed benzodiazepines—medication that unknowingly triggered his suppressed addiction issues. After being granted leave, he relapsed on narcotics and subsequently failed a drug test upon his return.

c. Following this incident, he was interrogated by CID, received an Article 15, was assigned extra duty, and entered the Army Substance Abuse Program (ASAP). He completed counseling sessions and met regularly with an Army Psychologist. SSG S.P. highlighted the significant, positive changes after this incident and was deemed a "prime example of someone who made a mistake, understood that mistake, and has taken the initiative to do what is right and moral."

d. He had the understanding that he could overcome these challenges and continue his service. However, he recalls lieutenant colonel (LTC) Ne___ stating that he wanted to "make an example out of him" by initiating his discharge. While receiving orders for his discharge, he was informed by multiple Army personnel that he could return to his recruiter and re-enlist. Disappointingly, this turned out to be untrue, as he was assigned an RE code 4. This marked the beginning of one of the most challenging periods of his life, leading to overwhelming feelings of guilt and shame. Despite his sincere efforts to demonstrate his desire to fulfill his duty, he felt he had become an "example" and was denied the opportunity to re-enlist, even as his unit was deployed to Afghanistan—a deployment he would have given anything to join.

e. Since his separation from the Army, he has struggled for years with addiction. However, he is proud to say that he is now sober, thanks to the grace of God. He is happily married with two children and is gainfully employed as a welder. He is also pursuing full-time education to become an Architectural Drafter. This is the primary reason he is seeking a discharge change: to regain his GI Bill benefits.

f. He humbly requests that the board review the information contained within his application for a discharge change, as this would not only be beneficial to him but also to his family. There is no greater honor than being a veteran of the United States Army, and he appreciates the time and consideration given to this matter.

3. The applicant provides:

a. Letter addressed to the Board.

b. DA Form 2627 reflects he accepted non judicial punishment (NJP) on 13 June 2007 for, between on or about 19 March 2007 and on or about 22 March 2007, wrongfully use heroine and morphine. His punishment included a reduction to private (PVT)/E01.

c. Medical documents (7 pages).

d. Lanier Technical College Certificate of Credit, presented 11 December 2013, reflects the applicant successfully completed the Basic Shielded Metal Arc Welder course.

e. Chattahoochee Technical General Student Record, dated 12 April 2024, reflects the applicant is expected to graduate on 12 December 2026 from the Drafting Technology AAS program.

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

a. He enlisted in the Regular Army on 25 October 2006.

b. He accepted NJP as previously cited in paragraph 3b.

c. On 6 August 2007, the applicant's 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, Commission of a Serious Offense. The reasons for the proposed action was, a positive urinalysis results for heroin and morphine on or about 22 March 2007.

d. The applicant acknowledged receipt of the commander's intent to separate him. On 8 August 2007, he waived his right to consult with legal counsel. He was advised of the basis for the contemplated separation action for Commission of a Serious Offense, 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 not 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. It is unclear as to the exact date when the separation authority approved the applicant's discharge, under the provisions of AR 635-200, paragraph 14-12c,

commission of a serious offense, with his service characterized as general under honorable conditions.

f. DD Form 214 reflects the applicant was discharged on 19 September 2007, under the provisions of AR 635-200, paragraph 14-12c(2), misconduct (drug abuse), character of service of general under honorable conditions, separation code JKK, and reentry code 4. He served 10 months and 25 days of net service this period. It also shows the following:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): National Defense Service Medal // Global War on Terrorism Service Medal // Army Service Ribbon
- Item 18 (Remarks): Member has not completed his first full term of service

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

6. AR 15-185 (Army Board for Correction of Military Records) states, an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

7. 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.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge. He contends he experienced mental health conditions including PTSD 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 25 October 2006; 2) The applicant accepted non judicial punishment on 13 June 2007 for wrongfully using heroin and morphine; 3) On 19 September 2007, the applicant was discharged, Chapter 14-12c(2), misconduct (drug abuse) with a character of service of general under honorable conditions. He served 10 months and 25 days.

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

c. The applicant asserts he was experiencing mental health conditions including PTSD while on active service, which mitigates his misconduct. There is evidence the applicant was seen at behavioral health services on 24 April 2007 for symptoms of anxiety, depression, insomnia, relationship problems, and problems with stress management. He also reported problems with concentration and a history of ADD as a teenager. He was referred to primary care for psychiatric medication and was recommended for individual therapy. He was diagnosed with an Adjustment Disorder with mixed emotional features. The applicant was seen primary care on 30 April 2007, and he reported symptoms and was again diagnosed with an Adjustment Disorder with mixed emotional features. He was prescribed an anxiolytic (Clonazepam) to provide the applicant a short-term sleep aid. The applicant continued to follow-up with individual therapy for one additional therapy session, and he was seen again at primary care, on 14 May 2007, for a refill of his psychiatric medication. On 09 July 2007, the applicant was seen at behavioral health services for a Mental Status Exam as part of his Chapter 14 administrative separation proceedings. The applicant was evaluated by a military clinical psychologist and diagnosed with opioid abuse and an occupational problem. He was cleared from a mental health perspective for administrative/disciplinary action. The applicant was also encouraged to continue in behavioral health treatment. There is insufficient evidence the applicant actively engaged in any additional behavioral health treatment while on active service.

d. A review of JLV provided evidence the applicant began to engage with the VA in May 2024. However, previously in 2023, the applicant underwent a Compensation and Pension evaluation for mental health conditions including PTSD. The applicant was not diagnosed with service-connected PTSD, and there is insufficient evidence the applicant has been diagnosed with PTSD by the VA. However, the applicant was diagnosed with service-connected Anxiety Disorder by the VA (70%SC). There is insufficient evidence the applicant is currently engaged in behavioral health treatment at the VA for a mental health condition at this time.

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 misconduct? Yes, the applicant asserts he experienced mental health conditions including PTSD while on active service, which mitigates his misconduct. There is evidence the applicant was diagnosed and treated for an Adjustment Disorder with mixed emotional features while on active service. Later in 2023, the VA diagnosed the applicant with a service-connected Anxiety Disorder.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD while on active service, which mitigates his misconduct. There is evidence the applicant was diagnosed and treated for an Adjustment Disorder with mixed emotional features while on active service. Later in 2023, the VA diagnosed the applicant with a service-connected Anxiety Disorder.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Yes, there is insufficient evidence beyond self-report the applicant was experiencing PTSD, while he was on active service. However, there is sufficient evidence beyond self-report the applicant was experiencing an Anxiety Disorder while on active service. This was demonstrated by his diagnosis of an Adjustment Disorder with mixed emotional features and later his diagnosis in 2023 of a service-connected Anxiety Disorder by the VA. The applicant did engage in substance abuse, which is avoidant behavior and potentially self-medicating behavior. This behavior could also be a natural sequelae to an Anxiety Disorder. Therefore, per Liberal Consideration, the applicant's misconduct, which led to his discharge is mitigable.

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. One potential outcome was to grant relief based on the behavioral health advisory noting PTSD as a mitigating condition. However, upon further review of the applicant's request, available military records and medical review, the Board considered the advising opinion of the Agency Medical Advisor that there is sufficient evidence to support the applicant had a condition or experience that mitigates his misconduct.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions including PTSD while on active service, which mitigates his misconduct. There is evidence the applicant was diagnosed and treated for an Adjustment Disorder with mixed emotional features while on active service. Later in 2023, the VA diagnosed the applicant with a service-connected Anxiety Disorder.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD while on active service, which mitigates his misconduct. There is evidence the applicant was diagnosed and treated for an Adjustment Disorder with mixed emotional features while on active service. Later in 2023, the VA diagnosed the applicant with a service-connected Anxiety Disorder.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Yes, there is insufficient evidence beyond self-report the applicant was experiencing PTSD, while he was on active service. However, there is sufficient evidence beyond self-report the applicant was experiencing an Anxiety Disorder while on active service. This was demonstrated by his diagnosis of an Adjustment Disorder with mixed emotional features and later his diagnosis in 2023 of a service-connected Anxiety Disorder by the VA. The applicant did engage in substance abuse, which is avoidant behavior and potentially self-medicating behavior. This behavior could also be a natural sequelae to an Anxiety Disorder. Therefore, per Liberal Consideration, the applicant's misconduct, which led to his discharge is mitigable.

3. Notwithstanding the advising opinion of the Agency Medical Advisor that sufficient evidence exists to support the applicant had a condition or experience that may have mitigated his misconduct, the Board majority determined that there is insufficient justification to warrant an upgrade of the applicant's discharge from General (Under Honorable Conditions) to Honorable. The Board acknowledged the applicant's post-service educational achievements and ongoing efforts toward personal development, he did not provide character references or documentation that would support clemency or demonstrate sustained rehabilitation.

4. Furthermore, the Board agreed that the applicant's misconduct, involving the use of illicit substances while in uniform, constituted a serious breach of Army standards and expectations. Despite the medical advisor's assessment under liberal consideration, the Board found that the applicant's actions during his 10 months and 25 days of net service fell short of the level of conduct and performance required for an Honorable discharge. The characterization of service he received appropriately reflects the nature of his offense and the circumstances surrounding his separation. Therefore, relief is denied.

5. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	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.

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. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) 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) 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 regulation deals with separation for various types of misconduct, which includes drug abuse and provides that individuals identified as drug abusers may be separated prior to their normal expiration of term of service. First time drug offenders in the grade of sergeant and above, and all Soldiers with three years or more of total military service, active and reserve, will be processed for separation upon discovery of a drug offense. All Soldiers must be processed for separation after a second offense.

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 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; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to 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 that misconduct which 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. 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.

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//