

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 March 2025

DOCKET NUMBER: AR20240006347

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (General).

APPLICANT'S SUPPORTINGS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Orders 119-3043 issued by Headquarters, U.S. Maneuver Center of Excellence, Fort Benning, GA on 29 April 2013
- Permanent Orders 129-2840 issued by Headquarters, U.S. Maneuver Center of Excellence, Fort Benning, GA on 9 May 2013
- Orders 40-340-0092 issued by Headquarters, III Corps and Fort Hood, Fort Hood, TX on 6 December 2013
- North Atlantic Treaty Organization (NATO) Travel Order Number HO-340-0092 (N) issued by Headquarters, III Corps and Fort Hood, Fort Hood, TX on 6 December 2013
- Enlisted Record Brief
- DD Form 214 (Certificate of Release or Discharge from Active Duty (Page 3)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 he is requesting an upgrade of his discharge based upon his honorable and faithful service until his period of service in Kosovo in support of Operation Joint Guardian. The applicant indicates on his DD Form 293, that mental health conditions are related to his request.
3. The applicant enlisted in the Regular Army on 16 October 2012 for a period of 4 years in the rank/grade of private/E-1.

4. Orders 119-3043, issued by Headquarters, U.S. Maneuver Center of Excellence, Fort Benning, GA on 29 April 2013 show the applicant was required to perform Parachute duty from 26 April 2013 until 17 May 2013 while attending Airborne training.

5. Permanent Orders 129-2840, issued by Headquarters, U.S. Maneuver Center of Excellence, Fort Benning, GA on 9 May 2013 show the applicant was awarded the Parachutist Badge and Skill Qualification Identifier "P" upon completion of Airborne training on 17 May 2013.

6. Orders 40-340-0092, issued by Headquarters, III Corps and Fort Hood, Fort Hood, TX on 6 December 2013 show the applicant was deployed in a Temporary Change of Stations status in support of Operation Joint Guardian (Kosovo Force) at Camp Bondsteel, Kosovo for a period not to exceed 315 days with a proceed date of on or about 12 January 2014. NATO Travel Order Number HO-340-0092 (N) issued by Headquarters, III Corps and Fort Hood, Fort Hood, TX on 6 December 2013 shows a list of countries to which the applicant was authorized in support of the mission.

7. The applicant's record is void of documentation showing the facts and circumstances regarding his administrative separation under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, Section II, for Misconduct (Civil Conviction). However:

a. Headquarters, 1st Cavalry Division (Rear) (Provisional), Fort Hood, TX memorandum, Subject: Separation Under the Provisions of Army Regulation 635-200, Chapter 14-5, Conviction by Civil Court, Private First Class [The applicant], dated 15 March 2017 shows the separation authority considered the applicant's separation packet. He reviewed the recommendations of the chain of command and the administrative separation board. After careful consideration of all relevant matters, the findings and recommendation of the administrative separation board were approved. He directed that the applicant be separated from the U.S. Army and furnished a UOTHC characterization of service. He further directed that the applicant be reduced to the lowest enlisted grade in accordance with regulatory guidance.

b. Orders and the applicant's DD Form 214 show he was involuntarily discharged from active duty on 19 April 2017 in the grade of E-1, under the provisions of Army Regulation 635-200, Chapter 14, Section II, due to Misconduct (Civil Conviction) with Separation Code "JKB" and Reentry Code "3." His service was characterized as UOTHC. He was credited with completion of 1 year, 11 months, and 10 days of net active service. He did not complete his first full term of service. He had time lost due to incarceration from 26 September 2014 to 19 April 2017.

c. His DD Form 214 does not show foreign service in an overseas area.

8. Army Regulation 635-200, Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge UOTHC is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

9. The applicant petitioned the Army Discharge Review Board (ADRB) for relief. On 9 May 2019, the applicant was informed that after careful review of his application, military records, and all other available evidence, the ADRB had determined that he was properly and equitably discharged and denied his request.

10. 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.

11. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions discharge. He contends he experienced mental health conditions that mitigate 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 16 October 2012; 2) The applicant deployed to Kosovo from 05 February 2014 to 31 October 2014; 3) The applicant's record is void of the specific facts and circumstances surrounding his discharge processing; 4) The applicant was discharged on 19 April 2017 due to misconduct (Civil Conviction) with an under other than honorable conditions characterization of service. He completed 1 year, 11 months, and 10 days of active service. The applicant had lost time from 26 September 2014 to 19 April 2017 due to incarceration.

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) was also examined. No additional medical records were provided for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced mental health conditions while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service. The applicant was seen for a Command Directed Mental Health Evaluation while he was deployed by a military mental health provider on 20 June 2014 due to allegations that the applicant was the perpetrator of sexual assault. The applicant did not report any

behavioral health symptoms or safety concerns, and the evaluation did not result in a mental health diagnosis or recommendation for follow-up for behavioral health treatment.

d. A review of JLV disclosed that following his discharge, the applicant's only engagement with the VA was through the Healthcare for Reentry Veteran Program that works with incarcerated veterans with their reentry into the general population following their release. There is insufficient evidence that the applicant was diagnosed with a mental health condition beyond self-report while serving or has ever been diagnosed with a service-connected mental health condition.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. In addition, there is insufficient evidence surrounding the events that resulted in the applicant's discharge to provide a complete and appropriate opinion on possible mitigation as the result of his reported mental health condition(s) or experience.

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, which mitigate his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions while on active service, which mitigate his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report that the applicant has been diagnosed with any mental health conditions during his time in service. While the applicant was discharged due to misconduct (Civil Conviction), at this time, there is insufficient evidence surrounding the events that resulted in the applicant's discharge to provide a complete and appropriate opinion on possible mitigation as the result of his reported mental health condition or experience. However, the applicant contends he experienced mental health condition or experience while on active service, which mitigates his misconduct. The applicant's assertion is sufficient for consideration per the Liberal Consideration Policy.

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. Upon review of the applicant's petition, available military records and the medical review, the Board concurred with the advising opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. The opine also noted, there is insufficient evidence surrounding the events that resulted in the applicant's discharge to provide a complete and appropriate opine on possible mitigation as the result of his reported mental health condition(s) or experience.

2. Consideration was given to the 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, which mitigate his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions while on active service, which mitigate his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report that the applicant has been diagnosed with any mental health conditions during his time in service. While the applicant was discharged due to misconduct (Civil Conviction), at this time, there is insufficient evidence surrounding the events that resulted in the applicant's discharge to provide a complete and appropriate opine on possible mitigation as the result of his reported mental health condition or experience. However, the applicant contends he experienced mental health condition or experience while on active service, which mitigates his misconduct. The applicant's assertion is sufficient for consideration per the Liberal Consideration Policy.

3. The Board acknowledged the applicant's contentions to upgrade his under other than honorable conditions (UOTHC) discharge to under honorable conditions (General), citing honorable and faithful service prior to his deployment to Kosovo in support of Operation Joint Guardian and the presence of mental health conditions. The Board noted the applicant's successful completion of Airborne training, receipt of the

Parachutist Badge, and orders reflecting deployment authorization to Kosovo. However, the applicant's DD Form 214 does not confirm foreign service, and his record is void of documentation verifying completion of the deployment. Evidence in the record shows the applicant did not complete his first full term of service, and his discharge was consistent with regulatory guidance for misconduct due to civil conviction.

4. Furthermore, the applicant's assertions that mental health conditions contributed to his misconduct, the applicant's record does not contain medical documentation or behavioral health evaluations substantiating a diagnosis or establishing a direct link between his condition and the misconduct leading to separation. The Board found that the severity of the offense, the duration of lost time, and the absence of mitigating evidence do not support an upgrade. Therefore, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	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, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. 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 regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body.
4. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; 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 to those conditions or experiences.

6. 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.

//NOTHING FOLLOWS//