

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 January 2025

DOCKET NUMBER: AR20240006393

APPLICANT REQUESTS:

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

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Self-Authored Statement
- Personal Note on Army Review Boards Agency Request Letter
- Department of Veterans Affairs (VA) Medical Records
- Two Letters of Support

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 he wants his under honorable conditions (General) discharge upgraded to honorable because he believes his discharge is unfair and the result of injustice. The applicant marked post-traumatic stress disorder (PTSD) on his DD Form 293 and notes traumatic brain injury in his second self-authored statement as conditions related to his request.

a. He made one mistake during his service but did not have proper legal representation during his court-martial. He felt pressured into accepting a general discharge, even after completing his non-judicial punishment of extra duty and reduction in rank. At the time, he was waiting for deployment and had no one to help with his case.

b. His discharge has significantly impacted his future, especially by taking away his GI Bill benefits and affecting his career opportunities. He is finishing his criminal justice degree and has applied to the Saint Clair Sheriff's Department and U.S. Customs and Border Protection, but his general discharge has the potential to hurt his chances.

c. With recent changes regarding PTSD and mental health in discharge decisions, he believes his case deserves a review. If he had had the proper legal support back then or had been discharged under current standards, he would not have been pressured into accepting a general discharge. He is asking for relief from the Board, as he does not believe the decision to give him a general discharge was fair.

3. The applicant provides extracts from his VA mental health medical records from 20 August 2015 to 27 March 2020, showing he was seen and treated by the VA for PTSD, mild depression, and traumatic brain injury symptoms. He also provides two letters of support from a retired Army Lieutenant Colonel and a retired Detroit Police Officer stating:

a. They met the applicant 5 years ago as members of the Northridge Church in Plymouth, MI, and the Mighty Oaks Foundation (MOF), which is a faith-based national non-profit organization serving active duty service members, veterans, and active duty and retired first responders, providing support for those struggling with both PTSD and a myriad of personal struggles due to their time in service. The applicant attended MOF weekly meetings determined to overcome his struggles with PTSD and overcome the demons that were haunting him.

b. He is married, works a full-time job, is finishing his degree in criminal justice, and is also enrolled at Grace Christian University. He is pursuing a degree in theology as a working adult. He uses the power of prayer and the Bible to give him strength, and they have seen the applicant grow in faith and character. He has shared with them that he is actively seeking employment with the U.S. Customs and Border Protection and Detroit Police, but they believe his general discharge will hinder him. They request the Board reevaluate his general discharge and grant him an upgrade to an honorable discharge so he can move forward with his life.

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

a. He enlisted in the Regular Army on 8 September 2008.

b. He served in Afghanistan from 19 November 2009 to 1 November 2010.

c. The complete facts and circumstances surrounding his discharge are not available for review. However, his record contains a duly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty) that shows:

1) On 16 February 2012, he was discharged from active duty under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 14, paragraph 12c, for commission of a serious offense with an under honorable conditions (General) characterization of service. He completed 3 years, 5 months, and 9 days of active service with no time lost.

2) He was assigned separation code JKQ and the narrative reason for separation listed as "Misconduct (Serious Offense)," with reentry code 3. It also shows he was awarded or authorized:

- National Defense Service Medal
- Afghanistan Campaign Medal with Two Bronze Service Stars
- Global War on Terrorism Service Medal
- Army Service Ribbon
- Overseas Service Ribbon
- NATO Medal
- Basic Marksmanship Qualification Badge
- Drivers and Mechanic Qualification Badge with Driver-Wheeled Vehicle Clasp

5. By regulation (AR 15-185), 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.

6. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as commission of a serious offense, 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. 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.

8. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) discharge to honorable. He contends PTSD and TBI as related to his request.

b. 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:

- The applicant enlisted in the Regular Army on 8 September 2008.
- The applicant served in Afghanistan from 19 November 2009 to 1 November 2010.
- The complete facts and circumstances surrounding his discharge are not available for review.
- Applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 16 February 2012 under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 14, paragraph 12c, for commission of a serious offense with an under honorable conditions (General) characterization of service. He completed 3 years, 5 months, and 9 days of active service with no time lost. He was assigned separation code JKQ and the narrative reason for separation listed as "Misconduct (Serious Offense)," with reentry code 3.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, he wants his under honorable conditions (General) discharge upgraded to honorable because he believes his discharge is unfair and the result of injustice. He made one mistake during his service but did not have proper legal representation during his court-martial. He felt pressured into accepting a general discharge, even after completing his non-judicial punishment of extra duty and reduction in rank. At the time, he was waiting for deployment and had no one to help with his case. His discharge has significantly impacted his future, especially by taking away his GI Bill benefits and affecting his career opportunities. He is finishing his criminal justice degree and has applied to the Saint Clair Sheriff's Department and U.S. Customs and Border Protection, but his general discharge has the potential to hurt his chances. With recent changes regarding PTSD and mental health in discharge decisions, he believes his case deserves a review. If he had had the proper legal support back then or had been discharged under current standards, he would not have been pressured into accepting a general discharge. He is asking for relief from the Board, as he does not believe the decision to give him a general discharge was fair.

d. Active-duty electronic medical records available for review show on 9 November 2010 the applicant participated in a post-deployment screening, he denied experiencing trauma during his deployment or significant readjustment problems. He did not have any psychiatric condition. On 13 December 2010, during a medical encounter, he screened negative for depression. On 7 April 2011, he was assessed upon his relocation, he shared his prior to military service history of treatment for depression via medication due to being a child in foster care since age 7. In addition, he reported difficulty sleeping without the aid of medication. During this encounter he was diagnosed with Adjustment Disorder and Insomnia. On 3 November 2011, he was seen for a walk-in appointment and reported depression and anxiety due to feeling overwhelmed and stressed. He reported the following stressors: deploying to Afghanistan, marital separation/seeking

divorce, and establishing contact with his biological family “after 25 years” since he was adopted at around age 8 or 9. During this encounter he was diagnosed with Adjustment Disorder and Insomnia. The applicant was seen once again on 17 November 2011 due to the unexpected death of a friend, at that point he was informed he would not be deploying to Afghanistan and his diagnosis remained unchanged. On 1 December 2011, the applicant participated in a behavioral health in-depth intake session, he was diagnosed with Depression and recommended for individual therapy; the note indicates he had started on antidepressant medication. During a follow-up session on 20 December 2011, the applicant denied anxiety, depression, and sleep disturbances; he reported normal enjoyment of activities. His diagnosis changed from Depression to Adjustment Disorder. The record shows on 09 January 2012, the applicant participated in a mental status evaluation for the purpose of separation. The report notes the applicant’s history of depression, along with his treatment via therapy and medication management, he was diagnosed with Adjustment Disorder. However, during this assessment he denied any significant mental health symptoms. The applicant reported he was being separated from service for apparently having “adulterated” a urine sample and being AWOL.

e. The VA’s Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 70% service connected for various medical conditions, but he is not service connected for any mental health conditions. The applicant sought a TBI consultation, but the record shows he was not found to have symptoms related to a TBI. The record shows the applicant participated in individual psychotherapy on 18 and 27 March 2020, he was diagnosed with Trauma/Stressor Related Disorder, Unspecified. The applicant discontinued treatment but later sought to reconnect on 21 June 2021 and was diagnosed with Adjustment Disorder, Unspecified. The applicant requested a PTSD consult, and an in-depth assessment was completed on 21 September 2021. He did not meet criteria for PTSD, but the clinician noted his participation in a community veteran’s PTSD support group that potentially could have relieved his symptoms. The applicant was diagnosed with Major Depressive Disorder, Attention Deficit Disorder (ADD) by history, History of Alcohol Use Disorder, and Cannabis Use. He was recommended for medication management and follow-up testing related to his reported ADD. The applicant was seen for a psychiatric assessment on 14 October 2021 and started on antidepressant medication. He was offered supportive psychotherapy but declined. An encounter dated 3 May 2022, indicates his ADD testing referral was discontinued, and the applicant reported only being interested in medication management. Overall, the record shows inconsistent participation in psychiatric care with a note dated 18 November 2024, discharging him from psychiatry to his primary care provider.

f. A PTSD DBQ dated 1 July 2014 documents the applicant’s reported deployment related stressors but states his symptoms did not meet the diagnostic criteria for PTSD. The evaluation diagnosed him with Substance-Induced Sleep Disorder, Alcohol Abuse, and Cannabis Abuse.

g. Based on the information available, this Agency Behavioral Health Advisor is unable to opine regarding mitigation without the specific facts and circumstances that led to his discharge. However, the medical record has some indication he was discharged due to AWOL, substance use, and tampering his drug test.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts mitigating conditions of PTSD, TBI, and OMH.

(2) Did the condition exist or experience occur during military service? Yes. The applicant was diagnosed with Depression, Adjustment Disorder, and Insomnia while in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unable to opine regarding mitigation without the specific facts and circumstances that led to his separation. However, the medial record does not show evidence of the applicant being diagnosed with PTSD or TBI. The record does show evidence the applicant was diagnosed with Depression while in service and after discharge. Although, the specific facts and circumstances that led to his separation are unavailable, if the applicant was discharged due to AWOL and substance use, his misconduct would be mitigated by his diagnosis of Depression. Given that there is a nexus between Depression and avoidance his AWOL would be mitigated. In addition, given the association between Depression and the use of substances to alleviate/cope with the symptoms of the disorder, his use of substances would be mitigated. However, his tampering with a drug test would not be mitigated since this evidences purposeful, conscious decisions making and Depression does not impair the ability to know right from wrong and act in accordance with the right.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record, and Department of Defense guidance for consideration of discharge upgrade requests, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's contentions, his record of service, the absence of a separation packet, the reason for his separation and the character of service he received upon discharge. The Board considered the applicant's statement regarding PTSD and TBI as related to his request and the review and conclusions of the Agency medical advisor. The review indicated the applicant is 70% service connected for various medical conditions, but he is not service connected for any mental health conditions. It also shows that the applicant sought a TBI consultation, but the record

shows he was not found to have symptoms related to a TBI. The Board found: (1) the applicant asserts mitigating conditions of PTSD, TBI, and OMH for his (unknown) misconduct; (2) the applicant was diagnosed with Depression, Adjustment Disorder, and Insomnia while in service; (3) the medial record does not show evidence of the applicant being diagnosed with PTSD or TBI and given the unknown nature of the serious misconduct that led to his separation, the Board is unable to conclude if that misconduct was mitigated. The Board determined that an upgrade of his discharge as a matter of liberal consideration was not warranted. The Board considered the two letters of support provided by the applicant but found them insufficient to render a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

3. 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>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	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.

[REDACTED]

[REDACTED]

[REDACTED]

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

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 member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 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, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed.

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 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 misconduct that led to the discharge.

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.

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, 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//