

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 March 2025

DOCKET NUMBER: AR20240006483

APPLICANT REQUESTS: an upgrade of his general discharge to honorable

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) covering the period ending 6 November 2009

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:

a. He is requesting upgrade of his general discharge to honorable, because of the circumstances surrounding why he was discharged.

b. He has marked the boxes on his application indicating disability and post-traumatic stress disorder (PTSD) are related to his request.

3. The applicant enlisted in the Regular Army on 15 April 2008.

4. Multiple DA Forms 4187 (Personnel Action) show the applicant's following duty status changes.

- from present for duty (PDY) to absent without leave (AWOL) effective 29 June 2009
- from AWOL to dropped from the rolls (DFR) effective 27 July 2009
- from DFR to PDY effective 25 September 2009
- from PDY to Confinement effective 25 September 2009

5. A DA Form 4430 (Department of the Army Report of Result of Trial) shows:

a. The applicant was tried by summary court-martial on 25 September 2009, where he was charged with and found guilty of being AWOL effective 26 June 2009, and remaining absent in desertion until his apprehension on 24 September 2009.

b. On 25 September 2009, he was sentenced to confinement for 30 days, forfeiture of \$1,099.00 pay for 1 month, and reduction in rank/grade to private (PVT)/E-1.

5. On 25 September 2009, the applicant was notified by his immediate commander of his initiation of action to separate him with a general discharge under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 14, for commission of a serious offense. He was advised of his right to consult with counsel and submit statements in his own behalf.

6. On 25 September 2009, the applicant acknowledged receipt of notification of his recommended discharge under the provisions of Army Regulation 635-200, chapter 14.

7. A DD Form 2807-1 (Report of Medical History) shows on 21 October 2009, the applicant provided his medical history and marked "no" to all listed conditions.

8. A DD Form 2697 (Report of Medical Assessment) shows the applicant provided his medical assessment on 21 October 2009, marking "no" on all medical assessment questions.

9. A DD Form 2808 (Report of Medical Examination) shows the applicant underwent medical examination on 27 October 2009, for the purpose of administrative discharge and was found qualified for separation with a PULHES of 111111.

10. A Medical Command (MEDCOM) Form 4038 (Report of Behavioral Health Assessment) shows on 27 October 2009, the applicant underwent a behavioral health assessment for the purpose of a misconduct discharge and was found to have no diagnoses, no need for treatment, and was psychiatrically cleared for any administrative action deemed appropriate by command.

11. On 4 November 2009, the applicant acknowledged having been advised by counsel of the basis for the contemplated action to separate him with a general discharge under the provisions of Army Regulation 635-200, chapter 14, for commission of a serious offense and the rights available to him. He indicated he was not submitting statements in his own behalf.

12. On 4 November 2009, the applicant's battalion commander recommended approval of his general discharge under the provisions of Army Regulation 635-200, chapter 14 for commission of a serious offense.

13. On 5 November 2009, the approval authority directed the applicant's general discharge under the provisions of Army Regulation 635-200, chapter 14 for commission of a serious offense.

14. The applicant's DD Form 214 shows he was given a general discharge on 6 November 2009, under the provisions of Army Regulation 635-200, chapter 14 for misconduct (serious offense).

15. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his general discharge to honorable. He contends he experienced PTSD which 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 15 April 2008; 2) The applicant was tried by summary court-martial on 25 September 2009, where he was found guilty of being AWOL from 26 June-24 September 2009; 3) On 6 November 2009, the applicant was given a general discharge, Chapter 14 for misconduct (serious offense).

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 documentation was provided for review.

c. The applicant asserts he was experiencing PTSD while on active service, which mitigates his misconduct. There is insufficient medical evidence the applicant was diagnosed with a mental health disorder, including PTSD while on active service. There is evidence the applicant underwent some group therapy for substance abuse while incarcerated, but he was not diagnosed with a mental health condition. On 27 October 2009, the applicant underwent a Mental Status Exam as part of his administrative separation proceedings. The applicant was screened for PTSD and a traumatic brain injury. However, he was not diagnosed with either condition or another mental health condition. The applicant was cleared from a psychiatric perspective for any administrative action deemed appropriate by command. There is insufficient evidence the applicant was diagnosed with a mental health condition which did not meet medical retention standards, underwent six months of behavioral health treatment without improvement, received inpatient psychiatric treatment, or was placed on a psychiatric permanent profile.

d. A review of JLV provided evidence the applicant began to engage with the VA for assistance with polysubstance abuse/dependence and homelessness starting predominately in 2020. The applicant did report being exposed to potentially traumatic events unrelated to his military service, and he has been diagnosed with nonservice-connected PTSD. At this time, there is insufficient evidence the applicant has ever been diagnosed with a service-connected mental health condition including PTSD, and he does not receive any service-connected disability for a 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 to support sending the applicant's case to DES to assess his suitability for a medical discharge.

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 PTSD on active service, which mitigates his misconduct. The applicant was diagnosed with PTSD unrelated to his military service in 2020.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD on active service, which mitigates his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD, while he was on active service. The applicant did go AWOL, which could be an avoidant behavior and a natural sequelae to PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition at the time of active service. In addition, there is insufficient evidence to support sending the applicant's case to DES to assess the applicant's suitability for a medical discharge. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for the board's consideration.

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of

discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The applicant enlisted in the Regular Army on 15 April 2008 and was found guilty by summary court-martial of being absent without leave from 26 June to 24 September 2009, resulting in confinement, forfeiture of pay, and reduction in rank. He was discharged on 6 November 2009 with a general discharge under Army Regulation 635-200, Chapter 14, for misconduct (serious offense). The Board reviewed and concurred with the medical advisor's review finding insufficient evidence that the applicant had a service-connected mental health condition, including PTSD, that would mitigate his misconduct. The applicant was apprehended after an extended AWOL period, has not provided evidence of service-connected mitigating medical conditions, and has offered no post-service accomplishments to support clemency or an upgrade of his discharge.

2. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration, the Board determined relief was not warranted.

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced PTSD on active service, which mitigates his misconduct. The applicant was diagnosed with PTSD unrelated to his military service in 2020.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD on active service, which mitigates his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD, while he was on active service. The applicant did go AWOL, which could be an avoidant behavior and a natural sequelae to PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition at the time of active service. In addition, there is insufficient evidence to support sending the applicant's case to DES to assess the applicant's suitability for a medical discharge. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for the board's consideration.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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

Signed by:

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. 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 (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) 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 (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.
3. 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs 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. 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.
4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 (Separation for Misconduct) establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, use of illegal drugs, and convictions by civil authorities. 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 considered appropriate for a Soldier discharged under this chapter.

b. Chapter 3 (Character of Service and Description of Separation) provides:

(1) An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct.

(2) 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.

(3) A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial when the reason for separation is based upon a pattern of behavior that constitutes a significant departure from the conduct expected of Soldiers of the Army or when the reason for separation is based upon one or more acts or omissions that constitutes a significant departure from the conduct expected of Soldiers of the Army. Examples of factors that may be considered include the following:

- use of force or violence to produce serious bodily injury or death
- abuse of a special position of trust
- disregard by a superior of customary superior-subordinate relationships
- acts or omissions that endanger the security of the United States or the health and welfare of other Servicemembers
- deliberate acts or omissions that seriously endanger the health and safety of other persons

//NOTHING FOLLOWS//