

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 March 2025

DOCKET NUMBER: AR20240006563

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) characterization of service.

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)
- Department of Veterans Affairs (VA) Disability Rating, dated 22 May 2024
- VA Medical Documents (158 pages), printed on 8 May 2024

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 notes post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI) as conditions related to his request.
3. The applicant enlisted in the Regular Army on 5 April 2006.
4. He served in Afghanistan from 23 May 2007 to 1 August 2008.
5. He was reported as absent without leave (AWOL) on 2 February 2009 and subsequently dropped from the rolls on 4 March 2009. He surrendered to military authorities on 2 March 2010 and was returned to military control.
6. He underwent a behavioral health evaluation on 15 March 2010. The evaluating provider diagnosed him with anxiety disorder, not otherwise specified, post concussive syndrome. He was psychiatrically cleared for any administrative action deemed appropriate by command.

7. The applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c, by reason of commission of a serious offense. The commander cited the applicant's period of AWOL as the specific reason. The applicant acknowledged receipt of the notification on 1 April 2010.

8. The applicant consulted with counsel on 16 April 2010. He was advised of the basis for the contemplated separation action and its effects, the rights available to him; and the effect of any action taken by him to waive his rights. In a sworn statement the applicant stated that following his deployment, he was suffering from PTSD. He was awarded a Purple Heart for being wounded from an improvised explosive device and several rocket-propelled grenade blasts.

9. In a memorandum for record from trial defense counsel, dated 16 April 2010, Senior Defense Counsel noted it was imperative the applicant receive necessary treatment for his combat related behavioral health issues, which were well documented in his medical record. He continued to be symptomatic of PTSD and TBI.

10. The applicant's immediate commander formally recommended his separation, prior to his expiration term of service, under the provisions of Army Regulation 635-200, Chapter 14-12c, by reason of commission of a serious offense. The intermediate commander reviewed and concurred with the recommendation, further recommending the issuance of an under honorable conditions (general) characterization of service.

11. The separation authority approved the recommended action on 26 April 2010 and directed the issuance of an under honorable conditions (general) characterization of service.

12. The applicant was discharged on 30 April 2010, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of misconduct (serious offense). His character of service was under honorable conditions (General). He completed 2 years, 11 months, and 24 days of active service.

13. The Army Discharge Review Board considered the applicant's request for an upgrade of his service characterization on 22 March 2013. The Board determined the applicant's discharge and character of service were both proper and equitable. The Board denied his request for relief.

14. The applicant provides a VA Disability Rating which shows his combined service connected disability rating as 100 percent. An additional 158 pages of VA medical documents will be reviewed and summarized in the "MEDICAL REVIEW" portion of this Record of Proceedings (ROP).

15. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

16. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge. The applicant contends his request is related to his experience of posttraumatic stress disorder (PTSD) and traumatic brain injury (TBI) 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 05 April 2006; 2) The applicant engaged in a combat deployment to Afghanistan from 23 May 2007 to 01 August 2008; 3) The applicant was found to be AWOL from 02 February 2009 to 02 March 2010; 4) The applicant was discharged on 30 April 2010, Chapter 14-12c, by reason of misconduct (serious offense). His character of service was under honorable conditions (general). The applicant completed 2 years, 11 months, and 24 days of net active service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The applicant also provided hardcopy VA documentation for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced PTSD and TBI while on active service, which mitigate his misconduct. The first documented diagnosis and treatment for PTSD and post-concussion syndrome secondary to blast-related TBI by a military psychiatrist occurred on 10 December 2008, following his deployment. On 07 January 2009, the applicant was evaluated by Neurology for an assessment of the TBI(s) the applicant sustained during deployment and resulted in a confirmed diagnosis of post-concussive syndrome. After returning from being AWOL, he engaged with physical medicine for evaluation of the current status of his post-concussive syndrome and PTSD symptoms on 10 March 2010. He reengaged with behavioral health on 11 March 2010 and was diagnosed again with PTSD. These initial evaluations were noted by providers as a part of the administrative separation/chapter process. His diagnosis fluctuated to anxiety disorder NOS, post-concussive syndrome, and adjustment disorder due to grief reaction immediately before and after his official administrative separation mental status examination in between 15 March 2010 and 31 March 2010. However, he was psychiatrically cleared for any administrative action deemed appropriate by command. The applicant's diagnosis returned to PTSD for his psychological therapy appointments on 08 April 2010 and remained in place for subsequent treatment until his discharge from military service.

d. A review of JLV revealed that the applicant became connected to the VA on 21 June 2010, primarily for physical and mental health treatment and has been consistent since that time. He has engaged in both inpatient and outpatient behavioral health treatment including the use of both medication and psychotherapy. His primary treating diagnoses include PTSD, history of TBI, and other physical concerns. Beginning in November 2016 during his inpatient psychiatric hospitalization, the applicant's behavioral health diagnoses have also included: Cannabis dependence with other cannabis-induced disorder; alcohol dependence with alcohol-induced mood disorder; major depressive disorder, recurrent moderate; and generalized anxiety disorder. The applicant is currently 100% service connected for PTSD and 10% service-connected for traumatic brain disease.

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 PTSD and post-concussive syndrome, which mitigates his misconduct. He was diagnosed with PTSD and post-concussive syndrome following his combat deployment beginning in 2008 and has continued to hold these diagnoses until his discharge from military service. He continued to be treated for these service-connected diagnoses in the VA immediately following his discharge from military service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD and TBI while on active service, which mitigates his misconduct. This assertion was corroborated by consistent follow-up with behavioral health and medical treatment during his time in service. These diagnoses were documented following his combat deployment as well as following his time AWOL and lasted through his discharge from service. In addition, he is currently service-connected for PTSD and traumatic brain disease.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Yes, there is sufficient evidence beyond self-report the applicant has been diagnosed with service-connected PTSD and TBI. There is evidence that the applicant was deployed to an active combat zone and is service connected for both PTSD and TBI. The applicant engaged in avoidant behavior such as going AWOL. This type of behavior is a natural sequelae to PTSD and TBI. Therefore, per Liberal Consideration, the applicant's misconduct is mitigatable.

BOARD DISCUSSION:

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 applicant was separated for misconduct with the commander citing absent without leave from 2 February 2009 to 2 March 2010. The Board reviewed the medical advisor's review; however, found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant provided no documentation to support his request, including post-service achievements or letters of reference to support clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

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

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 (USC), 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 Army Board for Correction of Military Records (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. Section 1556 of Title 10, USC, 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 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, and reviews to ABCMR applicants prior to adjudication.

3. Army Regulation 635-200 (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. 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. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if such were merited by the Soldier's overall record.

4. 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. Standards for

review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or 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.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NR 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//