

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 March 2025

DOCKET NUMBER: AR20240006568

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), with self-authored statement
- Diploma, Basic Combat Training (BCT), dated 17 October 2008
- Diploma, Human Intelligence Collector Course, dated 7 May 2009
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 1 September 2010, with corrected copy
- letter, Army Review Boards Agency (ARBA), dated 24 August 2021
- letter, Arizona Department of Corrections, dated 21 December 2021
- Certificate of Absolute Discharge, dated 21 December 2021
- Commission, Notary Public, dated 20 June 2022, and allied documents
- Order re: Application to Restore Civil Rights, dated 3 March 2022
- letter, Department of Veterans Affairs (VA), dated 18 July 2023
- VA Rating Decision, dated 18 October 2023
- letter, VA, dated 16 December 2023
- VA Medical Documents (17 pages)
- Resume
- statements of support (2), dated 10 May 2024 and 13 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 states at the time of his civil conviction he was not in a healthy mental state. He broke his wrist and was falling behind in his course. He became despondent and his behavior became erratic. He had a consensual encounter with a young woman, who later stated the encounter was nonconsensual. In June 2010, he submitted a plea

deal of attempted sexual assault. Contrary to the recommendation of probation, the judge sentenced him to three years in prison. He was later diagnosed with major depressive disorder and anxiety. He has since redefined his life. His civil conviction was an isolated incident, not a pattern of behavior.

3. The applicant enlisted in the Regular Army on 6 August 2008. The highest rank he attained was specialist/E-4.

4. On 10 June 2010, at the Superior Court of Arizona, the applicant pled guilty to attempted sexual assault, on or about 8 February 2009. He was sentenced to three years in prison.

5. The applicant was notified of his immediate commander's intent to initiate separation action against him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-5, by reason of conviction by civil court. The commander further stated he was recommending an honorable characterization of service. The applicant acknowledged receipt of the notification on 16 July 2010

6. The applicant consulted with counsel on 10 August 2010. He was advised of the basis for the contemplated action to separate him and its effects; of the rights available to him; and the effect of any action taken by him to waive his rights. He elected not to submit a statement in his own behalf.

7. The applicant's immediate commander formally recommended his separation, prior to his expiration term of service. His intermediate commanders concurred with the recommendation, further recommending an under honorable conditions (general) character of service.

8. The applicant's service record is void of documentation showing action by the separation approval authority. However, the applicant was discharged on 1 September 2010, under the provisions of Army Regulation 635-200, Chapter 14, Section II, by reason of misconduct (civil conviction). His service was characterized as under honorable conditions (general). He completed 2 years and 26 days of net active service.

9. On 1 August 2012, the Army Discharge Review Board considered the applicant's request for an upgrade of his character of service. After careful consideration, the Board determined he was properly and equitably discharged. However, the Board determined his DD Form 214 required an administrative correction. On 18 October 2012, he was issued a new DD Form 214 which showed item 27 (Reentry Code) was changed from RE-4 to RE-3. There were no additional changes.

10. The applicant provides:

- a. A letter and Certificate Absolute Discharge, dated 21 December 2021, released the applicant from his commitment to the Arizona Department of Corrections, Rehabilitation, and Reentry.
- b. A certificate of commission, dated 20 June 2022, and allied documents show the applicant is a Notary Public.
- c. An Order re: Application to Restore Civil Rights, dated 3 March 2022, shows the applicant was granted restoration.
- d. A VA Rating Decision, dated 18 October 2023 and additional VA medical documentation will be reviewed and summarized in the "MEDICAL REVIEW" portion of this Record of Proceedings (ROP).
- e. His resume highlights some of his post-service accomplishments.
- f. In two statements of support, dated 10 May 2024 and 13 May 2024, the authors attest to the applicant's excellent character.

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

12. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service. On his DD Form 293, the applicant indicated Other Mental Health Issues are related to his request. 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 (RA) on 06 August 2008, 2) on 10 June 2010, at the Superior Court of Arizona, the applicant pled guilty to attempted sexual assault, on or about 8 February 2009. He was sentenced to three years in prison, 3) the applicant was notified of his immediate commander's intent to initiate separation action against him under the provisions of AR 635-200, paragraph 14-5, by reason of conviction by civil court, 4) the applicant's service record is void of documentation showing action by the separation approval authority. However, the applicant was discharged on 1 September 2010, under the provisions of Army Regulation 635-200, Chapter 14, Section II, by reason of misconduct (civil conviction), with a separation code of JKB and reentry code of '4,' 5) on 1 August 2012, the ADRB considered the applicant's request for an upgrade of his character of service and determined he was properly and equitably discharged. However, the Board determined his DD Form 214 required an administrative correction and on 18 October 2012 his reentry Code was changed from RE-4 to RE-3.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) and Veterans Benefits Management System (VBMS) were also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. In-service medical records were available for review via JLV from 13 August 2008 through 23 March 2010. The applicant presented for a BH intake on 19 March 2009 reporting problems with anxiety, depression, and sleep disturbances. He also reported experiencing psychosocial stressors (e.g., familial/relationship), a proclivity toward risk-taking, hypersexuality, and an inflated sense of self-esteem. He was not diagnosed with a condition at the time of the encounter and was referred for psychological testing to rule out Personality Disorder, Bipolar Disorder, and Sex Addiction. He presented for a psychological testing on 15 and 16 April 2009 which showed that he was administered the Minnesota Multiphasic Personality Inventory-2 (MMPI-2) and Personality Assessment Inventory (PAI). In addition to his previously noted symptoms, he reported a history of two previous suicide attempts (2003 and 2004). It was noted that in 2005 after he graduated from college he engaged in increased risky behaviors. He also reported having issues with depression with varying 'intensities' since he was 10-years-old, with the most recent episode beginning the end of January 2009 and stated he had difficulty sleeping over the previous three weeks. The applicant also reported a history of ADHD at age 10. The stressors at the time of the visit were noted as military environment (it was documented that he wanted to get out of the Army), familial, and relationship problems. The provider documented his diagnoses as Personality Disorder (with antisocial, narcissistic, and depressive features with Schizotypal Traits), and ADHD, Combined Type. He was seen as a walk-in on 17 April 2009 to review the psychological testing results and discuss separation from the Army. It appears the applicant expressed a preference for a Chapter 5-17 separation over Chapter 5-13 due to wanting to keep his security clearance [*Advisor's Note*: it is unclear if the evaluating provider recommended administrative separation under the provisions of Chapter 5-13 or 5-17]. The provider noted his diagnoses as ADHD, Combined Type, Personality Disorder, and Adjustment Disorder with Depressed Mood. He was not referred for medication at the time of the appointment due to completing his course soon and was recommended to seek treatment at his next duty station if he remained in the Army.

d. VA medical records included as part of his application and via JLV were reviewed. A VA Rating Decision Letter dated 18 October 2023 shows the applicant was granted 70% service-connection through the VA for Major Depressive Disorder (MDD). The applicant underwent a Compensation and Pension (C&P) examination on 06 July 2023 showing he met criteria for MDD, Moderate, Recurrent. He underwent a subsequent C&P examination on 01 March 2025 which reaffirmed his diagnosis of MDD, Moderate, Recurrent. A treatment summary authored by a VA clinical psychologist dated 18 July 2023 shows the applicant had first sought treatment with the provider on 01 August

2015 for individual psychotherapy and also noted he had presented to the VA requesting medication for problems with concentration and attention associated with a history of ADHD. The provider noted he was diagnosed with Unspecified Depressive Disorder and Problems in Relationships. A VA Problem list provided by the applicant shows his BH diagnoses including ADHD, predominantly inattentive type (entered on 28 April 2021) and Depression (entered on 28 April 2021). A review of his medications shows he was prescribed Sertraline (antidepressant) for mood and/or anxiety, Propranolol (anxiety), Bupropion (for depression and attention), and Amphetamine XR (Adderall for ADHD).

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant was diagnosed with a potentially mitigating BH condition in-service. Since being discharged from the military, the applicant has been diagnosed and service-connected through the VA with MDD, which is a potentially mitigating BH condition. However, this Advisor would contend that the applicant's misconduct of attempted sexual assault is not mitigated by his diagnosis of MDD.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed and 70% service-connected through the VA with MDD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed and 70% service-connected through the VA with MDD. Service connection establishes that the condition existed during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Review of the applicant's in-service medical records show that he was diagnosed with ADHD, Combined Type, Personality Disorder, and Adjustment Disorder with Depressed Mood, which do not constitute mitigating BH conditions [*Advisor's Note*: Adjustment Disorders that are not chronic (i.e., less than 6 months) fall under the purview of administrative separation]. Since being discharged from the military, the applicant has been diagnosed and service-connected through the VA with Major Depressive Disorder. Attempted sexual misconduct is not associated with the natural history and sequelae of depression and MDD does not interfere with the ability to distinguish between right and wrong and adhere to the right. As such, there is no nexus between the applicant's misconduct of attempted sexual assault and his diagnosis of Major Depressive Disorder. Thus, BH mitigation is not supported.

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 a conviction by civil court for attempted sexual assault. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant's contention that he was not in a healthy mental state after he broke his wrist; however, reviewed and concurred with the medical advisor's review finding insufficient evidence that the applicant was diagnosed with a potentially mitigating behavioral health condition in-service that would mitigate his misconduct. 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.

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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 (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 regulation provides:

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 Soldier 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. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if such was merited by the Soldier's overall record.

d. Chapter 14, Section II (Conviction by Civil Court) provides that a Soldier may be considered for discharge when initially convicted by civil authorities, or when action is

taken that is tantamount to a finding of guilty. Initiation of separation action is not mandatory. The immediate commander must consider whether the specific circumstances of the offense warrants separation.

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/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//