

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 February 2025

DOCKET NUMBER: AR20240006573

ON BEHALF OF THE APPLICANT, COUNSEL REQUESTS RECONSIDERATION OF:

- Upgrade of his general under honorable conditions discharge to “Honorable”
- Change to narrative reason for separation to reflect “Secretarial Authority” or “Miscellaneous/General Reasons”

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

- DD Form 149 (Application for Correction of Military Record)
- Legal brief, with Exhibits A thru GG

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. Counsel states, via letter, the applicant's request should be granted under the liberal consideration standard because he was suffering from depression, which directly contributed to the episodes of misconduct for which he was discharged. These episodes of misconduct represent an uncharacteristic departure from the applicant's otherwise commendable service. The applicant consistently received positive evaluations up until the time he was charged with the conduct that led to his separation.
3. Counsel provides Exhibits A thru GG, which include the following:
 - Enlistment/Reenlistment Contract
 - Record of Proceedings Under Articles 15
 - Awards and Decorations
 - Discharge documents
 - Medical-related documents, to include Department of Veterans Affairs (VA) documents
 - Defense Finance and Accounting Service (DFAS) pay-related documents

- Army Discharge Review Board decision letter

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

a. He enlisted in the Regular Army on 30 August 2000.

b. On 31 January 2003, the applicant was given a mental status evaluation and was found to have the mental capacity to understand and participate in the proceedings, was mentally responsible, met the retention requirements of Chapter 3, AR 40-501, and was psychiatrically cleared for any administrative action deemed appropriate.

c. The applicant's duty status changed as follows:

- From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 4 April 2003
- From AWOL to Dropped From Rolls (DFR), effective 4 May 2003
- From DFR to PDY, effective 26 June 2003

d. He accepted nonjudicial punishment (NJP) on:

- 26 August 2002, for disobeying a lawful order given by a noncommissioned officer on two separate occasions on or about 31 July 2002 and 2 August 2002; on or about 2 August 2002, with intent to deceive, make an official statement, which statement was totally false, and was then known by the applicant to be so false; punishment included a reduction to private (E-2), suspended, to be automatically remitted if not vacated before 24 September 2002
- 24 July 2003, for absenting himself from his unit on or about 4 April 2003 until on or about 26 June 2003; he was reduced to private (PVT)/E-1

e. On 27 August 2003, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 14, paragraph 14-12b. The specific reason for his proposed action is as follows:

(1) For absenting himself from his unit without authority on or about 4 April 2003 and remained so absent until on or about 26 June 2003; receiving a Field Grade Article 15 for this offense.

(2) He was found guilty of joy riding (a misdemeanor), on or about 27 January 2003, in General Sessions Court of Montgomery County in the state of Tennessee. He was fined and placed on probation for a period of 11 months and 29 days.

(3) He received an Article 15 on or about 26 August 2002 for disobeying the orders of noncommissioned officers and making false official statements. The portion of

punishment relating to reduction in grade was suspended; however, it was later vacated due to the fact he broke restriction on or about 4 September 2002.

(4) He received counseling for malingering, failure to follow instructions, failure to be at your appointed place of duty at the time prescribed, and deliberately lying to a noncommissioned officer.

f. Subsequent to this acknowledgement and consultation with counsel, his immediate commander initiated separation action against him due to a pattern of misconduct, in accordance with AR 635-200, chapter 14-12b, pattern of misconduct. His chain of command recommended approval.

g. The applicant acknowledged receipt of the commander's intent to separate him. On 5 September 2003, he consulted with legal counsel who advised him of the basis for the contemplated separation action for misconduct, the type of discharge he could receive and its effect on further enlistment or reenlistment, the possible effects of this discharge, and of the procedures/rights available to him. He voluntarily waived consideration of his case by an Administrative Separation Board contingent upon receiving a characterization of service or description of separation no less favorable than honorable. In addition, he elected not to submit a statement in his own behalf. Paragraph 7a reflects the applicant requested a personal appearance before an administrative separation board. The applicant also acknowledged he:

- understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him
- understood he could be ineligible for many or all benefits as a veteran under Federal and State laws as a result of the issuance of a discharge under other than honorable conditions
- understood if he received a discharge characterization of less than honorable, he could make an application to the Army Discharge Review Board (ADRB) or the ABCMR for an upgrade, but he understood that an act of consideration by either board did not imply his discharge would be upgraded

h. It is unclear as to the exact date when the separation approving authority denied the applicant's request for a conditional waiver.

i. On 1 October 2003, the applicant was notified of a Board Proceeding scheduled for 22 October 2003 to determine if he should be recommended for elimination under the provisions of chapter 14, Section III, AR 635-200.

j. On 23 October 2003, an Administrative Separation Board convened at the John H. English Education Center, Fort Campbell, Kentucky and determined a preponderance of the evidence shows the following:

(1) Does support the allegations that on 4 April 2003 Respondent absented himself from his unit and remained absent from his unit until 26 June 2003 and that for this action he received punishment under Article 15 of the Uniform Code of Military Justice.

(2) Does support the allegation that on or about 27 January 2003 the Court of General Session of Montgomery County, Tennessee found the Respondent guilty of the offense of joy riding and sentenced Respondent to confinement for a period of 11 months and 29 days, which it permitted Respondent to serve on probation.

(3) Does support the allegations that on or about 31 July 2002 Respondent disobeyed an order from a noncommissioned officer to only go to the hospital, dining facility, or to Respondent's room and that for this action Respondent received punishment under Article 15 of the Uniform Code of Military Justice on 26 August 2002.

(4) Does support the allegations that on or about 2 August 2002 Respondent disobeyed an order from a noncommissioned officer to keep the officer informed of his whereabouts and that for this action Respondent received punishment under Article 15 of the Uniform Code of Military Justice on 26 August 2002.

(5) Does not support the allegations that on or about 2 August 2002 Respondent made a false official statement and that for this action Respondent received punishment under Article 15 of the Uniform Code of Military Justice on 26 August 2002.

(6) Does support the allegations that on or about 6 September 2002 Respondent left the Fort Campbell Military Installation while under a lawful order restricting him to places of duty, worship, dining, and medical facilities on the Fort Campbell Military Installation.

(7) Does support the allegations that on or about 31 July 2003 Respondent failed to report for extra duty as ordered.

(8) Does support the allegations that on or about 31 July 2003 Respondent failed to obey a lawful order to conduct a police call.

(9) Does not support the allegations that on or about 11 September 2002 and 13 September 2002 Respondent feigned illness to avoid performing physical training.

(10) Does the allegation that Respondent has engaged in a pattern of misconduct consisting of discreditable involvement with civil or military authorities and/or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

Recommendation. Based upon the findings set forth, the board recommends the respondent [the applicant] be separated from the service because of his misconduct and should receive a discharge under other than honorable conditions.

k. On 4 November 2003, the separation authority approved the applicant's discharge under the provisions of AR 635-200, chapter 14-12b, with his service characterized as under other than honorable conditions.

l. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 14 November 2003, under the provisions of AR 635-200 (Personnel Separations - Enlisted Personnel), Chapter 14-12b, pattern of misconduct, separation code JKA, reentry code 3, with a characterization of service of under other than honorable conditions. He completed 3 years, 3 months, and 16 days of net active service this period, with lost time from 4 April 2003 thru 25 June 2003.

5. The applicant applied to the ADRB for an upgrade of his discharge on 6 April 2011. The ADRB determined the discharge was both proper and equitable and voted to deny relief.

6. AR 635-200 states action will be taken to separate a member for a pattern of misconduct. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

7. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents (including multiple letters of support), the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant through counsel requests discharge upgrade from 'Under Other Than Honorable Conditions' to 'Honorable' and change in narrative reason for separation to 'Secretarial Authority' or 'Miscellaneous/General Reasons'. He contends that he was suffering from mental health symptoms from PTSD and Depression, as well as chronic pain from several physical conditions when he was involved in misconduct. He further contends that his physical and mental health conditions "were constantly disregarded and ignored" despite his attempts to seek help. His requests were previously denied relief through the Army Discharge Review Board convened 12Jul2010.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant enlisted in the Army National Guard 22Nov1989. He served honorably in active service from 19900313 to 19900706. He was discharged from the ANG 16Sep1994. He enlisted in the Regular Army on 30Aug2000. He served

honorably in active service 20000506 to 20031114. His MOS was 11B Infantryman. He was discharged under AR 635-200 para 14-12B for pattern of misconduct. The 23Oct2003, an Administrative Separation Board determined the applicant was guilty by a preponderance of the evidence of the following offences: failed to report for extra duty 31Jul2003; failed to obey order to conduct a police call 31Jul2003; AWOL from 20030404 to 20030626; joy riding (a misdemeanor) 27Jan2003; disobeyed an order from an NCO to keep the officer informed of his whereabouts 02Aug2002; broke a restriction related order 06Sep2002; disobeyed a restriction related order from an NCO 31Jul2002; and he engaged in a pattern of misconduct consisting of discreditable involvement with civil or military authorities and/or discreditable conduct and conduct prejudicial to good order and discipline. He was discharged from military service on 14Nov2003. His service was characterized as Under Other Than Honorable Conditions.

3. Summary of physical injuries/conditions documented in service treatment records.

a. 16Jan2002 Chronological Record of Medical Care (SF 600). The applicant was seen for right and left Achilles tendon pain for 1 month. He was evaluated by physical therapy on 11Feb2002.

b. 26Mar2002 Physical Therapy LaPointe Health Clinic BACH. The applicant was evaluated for left knee and left ankle pain. Therapy was planned at two times per week for 2 weeks. He was placed on a low impact activity profile for 30 days.

c. 04Jun2002 LaPointe Health Clinic BACH. The applicant sustained contusion to right tibia playing softball. A DVT (deep venous thrombosis) was ruled out by 13Jun2002 right lower extremity ultrasound. He participated in physical therapy 04Jun, 07Jun, 11June and 14Jun2002 with improvement in symptoms.

d. 27Jul2002 Triage Note. The applicant injured the lower back while working on a HUMVEE. The 02Aug2002 lumbar spine film series was normal.

e. 31Oct2002 LaPointe Health Clinic BACH. The applicant reported that he fell and hit his left knee. He also had a recurring ankle problem. He was placed on a no run, jump or march profile for 2 weeks.

f. 24Jan2003 Report of Medical History (DD Form 2807-1) the applicant endorsed a history of asthma; back injury while working on a HUMVEE; and numbness and tingling on the left side of the body involving neck, shoulder, arm, hip, knee, shin, and foot. He also endorsed left ankle tendon tear/heel pain, and finally, bilateral knee injury due to jumping out of helicopters. The 13Feb2003 Report of Medical Examination (DD Form 2808) documented a physical examination within normal limits. His physical profile was

PULHES 111111. He was qualified for chapter separation and was advised to follow up for the Achilles tendonitis, paresthesias, and foot pain.

g. 07Mar2003 LaPointe Health Clinic BACH. His Asthma was stable. He had Left Achilles Tendonitis for which Celebrex had not been helpful. He was switched to Naprosyn.

h. 08Sep2003 LaPointe Health Clinic BACH. This was a follow-up visit after the emergency room visit on the same day. He had a one-day history of waking up with lower back pain. Diagnosis: Back Strain.

4. Behavioral health condition. Through counsel, the applicant endorsed that he was experiencing personal problems (including marital difficulties and his father's worsening Alzheimer's Disease) after he transferred to Fort Campbell, KY in December 2001. They also stated that the applicant endorsed using marijuana "to help cope with his chronic pain and injuries". As a result, the applicant had a positive urine test while in service. The following visits took place during military service.

a. 23Jul2002 Blanchfield ACH. The applicant was undergoing an Overweight Evaluation. He felt that he was eating less despite the weight gain. Also noted increased irritability, aggravation, and some anhedonia. He denied suicide ideation. His stressors were work and several medical issues. Diagnosis: Depression. He was started on a trial of Prozac. He was educated and encouraged concerning the Division of Mental Health services and Chaplain services. He was medically cleared to participate in the Army weight program.

b. 24Jan2003 Report of Medical History (DD Form 2807-1) the applicant endorsed frequent trouble sleeping, depression or excessive worry and having received counseling.

c. 31Jan2003 Report of Mental Status Evaluation indicated that the applicant exhibited normal behavior, unremarkable mood/affect, and normal thought process/content and memory. He was deemed to have the capacity to understand and participate in administrative proceedings and he was mentally responsible. He met retention standards of AR 40-501 chapter 3. He was psychiatrically cleared for any administrative action.

d. 04Feb2003 Division Mental Health. The applicant was a new patient. The plan was for him to be followed in active therapy.

e. 04Mar2003 Triage Note LaPointe Health Clinic BACH. The applicant presented with chief complaint: Depression. He was unable to sleep well during the past month, his body felt tense, and he reported increased stress. His symptoms were continuous

and worsening. He denied injury to self/others and substance use. He was taken to Blanchfield Mental Health.

f. 07Mar2003 LaPointe Health Clinic BACH. It was noted that the applicant had a history of Depression. He reported that he had not taken his Prozac (fluoxetine) for one month. He was being followed by mental health services.

5. JLV search showed the applicant was not service connected by the VA due to the characterization of his service. Six years after discharge from service, the applicant had at least 2 inpatient psychiatric admission (11Jan2009, 13May2009) and one outpatient admission (29Apr2009) for PTSD and Major Depressive Disorder. Alexian Brothers Behavioral Health Hospital (ABBHH) psychiatric admission paperwork indicated that the applicant had been on disability for PTSD and Depression since 2006. The notes also indicated that the applicant was experiencing flashbacks and had nightmares from combat deployment. The 11Jan2009 ABBHH provider was under the impression that the applicant "served in two wars, Afghanistan War and also Iraq War". Likewise, the 13Apr2009 ABBHH provider wrote that the applicant "was participating in combat in Afghanistan and Iraq". The applicant's report to the ABBHH providers in this regard was not consistent with other evidence in the case file that indicated otherwise. For example, the service record did not show combat deployment. In addition, in the counselor's brief, it was acknowledged that the applicant did not physically deploy; however, "he experienced these depressive and PTSD symptoms in anticipation of his deployment as well as from hearing vivid stories from member of his unit who were deployed to Iraq and Afghanistan." It appears that the PTSD diagnosis by the ABBHH mental health specialists was based on the report that the applicant had physically completed combat deployment in Iraq and Afghanistan and was manifesting re-experiencing symptoms (and others) related to this.

6. Based on medical evidence and military records currently in the case file, the PTSD diagnosis due to combat experience is not supported. However, the applicant was diagnosed with Depression while in service. Liberal Consideration guidance was considered, and Depression can be a mitigating condition.

7. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant was diagnosed with Depression.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes, in part. While in service, the applicant endorsed the following symptoms of depression:

Depressed mood, sleep disturbance, decreased appetite and increased irritability. The applicant underwent treatment for multiple orthopedic conditions while in service. The Achilles tendon (left ankle) and lower back conditions appeared chronic/recurrent in nature. Chronic pain can contribute to depression symptoms. And finally, the applicant experienced increased stress as a consequence of the long span of occupational conflict associated with his offences (from July 2002 to July 2003). Substance use (marijuana) is also a common sequela of mental illness. The applicant reported self-treatment with marijuana. Withdrawing is common with depression. The AWOL offence is mitigated as a possible manifestation of withdrawal behavior. The applicant also had instances of failure to report and failure to obey an order. Increased irritability can contribute to these offences. The joy riding offence is not mitigated as there was no established link between this behavior and the natural history of Depression. Under Liberal Consideration, the applicant's assertion alone that his BH condition contributed to the reason for his discharge, is sufficient for the Board to consider his request.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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 reviewed and concurred with the medical advisor's review finding sufficient evidence to support the applicant had a behavioral health condition during military service that mitigated his misconduct. Specifically, the applicant was diagnosed with depression. However, the Board denied the portion of the applicant's request pertaining to amending his narrative reason for separation to reflect "Secretarial Authority" or "Miscellaneous/General Reasons" as those were the conditions that existed at the time of the applicant's separation and reflect no error or injustice.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:XX	:XX	:XX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 14 November 2003, to show his characterization of service as honorable.
2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to amending his narrative reason for separation.



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, 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 635-200 (Personnel Separations - Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a states 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, of the version in effect at the time, 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, and convictions by civil authorities. It provided that 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 appropriate for a Soldier discharged under this chapter. However, the separation authority could direct an honorable discharge if merited by the Soldier's overall record.

3. 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 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.

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 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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

5. 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 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. 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 based on 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.

6. 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//