

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 March 2025

DOCKET NUMBER: AR20240007291

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge.

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

- DD Form 293 (Application for the Review of Discharge)
- Self-Authored Statement (The complete five-page letter is available for review by the Board in supporting documents)
- SF 88 (Report of Medical Examination)
- DD Form 2808 (Report of Medical Examination)
- DD Form 2807-1 (Report of Medical History)
- DD Form 2697 (Report of Medical Assessment)
- DA Form 4856 (Developmental Counseling Form), second page
- Medical records (80 pages) in support of his claim, showing the applicant was diagnosed with various medical conditions, including post-traumatic stress disorder (PTSD), major depressive disorder, anxiety, insomnia, and anger

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 was diagnosed with a thyroid condition and was under stress. The applicant recently returned from Kuwait and was suffering from post-traumatic stress disorder (PTSD). The character of his discharge was overly punitive. The applicant further details the contentions in a self-authored statement submitted with the application.
3. A review of the applicant's service records shows:

- a. The applicant enlisted in the Regular Army on 17 June 1998, with continuous honorable service until 6 November 2000; he reenlisted on 7 November 2000.
- b. He served in an overseas location in Korea from 22 August 2002 to 18 November 2003.
- c. Five DA Forms 4856, reflect he was counseled for:
 - Disrespecting noncommissioned officers (NCO)s
 - Privileges being restricted because he abused his family member
 - Disobeying a lawful order
- d. Military Police Report, 23 March 2006, reflects he was apprehended on post for:
 - domestic violence
 - spouse, abuse-civilian female victim
 - simple assault, consummated by a battery
- e. Memorandum: subject: Serious Incident Report, 24 March 2006, shows on or about 2030 hours, the applicant was apprehended because it was reported the applicant pushed his spouse in the face and left the residence.
- f. A No Contact Order, 26 July 2005, shows the applicant was apprehended for or suspected of domestic violence and ordered not to communicate with his spouse for a minimum of 72 hours.
- g. DD Form 2808, 24 May 2006, reflects the examining medical physician noted in the comments section: Graves' disease.
- h. DA Form 3822-R (Report of Mental Status Evaluation), 25 May 2006, reflects the applicant was diagnosed with:
 - AXIS I – partner relational problems
 - AXIS II – deferred
 - AXIS III – none impacting
- i. DA Form 2627 (Record of Proceedings Under Article 15, UCMJ (Uniform Code of Military Justice)), reflects the applicant received a Field Grade Article 15, UCMJ, for on 23 March 2006, unlawfully striking J. F. in the face with an open hand. The punishment included a reduction from Specialist / E-4 to Private / E-1.
- j. On 23 June 2006, his commander notified him of his intent to separate him under the provisions (UP) of Army Regulation (AR) 635-200 (Personnel Separations – Active

Duty Enlisted Administrative Separations), Chapter 14, paragraph 14-12b, due to pattern of misconduct.

k. On 27 June 2006, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than general (under honorable conditions) discharge.

l. His chain of command recommended approval and that his character of service be under other than honorable conditions. The intermediate commander recommended disapproval of the conditional waiver.

m. On 17 August 2006, the separation authority disapproved the applicant's conditional waiver.

n. On 29 August 2006, the applicant unconditionally waived consideration of the case before an administrative separation board.

o. On 16 October 2006, the separation authority approved the separation and directed an under other than honorable conditions discharge.

p. Accordingly, he was discharged with an under other than honorable conditions on 25 October 2006. The applicant's DD Form 214 reflects he completed 8 years, 4 months, and 9 days of net active service and was awarded the:

- Army Achievement Medal, 4th Award
- Army Good Conduct Medal, 2nd Award
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Noncommissioned Professional Development Ribbon

4. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

5. 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

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his other than honorable discharge. He contends he experienced mental health conditions including PTSD 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 17 June 1998; 2) He

was counseled 4 times between 05 February 2004 and 02 August 2005 for: Disrespecting his NCO(s), post restrictions due to abusing a family member, and disobeying a lawful order; 3) He received a no contact order on 26 July 2005 due to domestic violence against his spouse; 4) The applicant asserts he deployed to Kuwait and was awarded a Global War on Terror award 5) Per a 23 March 2006 military police report, the applicant was apprehended for domestic violence, spousal abuse on-post, for domestic violence. He received NJP for this on the same day; 6) The Charge Sheet, if any, leading to a referral to a court-martial was not available in his records; 7) The applicant was discharged on 25 October 2006, Chapter 14 (14-12b)- due to a pattern of misconduct. His character of service was under other than honorable conditions. He completed 8 years, 4 months, and 9 days net active service.

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

c. The applicant asserts he experienced mental health conditions including PTSD while on active service that mitigate his misconduct. There is insufficient evidence that the applicant reported or was diagnosed with any mental health conditions including PTSD, aside from a partner relational problem, while on active service. He attended behavioral health treatment for one session on 22 August 2005 for the treatment of irritability at work and the resulting disrespect of his NCOs and was diagnosed with an occupational and partner relational problem. During this encounter, the applicant reported irritation within the context of his marriage and not feeling he was treated with respect at work. Following this encounter, the applicant primarily attended treatment at the Family Advocacy Program as a result of being Command referred due to allegations of spousal abuse beginning on 03 April 2006 until 10 May 2006 and three phone contacts for referrals between 07 November 2006 and 13 November 2006. His diagnoses during these encounters varied from partner relational problems to marital and parent/child problems. On 25 May 2006, he underwent a mental status evaluation which cleared him from a mental health perspective for separation proceedings and was diagnosed with partner relational problems.

d. A review of JLV revealed that the applicant connected with the VA on 12 March 2014 and attended medical care infrequently since that time. There was no evidence provided of mental health care through the VA. However, he holds a VA mental health diagnosis of depressive disorder, but no connection was provided from his diagnosis to his time in service. The applicant has not been diagnosed with a service-connected mental health condition, including PTSD; however, he is currently 10% VA service-connected for physical conditions. The applicant provided documentation regarding civilian mental health care from his primary care medical providers primarily through

medication management for treating symptoms of depression, anxiety, insomnia, PTSD, and anger/irritability since 06 March 2024. Per the applicant's report, his civilian provider(s) have attributed the applicant's PTSD symptoms to his time in military service. However, the official diagnoses the applicant was documented as carrying with his civilian provider were major depressive disorder, recurrent, moderate; irritability; and insomnia due to other mental disorder.

e. Based on the available information, it is the opinion of the Medical Advisor that there is sufficient evidence to support the applicant had a condition or experience that partially mitigates his misconduct which led to his 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 mental health conditions including PTSD that mitigate his misconduct. The applicant was previously treated for irritability and interpersonal difficulties during his time in service. The applicant has also been diagnosed after his discharge by the VA with non-service-connected depression, and he has been diagnosed in 2024 by a civilian medical provider with symptoms of PTSD connected to his military service, major depressive disorder, and insomnia.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health symptoms including PTSD while on active service. His civilian medical provider noted the applicant displayed symptoms related to PTSD that they attributed to his time in military service.

(3) Does the condition experience actually excuse or mitigate the misconduct? Partially, there is sufficient evidence beyond self-report that the applicant has been diagnosed with symptoms consistent with service-connected mental health conditions including PTSD. The applicant's civilian medical provider(s) diagnosed the applicant with major depressive disorder and insomnia that were not officially connected to his time in service. However, the civilian provider noted that the applicant displayed symptoms attributable to PTSD related to his military service. The applicant did engage in some erratic misconduct such as not following orders, which can be a natural sequelae to some mental health conditions including PTSD. However, the presence of misconduct is not sufficient evidence of a mental health condition. In addition, the applicant repeatedly engaged in the misconduct of assault and domestic violence. There is no nexus between this type of misconduct and the applicant's reported mental health conditions including PTSD in that: 1) These types of misconduct are not a part of the natural history or sequelae of the applicant's reported mental health conditions and; 2) The applicant's reported mental health conditions broadly do not impact one's ability to distinguish right from wrong and act in accordance with the right. Yet, the applicant

contends he experienced a mental health condition or experience while on active service that mitigates his misconduct, and the applicant's contention is sufficient for consideration per the Liberal Consideration Policy.

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 applicant was separated for patterns of misconduct under the provisions of Army Regulation 635-200, chapter 14-12b. Based on the medical review the Board concurred there is no nexus between this type of misconduct and the applicant's reported mental health conditions including PTSD in that: 1) These types of misconduct are not a part of the natural history or sequelae of the applicant's reported mental health conditions and; 2) The applicant's reported mental health conditions broadly do not impact one's ability to distinguish right from wrong and act in accordance with the right. Therefore, the Board denied relief.

2. The Board considered the following Kurta questions under liberal consideration:

a. Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions including PTSD that mitigate his misconduct. The applicant was previously treated for irritability and interpersonal difficulties during his time in service. The applicant has also been diagnosed after his discharge by the VA with non-service-connected depression, and he has been diagnosed in 2024 by a civilian medical provider with symptoms of PTSD connected to his military service, major depressive disorder, and insomnia.

b. Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health symptoms including PTSD while on active service. His civilian medical provider noted the applicant displayed symptoms related to PTSD that they attributed to his time in military service.

c. Does the condition experience actually excuse or mitigate the misconduct? Partially, there is sufficient evidence beyond self-report that the applicant has been diagnosed with symptoms consistent with service-connected mental health conditions including PTSD. The applicant's civilian medical provider(s) diagnosed the applicant with major depressive disorder and insomnia that were not officially connected to his

time in service. However, the civilian provider noted that the applicant displayed symptoms attributable to PTSD related to his military service. The applicant did engage in some erratic misconduct such as not following orders, which can be a natural sequelae to some mental health conditions including PTSD. However, the presence of misconduct is not sufficient evidence of a mental health condition. In addition, the applicant repeatedly engaged in the misconduct of assault and domestic violence. There is no nexus between this type of misconduct and the applicant's reported mental health conditions including PTSD in that: 1) These types of misconduct are not a part of the natural history or sequelae of the applicant's reported mental health conditions and; 2) The applicant's reported mental health conditions broadly do not impact one's ability to distinguish right from wrong and act in accordance with the right. Yet, the applicant contends he experienced a mental health condition or experience while on active service that mitigates his misconduct, and the applicant's contention is sufficient for consideration per the Liberal Consideration Policy.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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, 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. Title 10, USC, section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.
3. Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) in effect at the time, set forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct. Paragraph 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian or military

authorities 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 civilian law and time-honored customs and traditions of the Army.

a. An honorable discharge is a separation with honor. 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. An under other than honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

4. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

5. The Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta Memorandum]. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury (TBI), 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. 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.

a. Guidance documents are not limited to under other than honorable conditions discharge characterizations but rather apply to any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from general to honorable characterizations.

b. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.

c. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

6. 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.

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 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.

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.

//NOTHING FOLLOWS//