

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 May 2025

DOCKET NUMBER: AR20240007293

APPLICANT REQUESTS:

- An upgrade of his under other than honorable conditions discharge
- Change to the narrative reason for separation to reflect disability

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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 has tried for many years to receive help in getting his status changed and his disability approved. Every lawyer he has spoken to has been unable to assist him, as his claims were not properly closed. He is unable to appeal because of this issue. The last lawyer he consulted with told him that he should reach out to his senator to help him get his discharge status changed based on the circumstances at that time. Posttraumatic stress disorder (PTSD) makes it very difficult for him to ask for help.

b. All medical records have been attached to his original disability claim. He also included a detailed account of the experiences he faced over several months during his time in Afghanistan and immediately following his return to base. Upon arriving at Fort Bragg, he was diagnosed with and depression and prescribed medication. He was on this medication for approximately 45 days before ultimately going absent without leave (AWOL). Since his discharge in 2004, he has consistently received treatment for PTSD and depression.

c. Please be advised that the Army Board for Correction of Military Records functions independently and does not coordinate with the Department of Veterans Affairs (VA). Consequently, this agency does not have access to any documents that may have been submitted to the VA for disability claims.

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

a. He enlisted in the Regular Army on 9 April 2003.

b. He served in Afghanistan from 1 November 2003 – 30 June 2004.

c. His duty status changed as follows:

- From Failure to Report to Absent Without Leave (AWOL), effective 16 September 2004
- From AWOL to Dropped from Rolls (DFR), effective 17 October 2004

d. DD Form 616 (Report of Return of Absentee), dated 12 October 2005, reflects he was apprehended by civil authorities and returned to military control.

e. On 8 November 2005, his commander notified him of his intent to separate him under the provisions of AR 635-200, chapter 14-12c, commission of a serious offense, with a character of service of under other than honorable conditions.

f. On 8 November 2005, he was afforded the opportunity to consult with appointed counsel; however, he declined the opportunity. In addition, he elected not to submit statements on his own behalf.

g. His Battalion and Brigade Commanders recommended elimination from the service for commission of serious offense, with a character of service of under other than honorable conditions.

h. On 30 November 2005, the separation authority approved separation UP of AR 635-200, chapter 14-12c for commission of a serious offense; he directed the applicant's service be characterized as under other than honorable conditions

i. Accordingly, he was discharged on 12 December 2005, with an under other than honorable conditions character of service, he completed 1 year, 7 months, and 3 days net active service this period. He had lost time from 16 September 2004 to 16 October 2005.

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 and a medical discharge due to disability. Specifically, he contends mental health conditions including PTSD 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 on 09 April 2003; 2) He deployed to Afghanistan from 01 November 2003 to 30 June 2004; 3) The applicant went AWOL from 16 September 2004 to 12 October 2005; 4) The applicant was discharged on 12 December 2005, Chapter 14-12c, misconduct, (serious offense). His character of service was under other than honorable conditions. The applicant completed 1 year, 7 months, and 3 days of net active service. He had lost time from 16 September 2004 to 16 October 2005.

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. 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, which mitigates his misconduct. Per the applicant's report, following his deployment and upon his return CONUS, he was diagnosed with depression and prescribed medication. He indicated that he was on this medication for approximately 45 days before ultimately going AWOL. On 27 October 2005, the applicant was documented to have been evaluated by a licensed clinical psychologist as a part of his chapter 14-12c procedures and was cleared from a mental health perspective for continued administrative processing without any reported mental health symptoms or diagnosis. There is insufficient evidence beyond self-report that the applicant was formally diagnosed with a mental health condition, including PTSD.

d. A review of JLV did not reveal any results. The applicant reported that following his discharge from military service, he has consistently received treatment for PTSD and depression, without further detail provided. There is insufficient evidence that he was formally diagnosed with any mental health disorder and there is insufficient evidence at this time that the applicant has ever received any service-connected disability for any mental health condition, including PTSD, at this time.

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 and/or to warrant a change in discharge to a permanent medical retirement. There is insufficient evidence that the applicant underwent greater than 6 months of mental health treatment, evidence of hospitalization for psychiatric purposes, nor was there sufficient evidence that the applicant was ever placed on a permanent psychiatric profile while on active service. Therefore, there is insufficient evidence the applicant's case warrants a referral to DES from a behavioral health perspective, at this time. However, the applicant reported experiencing depression and subsequent treatment following his deployment. Avoidant behavior, such as going AWOL could be a natural sequelae of some mental health conditions. As a result, per the Liberal Consideration Policy, the applicant's asserted presence and treatment of depression merits consideration by the board.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant contends he was experiencing mental health conditions including PTSD that mitigates the misconduct leading to his separation. The applicant reported treatment for depression following his deployment prior to his misconduct and noted ongoing difficulties and treatment for PTSD following his discharge from active service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced mental health conditions including PTSD at the time of his active service that mitigates his misconduct. The applicant reported treatment for depression following his deployment prior to his misconduct and noted ongoing difficulties and treatment for PTSD following his discharge from active service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report that the applicant was formally diagnosed with PTSD or any other mental health condition during his active service. The applicant did go AWOL while on active service, and this type of avoidant behavior can be a natural sequelae of PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. Yet, the applicant contends he experienced mental health conditions including treatment for depression while on active service, which mitigates his misconduct. The applicant's self-assertion is sufficient for consideration of mitigation by the board 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 evidence of record establishes that the applicant was reported AWOL on 16 September 2004 and remained in that status until apprehended and returned to military control on or about 12 October 2005. In response, the applicant's commander initiated separation proceedings pursuant to the governing regulation. The applicant was afforded the opportunity to consult with counsel, and following such consultation, his separation was duly executed. The Board considered the medical advisory opinion and concurred with its findings. Specifically, the advisory concluded that there was insufficient evidence to support the existence of a medical condition or experience that would mitigate the applicant's misconduct or justify a change in discharge to a permanent medical retirement. The record does not demonstrate that the applicant:

- Underwent greater than six months of mental health treatment;
- Experienced psychiatric hospitalization; or
- Was ever placed on a permanent psychiatric profile during active service

Accordingly, the Board determined that the applicant's case does not warrant referral to the Disability Evaluation System from a behavioral health perspective. Based on the foregoing, the Board finds no basis for granting relief. The applicant's request is denied.

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 contends he was experiencing mental health conditions including PTSD that mitigates the misconduct leading to his separation. The applicant reported treatment for depression following his deployment prior to his misconduct and noted ongoing difficulties and treatment for PTSD following his discharge from active service.

b. Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced mental health conditions including PTSD at the time of his active service that mitigates his misconduct. The applicant reported treatment for depression following his deployment prior to his misconduct and noted ongoing difficulties and treatment for PTSD following his discharge from active service.

c. Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report that the applicant was formally diagnosed with PTSD or any other mental health condition during his active service. The applicant did go AWOL while on active service, and this type of avoidant behavior can be a natural sequelae of PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. Yet, the applicant contends he experienced mental health conditions including treatment for depression while on active service, which mitigates his misconduct. The applicant's self-assertion is sufficient for consideration of mitigation by the board per the Liberal Consideration Policy.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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. Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to their normal expiration of term of service.

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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

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. A characterization of under 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.

3. 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.

4. 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.

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.

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//