

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 March 2025

DOCKET NUMBER: AR20240007389

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

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

- Online Application
- Department of Veterans Affairs (VA) Rating, dated 4 June 2013
- VA Performance Appraisal, for the period ending 30 September 2023
- Leadership Development Institute (LDI) Application, Supervisor's Reference Form, dated 29 April 2024
- letter, Alexandria VA Health Care System (VAHCS), dated 9 May 2024
- photograph, youth football team

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 started having problems after his second tour in Afghanistan. He began experiencing angry outbursts, fatigue, lack of sleep, and other behavioral changes which led to his discharge for patterns of misconduct. He discovered he has service-connected post-traumatic stress disorder (PTSD). He now works at the VA serving other Veterans with PTSD. He has been accepted into the VA Leadership Development Institute and has set a goal of becoming a college graduate.
3. The applicant enlisted in the Regular Army on 6 September 2006. The highest rank he attained was specialist/E-4.
4. He served in Afghanistan from 26 December 2007 to 23 October 2008 and 14 March 2010 to 16 February 2011.

5. The applicant's immediate commander preferred nonjudicial punishment against him under the provisions of Article 15 of the Uniform Code of Military Justice on two occasions:

a. On 1 October 2010, for being disrespectful in language to a noncommissioned officer (NCO), on or about 22 September 2010; and for failure to go at the time prescribed to his appointed place of duty, on or about 25 September 2010. His punishment consisted of reduction to private first class/E-3, extra duty for 14 days, restriction for 14 days, and an oral reprimand. His appeal of punishment was denied.

b. On 25 January 2011, for being disrespectful in language and deportment toward an NCO, on or about 22 September 2010; and for failure to go at the time prescribed to his appointed place of duty, on or about 22 January 2011. His punishment consisted of reduction to private/E-2, extra duty for 14 days, restriction for 14 days, and an oral reprimand.

6. The applicant underwent a medical examination on or about 29 January 2011. The relevant DD Form 2807-1 (Report of Medical History) and corresponding DD Form 2808 (Report of Medical Examination) show the applicant reported occasional knee pain. The examining provider determined the applicant was medically qualified for service/chapter.

7. The applicant underwent a behavioral health evaluation on 30 January 2011. The evaluating provider determined the applicant was mentally responsible and had the mental capacity to participate in administrative proceedings. He was psychiatrically cleared for any administrative action deemed appropriate by his command. His screen for PTSD and traumatic brain injury were negative.

8. On 17 May 2011, the applicant's immediate commander notified the applicant of her intent to initiate separation action against him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12b, for patterns of misconduct.

9. The applicant consulted with counsel on 18 May 2011. He was advised of the basis for the contemplated action to separate him and its effect; of the rights available to him; and the effect of waiving his rights. He further acknowledged understanding that he may expect to encounter substantial prejudice in civilian life if he were issued a general discharge. He waived the right to have his case heard by an administrative separation board and elected not to submit a statement in his own behalf.

10. Subsequently, the applicant's commander formally recommended the applicant's separation from service, prior to his expiration term of service, under the provisions of Army Regulation 635-200, paragraph 14-12b, by reason of patterns of misconduct. The commander further recommended rehabilitative attempts were not practical, and the

applicant should receive an under honorable conditions (general) discharge. The intermediate commander concurred with the recommendations.

11. On 1 June 2011, the separation authority approved the recommended separation action, waived the rehabilitative transfer requirement, and directed the issuance of an under honorable conditions (general) character of service.

12. The applicant was discharged on 17 June 2011, under the provisions of Army Regulation 635-200, paragraph 14-12b, by reason of pattern of misconduct. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his character of service was under honorable conditions (general), with separation code JKA and reentry code RE-3. He completed 4 years, 9 months, and 12 days of net active service.

13. The Army Discharge Review Board considered the applicant's request for an upgrade of his service characterization on 22 August 2014. After careful consideration, the Board determined the quality of the applicant's service was not consistent with the Army's standards for acceptable personal conduct and performance of duty. His discharge and the characterization of service were both proper and equitable. His request for relief was denied.

14. The applicant provides:

a. The second page of a letter from the VA, shows the applicant has a service-connected disability rating of 50 percent for PTSD, effective 4 June 2013.

b. A VA Performance Appraisal shows the applicant's performance as an Inventory Management Specialist, for the period 1 October 2022 to 30 September 2023, was rated "Outstanding."

c. An LDI Application, Supervisor's Reference Form, dated 29 April 2024, and a letter from the Alexandria VAHCS, dated 9 May 2024, shows the applicant was recommended for and accepted to represent the Alexandria VAHCS at the 2024 South Central VA Health Care Network's LDI Program.

d. A photograph of a youth football team, presumably shows the applicant as a coach.

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) character of service. He contends he experienced PTSD that mitigates 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 6 September 2006; 2) The applicant deployed to Afghanistan from 26 December 2007-23 October 2008 and then again from 14 March 2010-16 February 2011; 3) The applicant's immediate commander preferred two nonjudicial punishments against the applicant between October 2010 and January 2011 for being disrespectful towards an NCO and failures to the time prescribed to his place of duty; 4) The applicant was discharged on 17 June 2011, Chapter 14-12b, by reason of pattern of misconduct. His character of service was under honorable conditions (general).

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) and VA hardcopy medical documentation provided by the applicant were also reviewed.

c. The applicant asserts he was experiencing PTSD as a result of his deployments while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service. The applicant was seen by behavioral health services while deployed in January 2011. He stated he was referred by his leadership out of concern that he was at higher risk for self-harm due to a recent Article 15 for having pornography on his government computer. The applicant denied any mental health symptoms other than frustration with his leadership and his desire to get out of the Army. He declined further behavioral health services. He was not diagnosed with a mental health condition. He was again referred to mental health services later in January 2011 by his leadership due to ongoing difficulty with his ability to get along with his NCOs and occupational problems. The applicant denied any mental health symptoms again, but he recognized his leadership wanted him to speak to someone to resolve his frustration. He again was not diagnosed with a mental health condition. The applicant was seen for a Mental Health Status evaluation as part of his administrative separation proceedings while deployed on 30 January 2011. He was screened for PTSD and Major Depression, and he was not diagnosed with a mental health condition and cleared from a psychiatric perspective to participate in any administrative proceedings deemed appropriate by Command.

d. A review of JLV provided evidence the applicant began to engage with the VA following his discharge in August 2011. He underwent a Compensation and Pension Evaluation in 2013, and he was diagnosed with service-connected PTSD. He has

attended behavioral health treatment for service-connected PTSD (currently 50%SC) related to his combat deployments.

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 which led to his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD.

(3) Does the condition/experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. The applicant did engage in erratic behavior while on active service following and during his combat deployments. This type of behavior can be a natural sequelae to PTSD. Therefore, per Liberal Consideration, the applicant's misconduct, which led to his discharge is mitigable.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising opinion of the Agency Medical Advisor that there is sufficient evidence to support the applicant had a condition or experience that mitigates his misconduct which led to his discharge. The Board acknowledged that while the applicant's behavioral health evaluation at the time of discharge did not identify PTSD, subsequent medical documentation and his post-service achievements provide compelling evidence of the condition's impact on his conduct.

2. The Board determined there is sufficient evidence of in-service mitigating factors to overcome the misconduct of two nonjudicial punishments for disrespect and failure to report to duty, which formed the basis for his separation. The Board found these infractions occurred in close proximity to his return from combat and are consistent with symptoms of PTSD. The applicant's honorable service in Afghanistan, totaling nearly two years in an imminent danger pay area, and his continued commitment to serving fellow veterans through his work at the VA demonstrate a significant post-service rehabilitation. Furthermore, his acceptance into the VA Leadership Development Institute and pursuit of higher education further reflect his dedication to personal growth and public service. Based on the applicant's combat service, documented mental health condition, and exemplary post-service conduct, the Board determined that the characterization of service should be upgraded to honorable and his narrative reason amended to Secretarial Authority.

3. Consideration was given to the Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD.

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(3) Does the condition/experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. The applicant did engage in erratic behavior while on active service following and during his combat deployments. This type of behavior can be a natural sequelae to PTSD. Therefore, per Liberal Consideration, the applicant's misconduct, which led to his discharge is mitigable.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by re-issuing the applicant a DD Form 214 showing his characterization of service as honorable and the narrative reason as secretarial authority.

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 (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 ABCMR applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if 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/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 on the basis of equity, injustice, or clemency grounds, Boards 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//