

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 April 2025

DOCKET NUMBER: AR20240007861

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) characterization of service, and an appearance before the board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for Review of Discharge)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20200005967 on 29 September 2020.

2. The applicant states he has suffered with having many headaches, flashbacks, nightmares, and vivid memories of dead Soldiers that he knew personally. He has voices telling him that he should have multiple women, he hardly gets any sleep, he is nervous whenever he is around large crowds, and he is always aware of his surroundings. Further, he has lost some of his hearing due to firing military weapons while in basic training. In addition, he has a constant ringing in his ears, and he has been diagnosed with Schizophrenia, severe depression, and he is currently on medication. Lastly, it has been very hard finding a job after serving in the military.

3. The applicant enlisted in the Regular Army on 13 June 2007. The highest grade he attained was E-3.

4. The applicant accepted nonjudicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on the following dates:

- on 14 October 2008, for failing to go at the time prescribed to his appointed place of duty, on or about 28 April 2008, 11 June 2008, 4 August 2008, 6 August 2008, 8 September 2008, and 24 September 2008

- 29 January 2009, for wrongfully using marijuana, between on or about 19 November and 19 December 2008
5. On 29 April 2009, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.
 6. On 1 May 2009, a DA Form 3822-R (Report of Mental Status Evaluation), shows he was evaluated by a psychiatrist and was cleared for any administrative action deemed appropriate by command.
 7. On 29 May 2009, the applicant's immediate commander notified him, that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12c, for Commission of a Serious Offense. The reason for his recommendation was the applicant received a Field Grade Article 15 for testing positive for Marijuana on 12 December 2009.
 8. On 10 June 2009, the applicant acknowledged that he had been given the opportunity to consult with counsel and was advised of the basis for the contemplated actions to separate him and of the rights available to him. He elected to submit a statement in his own behalf, dated 8 June 2009, wherein he requested a rehabilitative transfer rather than separation from the Army.
 9. On 10 June 2009, the applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 14, for misconduct, prior to his expiration term of service.
 10. On 11 June 2009, consistent with the chain of command's recommendations, the separation authority approved the recommended discharge and directed the issuance of a General Discharge Certificate.
 11. On 17 July 2009, the applicant was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c, for Misconduct (Drug Abuse). His service was characterized as under honorable conditions (General). He completed 2 years, 1 month, and 5 days of net active service.
 12. On 29 September 2020, the ABCMR considered the applicant's request for an upgrade of his discharge and determined his discharge was both proper and equitable, and denied his request.
 13. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

14. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service. He contends he experienced a traumatic brain injury (TBI) and mental health conditions including PTSD which 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 13 June 2007; 2) The applicant accepted nonjudicial punishment (NJP) on 14 October 2008 for failing to be on time to his place of duty six times between 28 April-24 September 2008; 3) On 29 January 2009, the applicant accepted NJP for using marijuana; 4) The applicant was discharged on 17 July 2009, Chapter 14-12c(2), for Misconduct (Drug Abuse). His service was characterized as under honorable conditions (general). He completed 2 years, 1 month, and 5 days of net active service; 5) On 29 September 2020, the ABCMR reviewed and declined the applicant's request for an upgraded discharge.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. The applicant asserts he was experiencing a TBI and mental health conditions including PTSD while on active service, which mitigates his misconduct. There is insufficient evidence the applicant was diagnosed with a TBI or mental health disorder, including PTSD while on active service. On 23 April 2009, the applicant underwent a Mental Status Exam as part of his administrative separation proceedings. The applicant was reported to not have evidence of a TBI, was not diagnosed with a mental health condition including PTSD, and was cleared from a psychiatric perspective for any administrative action deemed appropriate by command.

d. A review of JLV provided evidence the applicant has been provided intermittent emergency physical and mental health treatment starting in 2010 and assistance for homelessness by the VA. He underwent a Compensation and Pension evaluation in 2023. The applicant was not diagnosed with a service-connected mental health condition including PTSD or a TBI. He has received treatment for Major Depression from the VA till present.

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.

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 a TBI and mental health conditions including PTSD on active service, which mitigates his misconduct. The applicant has been diagnosed with nonservice-connected Major Depression by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced a TBI and mental health conditions including PTSD on active service, which mitigates his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a TBI or mental health condition including PTSD, while he was on active service. The applicant did engage in avoidant behavior such as drug abuse and not being on time to his place of duty multiple times, which can be a natural sequela to some mental health conditions including PTSD and possibly a TBI. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition or TBI at the time of active service. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for the board's consideration.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The Board concurred with the medical advisory official who found insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. The Board notes the applicant received two nonjudicial punishments for not being at his appointed place of duties on multiple days and for use of illegal drugs (marijuana). The Board determined there was no error or injustice and denied relief.

2. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced a TBI and mental health conditions including PTSD on active service, which mitigates his misconduct. The applicant has been diagnosed with nonservice-connected Major Depression by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced a TBI and mental health conditions including PTSD on active service, which mitigates his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a TBI or mental health condition including PTSD, while he was on active service. The applicant did engage in avoidant behavior such as drug abuse and not being on time to his place of duty multiple times, which can be a natural sequela to some mental health conditions including PTSD and possibly a TBI. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition or TBI at the time of active service. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for the board's consideration.

The Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

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

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 amendment of the ABCMR decision rendered in Docket Number AR20200005967 on 29 September 2020.


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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. It states that action will be initiated to separate a Soldier for misconduct when it was clearly established that rehabilitation was impracticable or unlikely to succeed. Paragraph 14-12c (Commission of a Serious

Offense) applied to commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense. First time offenders below the grade of sergeant, and with less than 3 years of total military service, may be processed for separation as appropriate.

5. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised post-traumatic stress disorder (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.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

//NOTHING FOLLOWS//