

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 March 2025

DOCKET NUMBER: AR20240007920

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

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Self-Authored Statement, 6 pages: The applicant provided a chronological account of his military career and the reasons why he believes his discharge should be upgraded for the Board's review.
- DA Form 3975 (Military Police Report), Dated 25 July 2009 shows off post drunken driving (Driving under the influence of alcohol)
- DA Form 2627(Record of Proceedings Under Article 15)
- DD Form 2329 (Record of Trial by Summary Court-Martial)
- DA Form 4430 (Department of the Army Report of Result of Trial)
- Notification of Separation
- Acknowledgment
- Election of Rights
- Initiation of Separation
- Chain of Command Recommendation
- Separation Authority Approval
- DD Form 214(Certificate of Release or Discharge from Active Duty) dated 9 March 2012
- Medical Documentation, 2009-2012: shows the physicians notes regarding the applicant's chronic physical health, chronic mental health and medication prescribed

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 would like an upgrade to his discharge first is due to an injury he received while on his second deployment. Before being discharged out of the army he was allowed to get surgery on his foot. Since separating from the army his injury has returned and is very painful. He does not have Veteran Administration (VA) benefits so he cannot get his foot taken care of without a large cost. It has resulted in him missing work because of aforementioned injury. The second reason he believes his discharge should be upgraded is due to his ongoing struggle with his mental health and Post-Traumatic Stress Disorder (PTSD). He would like to his discharge upgraded due to my worsening medical conditions. His body is starting to break down from his injuries in the Army. He is afraid he needs surgery again on his foot but cannot afford to take the amount of time needed to have that surgery. He would also like to see a VA psychiatrist to help him with the mental health issues he incurred during his time in the Army. He has fought for this country twice and he wants to keep fighting to be in his daughter's life. He would to be there physically and mentally.

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

- a. He enlisted in the Regular Army on 24 September 2007.
- b. He served two tours in Afghanistan 20080510-20080705 and 20091205-20101116.
- c. On 12 August 2009, he accepted nonjudicial punishment for wrongfully:
 - driving under the influence of alcohol in a reckless manner
 - failing to maintain control
 - striking another vehicle
 - driving in to a ditch
 - left the scene of the accident without making his identity known
- d. On 18 August 2009 the applicant received a General Officer Memorandum of Reprimand (GOMOR) for driving under the influence of alcohol on 25 July 2009.
- e. The applicant acknowledged the GOMOR and submitted a rebuttal on 30 August 2009. (available for the Boards review)
- f. On 22 September 2009 the GOMOR was placed in the applicant's permanent military record.
- g. On 15 November 2011, at Fort Bragg, NC, the applicant was convicted/or found guilty by a summary court-martial (SCM) of:
 - Charge I wrongfully possessing drug paraphernalia

- Charge II wrongfully introduce:
 - Specification 1: 17 dosages of Lysergic Acid Diethylamide (LSD)
 - Specification 2: 9 grams or spice
 - Specification 3: use Cocaine

h. On 9 December 2011 the immediate commander- notified applicant of his intent to separate him under the provisions (UP) of Chapter 14, Army Regulation (AR) 635-200, paragraph 14-12c for commission of a serious offense. The commander recommended that his period of service be characterized as other than honorable conditions. He acknowledged the same day.

i. He was advised by consulting counsel of the basis for the contemplated action to separate him for commission of a serious offense UP of Chapter 14-12c, AR 635-200 and its effects; of the rights available to him; and the effects of any action by him waiving his rights.

j. His commander/chain of command recommend approval and that his character of service be under honorable conditions.

k. On 31 January 2012, the separation authority approved separation UP of AR 635-200, chapter 14 for commission of a serious offense; he directed an other than honorable characterization of service.

l. Accordingly, the applicant was discharged under honorable conditions on 9 March 2012, he completed 4 years, 5 months, and 16 days of active service. It also shows he was awarded or authorized the:

- Army Achievement Medal (2nd award)
- Meritorious Unit Commendation
- National Defense Service Medal
- Afghanistan Campaign Medal w/2 Campaign Stars (2nd award)
- Global War on Terrorism Service Medal
- Army Service Ribbon
- Overseas Service Bar (2nd Award)
- NATO Medal
- Combat Action Badge
- Parachutist Badge

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

5. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. The applicant selected PTSD and OMH on his application as related to his request.

b. 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:

- Applicant enlisted in the Regular Army on 24 September 2007.
- Applicant served in Afghanistan from 10 May 2008 to 5 July 2008 and again from 5 December 2009 to 16 November 2010.
- On 12 August 2009, he accepted nonjudicial punishment for wrongfully:
 - driving under the influence of alcohol in a reckless manner
 - failing to maintain control
 - striking another vehicle
 - driving in to a ditch
 - leaving the scene of the accident without making his identity known
- On 18 August 2009 the applicant received a General Officer Memorandum of Reprimand (GOMOR) for driving under the influence of alcohol on 25 July 2009.
- On 15 November 2011, at Fort Bragg, NC, the applicant was convicted/or found guilty by a summary court-martial (SCM) of (the available service record is void the charge sheet):
 - Charge I wrongfully possessing drug paraphernalia
 - Charge II wrongfully introduce
 - Specification 1: 17 dosages of Lysergic Acid Diethylamide (LSD)
 - Specification 2: 9 grams of spice
 - Specification 3: used Cocaine
- On 9 December 2011 the immediate commander- notified applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200, Chapter 14, paragraph 14-12c for commission of a serious offense. The commander recommended his period of service be characterized as under other than honorable conditions. He acknowledged the same day.
- Applicant was discharged on 9 March 2012 under the provisions of Army Regulation (AR) 635-200, paragraph 14-12c, by reason of Misconduct (Serious Offense). His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his service was characterized as Under Other Than Honorable Conditions (UOTHC) with separation code "JKQ" and reentry code "3."

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states he would like an upgrade to his discharge due to an

injury he received while on his second deployment. Before being discharged out of the army he was allowed to get surgery on his foot. Since separating from the army his injury has returned and is very painful. He does not have Veteran Administration (VA) benefits so he cannot get his foot taken care of without a large cost. It has resulted in him missing work because of the aforementioned injury. The second reason he believes his discharge should be upgraded is due to his ongoing struggle with his mental health and Post-Traumatic Stress Disorder (PTSD). He would like to have his discharge upgraded due to his worsening medical conditions. His body is starting to break down from his injuries in the Army. He is afraid he needs surgery again on his foot but cannot afford to take the amount of time needed to have that surgery. He would also like to see a VA psychiatrist to help him with the mental health issues he incurred during his time in the Army. He has fought for this country twice and he wants to keep fighting to be in his daughter's life. He wants to be there physically and mentally.

d. The active-duty electronic medical record available for review indicates the applicant was initially evaluated on 10 July 2008 via a primary care provider who referred him for a same day social work appointment for counseling and a follow-up appointment for medication management. He reported experiencing anxiety since returning from his deployment in Afghanistan and further indicated a history of mental health issues since childhood. During that appointment, he described having disrupted sleep, migraine headaches, depressive symptoms, as well as worry about his wife's medical issues. The applicant was diagnosed with Adjustment Disorder with Anxiety and Depressed Mood. On 5 March 2009, the applicant was escorted to behavioral health by a medical provider due to his significant distress related to marital problems. He reported anxiety, depression, mood swings, sleep problems, feelings of emptiness, low energy, attention/ concentration problems, irritability and feelings of worthlessness. He further reported an extensive psychiatric history prior to military service that he did not report upon enlistment. He was diagnosed with Adjustment Disorder with Anxiety and Depressed Mood and recommended for psychotherapy and medication management. He was seen on 10 March 2009 for individual therapy and on 11 March 2009 by the Family Advocacy Program for couples' counseling. A note dated 25 March 2009 shows he was seen for a follow-up medical appointment to provide a medication refill, and the applicant was diagnosed with Anxiety Disorder. The record shows he received ongoing behavioral health care via therapy and medication management until August 2009. On 6 October 2009 he presented to ASAP for an initial evaluation following a DUI and automobile accident. He was diagnosed with Alcohol Disorder. A note dated 3 July 2010 shows the applicant was diagnosed with Depression with Anxiety and restarted on antidepressant medication. Another note dated 11 November 2010 states the applicant's symptoms had been treated for several months with medication. During this appointment he reported distress over a friend's death as well as increased Xanax use to manage "combat stress". Applicant was provided with a sleep aid, an increased dosage of his antidepressant medication, and a less addictive medication for anxiety to be taken as needed. He was diagnosed with Anxiety Disorder.

The applicant participated in a post-deployment assessment on 22 November 2010 and was diagnosed with Adjustment Disorder with Disturbance of Emotions but reported symptoms consistent with PTSD including anxiety, nightmares, hyperarousal, anger issues, and excessive alcohol consumption. The record shows the applicant was treated in the hospital on 9 June 2011 following experiencing a seizure, he was diagnosed with new onset Seizure Disorder. The medical record shows the applicant received ongoing ASAP services up until his discharge.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected, likely due to the characterization of his service.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his misconduct.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected PTSD on his application as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant twice deployed to a combat zone. In addition, he was treated with psychotropic medication while in service and the electronic medical record shows he was diagnosed with Adjustment Disorder; Anxiety Disorder; Depression; Alcohol Disorder; Seizure Disorder; and Opioid Abuse.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to driving under the influence of alcohol and wrongful possession of drug paraphernalia as well as LSD, cocaine, and spice. The service record shows the applicant served two tours in Afghanistan and was treated via medication and psychotherapy for his BH conditions. While in service he was diagnosed with Adjustment Disorder; Anxiety Disorder; Depression; Seizure Disorder; Opioid Abuse and Alcohol Disorder. In addition, he experienced the stressor of significant marital conflict and the death of a close friend. Given the nexus between Anxiety and Depression and the use of substances to alleviate/cope with the symptoms of his behavioral health conditions, the applicant's misconduct of driving under the influence of alcohol and wrongful possession of drug paraphernalia as well as LSD, cocaine, and spice are mitigated by his BH conditions.

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 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 conviction by court-martial for the illegal use of drugs. However, the Board concurred with the Agency Behavioral Health Advisor's medical advisory official who opined that there is sufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his misconduct. The Board notes that the applicant had PTSD as a result of his deployment and a foot injury, which caused a great deal of pain. Based on a preponderance of the evidence, the Board concluded that the applicant's characterization of service should be upgraded to Honorable and granted 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 discharge? Yes. The applicant selected PTSD on his application as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant twice deployed to a combat zone. In addition, he was treated with psychotropic medication while in service and the electronic medical record shows he was diagnosed with Adjustment Disorder; Anxiety Disorder; Depression; Alcohol Disorder; Seizure Disorder; and Opioid Abuse.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to driving under the influence of alcohol and wrongful possession of drug paraphernalia as well as LSD, cocaine, and spice. The service record shows the applicant served two tours in Afghanistan and was treated via medication and psychotherapy for his BH conditions. While in service he was diagnosed with Adjustment Disorder; Anxiety Disorder; Depression; Seizure Disorder; Opioid Abuse and Alcohol Disorder. In addition, he experienced the stressor of significant marital conflict and the death of a close friend. Given the nexus between Anxiety and Depression and the use of substances to alleviate/cope with the symptoms of his behavioral health conditions, the applicant's misconduct of driving under the influence of alcohol and wrongful possession of drug paraphernalia as well as LSD, cocaine, and spice are mitigated by his BH conditions.

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

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: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 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 9 March 2012 to show in:

- item 24 (Character of Service): Honorable
- item 25 (Separation Authority): Army Regulation 635-200
- item 26 (Separation Code): JFF
- item 28 (Narrative Reason for Separation): Secretarial Authority

//SIGNED//
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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 635-5 (Separation Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

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

a. Honorable Discharge states 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. General Discharge states 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. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

4. 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.

5. 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 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 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, traumatic brain injury, sexual assault, or sexual harassment. 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.

//NOTHING FOLLOWS//