

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 March 2025

DOCKET NUMBER: AR20240008610

APPLICANT REQUESTS:

- an upgrade of his under other than honorable discharge
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Department of Veterans Affairs (VA) Form 21-0781 (Statement in support of Claim for Service Connection for Post Traumatic Stress Disorder (PTSD))
- Department of Veterans Affairs (VA) Form 21-4138 (Statement in Support of Claim)

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 on 19 July 2022 he watched his best friend crash on his motorcycle, get decapitated and then died in his arms with brain matter, bone, and blood all over him. To this day he can't sleep without reliving those moments in his dreams. He is afraid to sleep. He lost his mind. He was investigated, unable to attend his funeral and he attempted suicide. His mind was mush. He fought with everyone over nothing; he felt dead inside. He was distraught, depressed, no emotion, and had no desire to live. He got into trouble after trouble. He was disrespectful and insubordinate; he needed psychiatric counseling and couldn't get it. He put in a DD Form 4187 (Personnel Action) to go to Germany, anything to get away. He needed counseling, help, and asked for it and was laughed at. He self-destructed without help.
3. The applicant provides the following documents:

a. A self-authored statement that describes the applicant's life prior to, after and the experience of witnessing the death of his best friend.

b. A copy of VA Statement in support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) and VA Statement in Support of Claim that provides the accounts of what happened to the applicant's best friend leading up to his death.

4. A review of the applicant's service record does not contain the entire separation packet; however, the available record shows:

a. He enlisted in the Regular Army on 2 November 2004.

b. On 12 August 2008, the immediate commander-initiated separation action against the applicant for commission of a serious offense. He recommended that his period of service be characterized as under other than honorable conditions. The intermediate commanders recommended approval.

c. On 14 August 2008, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation, under the provisions of Chapter 14, AR 635-200, paragraph 14-12c for commission of a serious offense. He would be issued an under other than honorable conditions characterization of service.

d. On 25 August 2008, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 3 year, 9 months, and 24 days of active service with no lost time. He was assigned separation code JKQ and the narrative reason for separation listed as "Misconduct, (Serious Offense)" with reentry code 3. It also shows he was awarded or authorized the following:

- Army Achievement Medal
- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Korean Defense Service Medal
- Army Service Ribbon
- Overseas Service Bar

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

6. 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.

7. By regulation, 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.

8. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to something more favorable. He contends he experienced an undiagnosed mental health condition, including PTSD, that mitigates his misconduct.

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:

- The applicant enlisted into the Regular Army on 2 November 2004.
- A review of the applicant's service record does not contain the entire separation packet. However, a memorandum showed that on 12 August 2008 the applicant's immediate commander-initiated separation action against the applicant for commission of a serious offense, and he reported this as the applicant being disrespectful in language toward an NCO, wrongfully communicating a threat to another soldier, and being drunk and disorderly. All of these offenses occurred on 26 May 2008.
- The applicant was discharged on 25 August 2008 and completed 3 year, 9 months, and 24 days of active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he witnessed the decapitation and death of his best friend in a motorcycle accident, and he indicates PTSD and "other mental health" as issues/conditions related to his request. The application was void of any medical or mental health documentation. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed an initial encounter with DoD mental health on 25 September 2006 as a walk-in escorted by his team leader. He reported distress related to marital problems and concerns that his wife was leaving him, and he discussed obsessive-compulsive type behaviors and reported a diagnosis of OCD while in high school, which was treated with an antidepressant medication. He was diagnosed

with Adjustment Disorder with Depressed Mood, OCD, and Partner Relational Problems and was started on an antidepressant. His next encounter was on 22 April 2008 when he again walked-in to the MH clinic reporting high irritability, anxiety, depression, and interpersonal conflicts. He had 12 encounters with MH through July 2008, and the primary focus of treatment was on managing his anger and discontent toward his command and others in his unit. He was prescribed a medication for sleep and mood. On 16 July 2008 a Mental Status Evaluation was conducted as part of a Chapter 14 discharge. The applicant reported he was being discharged for "multiple Articles, defiance, CID reports, and showing up to formation intoxicated." There was no indication of any mental health symptoms noted, and he was diagnosed with Antisocial Personality Disorder. The final MH related encounter was through the Emergency Department when the applicant was brought in due to a head injury secondary to an altercation. He reported suicidal ideation, and it is noted that he was cleared to leave with an appointment to see MH the following Monday.

e. The applicant initiated mental health care through the VA via the ER in January 2018 and reported depression, substance abuse, and suicidal ideation. He was admitted voluntarily under "Humanitarian Emergency" and observed for stabilization and assessment. He discharged the following day and was provided with some follow up phone contacts to ensure stability. His diagnoses were Mood Disorder Unspecified, Amphetamine Use Disorder, Alcohol Use Disorder, and ADHD (by history). His next encounter was in January 2019 through the Veteran Justice Outreach program. He was incarcerated, and documentation from July 2024 indicated he was not on parole yet and not in need of services.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to fully opine on the change of his characterization of discharge because of the absence of the specific facts and circumstances surrounding his discharge processing. A memorandum from his commander indicated he was being discharged related to being disrespectful in language, wrongfully communicating a threat to another soldier, and being drunk and disorderly. The applicant's in-service mental health and medical records do provide some evidence of these behaviors, and he was diagnosed with an Adjustment Disorder as related to interpersonal conflicts within his unit.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had a mental health condition, including PTSD, at the time of the misconduct. DoD records show he received mental health treatment from April through July 2008 and was diagnosed with Adjustment Disorder with Depressed Mood. The primary focus of treatment was related to interpersonal difficulties with his command and others in his unit, and there was no indication of any

PTSD symptoms or traumatic experiences while in service. The applicant also utilized VA in 2018, including a hospitalization, for depression, suicidal ideation, and substance abuse, and his diagnoses were Mood Disorder, Amphetamine Use Disorder, Alcohol Use Disorder, and ADHD (by history).

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service. In his personal statement included in the application he details a traumatic event related to the loss of life of a close friend, but this event is not discussed or addressed in any of his 16 mental health encounters.

(3) Does the condition or experience actually excuse or mitigate the discharge? NA. A review of military medical and mental health records revealed the applicant was diagnosed with an Adjustment Disorder while on active service. The primary content of his treatment was related to the difficulties he was experiencing in getting along with his command and others in his unit. There was no report of any trauma-related experiences. However, in the absence of information related to his discharge, there is insufficient evidence to demonstrate a nexus between his mental health condition and the misconduct that generated his discharge. However, the applicant's assertion of an undiagnosed mental health condition, including PTSD, as a mitigating factor, per Liberal Consideration, warrants consideration by the board.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the pattern of misconduct leading to the applicant's separation and the lack of mitigation found within the medical review for the misconduct, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

//SIGNED//

X

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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (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. Paragraph 3-7b (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.

3. 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.

4. 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.

5. 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; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to 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 that misconduct which led to the discharge.

6. Section 1556 of Title 10, United States Code, 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 applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//