

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 May 2025

DOCKET NUMBER: AR20240008905

APPLICANT REQUESTS: Upgrade of his under honorable conditions (general) discharge. Additionally, he requests removal of court-martial documents from his service record.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Veterans Affairs (VA) rating decision, service connection for schizoaffective disorder, bipolar type with cannabis use disorder, stimulant use disorder, and unspecified personality disorder granted with an evaluation of 70% effective September 3, 2021
- Post-service training certificates for:
 - Legal Assistant/Paralegal
 - Interviewing and Investigating
 - Personnel Injury/Torts
 - Family Law
 - Criminal Law
 - Civil Litigation

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 severe mental health issues led to his administrative separation. He disclosed his issue to his superior officers; however, they decided to make an example out of him opposed to helping him. The VA awarded him service connection for mental health illness. With the support of his family, he found a passion in the study of law and spent the past two years earning certificates in the paralegal career field.

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

- a. He enlisted in the Regular Army on 9 November 2004.
- b. He tested positive for marijuana from a urine sample taken on 8 December 2005.
- c. Before a summary court-martial on 8 February 2006, at Fort Lewis, WA, he was found guilty of testing positive for marijuana.
- d. The court sentenced him to reduction to E-1, forfeiture of \$849.00 pay, and confinement for 30 days. The sentence was approved, and the record of trial was forwarded for appellate review.
- e. He underwent a mental status evaluation, on 8 March 2006. He was cleared to participate in any administrative actions deemed appropriate by the command.
- f. His commander notified him on 23 March 2006, that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, paragraph 14-12c(2) for commission of a serious offense. As the specific reasons, the commander noted his use of marijuana.
- g. On 3 April 2006, the applicant consulted with counsel and was advised of the basis for the contemplated separation action, the possible effects of the discharge, and the rights available to him. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a discharge/character of service that is less than honorable was issued to him. He submitted a statement in his own behalf; however the available record is void of his statement.
- h. His commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c(2).
- i. Consistent with the chain of command's recommendations, the separation authority approved the recommended separation action, and directed the applicant's discharge with his service characterized as under honorable conditions (general).
- j. The applicant was discharged on 4 May 2006. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c(2) for misconduct (drug abuse). His service was characterized as under honorable conditions (general). He completed 1 year, 5 months, and 26 days of net active service this period.

4. 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.

5. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) discharge and removal of all court-martial documentation from his service record. The applicant contends OMH 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 9 November 2004.
- Applicant tested positive for marijuana on 8 December 2005.
- Before a summary court-martial on 8 February 2006, at Fort Lewis, WA, he was found guilty of testing positive for marijuana.
- Applicant was discharged on 4 May 2006. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c(2) for misconduct (drug abuse). His service was characterized as under honorable conditions (general) with separation code JKK and reentry code 4.

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 severe mental health issues led to his administrative separation. He disclosed his issue to his superior officers; however, they decided to make an example out of him as opposed to helping him. The VA awarded him service connection for mental health illness. With the support of his family, he found a passion in the study of law and spent the past two years earning certificates in the paralegal career field.

d. Active-duty electronic medical records available for review show the applicant was command referred to behavioral health for an evaluation on 5 January 2006 due to suicidal ideation. The applicant reported a chronic history of depression predating military service with "chronic self-hatred" related to "being fat" and unsuccessful in relationships with females. He stated he enjoyed making "people mad by fucking with them" and reported two prior suicide gestures but no hospitalization; one in June 2005 via overdose, his unit friends helped him vomit, and the other in high school when he cut his wrists. He further reported depression in high school and failing out of college due to polysubstance use. During that encounter he was diagnosed with Major Depression and Cluster B personality traits, he was placed on profile and recommended for expeditious discharge. The applicant was also referred to ASAP and for a psychiatric evaluation. A psychiatric evaluation dated 3 February 2006, indicates the applicant had started treatment via individual counseling and ASAP. He was taking antidepressant medication for a year prior, and his medication was adjusted during this evaluation. On 8 February 2006, the applicant was command referred for a mental status evaluation prior to confinement after testing positive for marijuana on a urinalysis. He was

diagnosed with Major Depression and cleared for any administrative action, including confinement. A psychiatric evaluation on 21 February 2006, shows he was diagnosed with Adjustment Disorder with Depressed Mood and Personality Disorder, NOS, and continued receiving medication for his symptoms. The record shows he continued to receive supportive psychotherapy throughout the chapter process as well as ASAP services.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 70% service connected, for Schizoaffective Disorder. A note dated 8 June 2023 accounts the applicant's contact with the VJO while at Montana State Prison, the contact was related to overpayment of his service-connected compensation. A second contact with VJO, dated 6 June 2024, was focused on supporting the applicant with possible parole eligibility in January 2025. He was further seen by the VJO on 5 September 2024 and 5 December 2024.

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 OMH on his application as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 70% service connected for Schizoaffective Disorder

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The record shows while in service the applicant had a pre-existing personality disorder that manifested with depressive symptoms. The applicant reported a history of suicidal gestures, making "people mad by fucking with them," failing out of college prior to military service due to polysubstance use, and additional symptoms consistent with his personality disorder diagnosis. The applicant was discharged due to a positive urinalysis for marijuana. The available VA electronic medical record shows the applicant is 70% service connected for Schizoaffective Disorder with cannabis use disorder, stimulant use disorder, and Unspecified Personality Disorder. Although the applicant has been service connected, these disorders predate military service and contributed to his failing out of college due to polysubstance use and as a result joining the Army. Given the nexus between his BH condition and the use of substances to alleviate/cope with the symptoms of his behavioral health condition, the applicant's use of marijuana is mitigated by his BH condition. However, given the severity of his service-connected disability the applicant's reentry code should remain unchanged.

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 partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct leading to the applicant's separation and the following findings outlined in the medical review:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes.

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes,

the Board concluded there was sufficient evidence of an error or injustice warranting an upgrade of the applicant's characterization of service to Honorable. However, based upon the lack of appropriate justification for removal of the court-martial documents and the Army's intent to complete the record of service for each service member, the Board concluded there was insufficient evidence of an error or injustice warranting removal of documentation from the applicant's military record.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:XXX	:XXX	:XXX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Honorable
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to removal of any documentation from the applicant's military record.

//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. Title 10, U.S. Code, Section 1556, 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 600-8-104 (Personnel Separations – Military Personnel Information Management/Records) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that the record of trial by summary court-martial would be filed in the official military personnel file of those Soldiers.

4. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) 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. 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.

5. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, 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//