

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 May 2025

DOCKET NUMBER: AR20240009999

APPLICANT REQUESTS:

- upgrade of his under honorable conditions (General) discharge
- 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)
- Veterans Affairs Memorandum, dated 15 July 2024

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 the following:

a. He is requesting consideration because he was young. He lost a fellow Soldier, who he had bonded with in basic training. His friend died during a physical fitness test, and he was unable to save his life. This caused him to screw up (make bad decisions), which continued long after his discharge.

b. He feels an injustice was done to him due to not having the opportunity to speak to someone. He is sure things would have been quite differently if given the chance. He still struggles with the trauma today. Lastly, he would like to get an education in cybersecurity. This is why he needs to get his discharge upgraded, so he can get his educational benefits.

3. On his DD Form 149, the applicant notes mental health issues are related to his request.

4. The applicant enlisted in the Regular Army on 2 July 1997.

5. On 18 May 1998, he received a Company Grade Article 15 for on or about 26 February 1998, failing to obey a lawful general regulation, while at Fort Campbell, Kentucky, by wrongfully operating a motor vehicle while post driving privileges were suspended.
6. On 21 April 1999, he received a Field Grade Article 15, for on or about 27 February 1999, being disrespectful in deportment towards a noncommissioned officer (NCO), who was in the execution of his office, by walking out of the building while the NCO was still talking to him.
7. On 30 August 1999, a DA Form 3822-R (Report of Mental Status Evaluation), shows the applicant was evaluated by a psychiatrist and was cleared for any administrative action deemed appropriate by command.
8. On 5 October 1999, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.
9. On 20 October 1999, the applicant's commander notified him, that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12b, for a Pattern of Misconduct. The reason for his recommendation was due to missed formations, disrespect towards an NCO, slept on duty, and failed to obey regulations.
10. On 26 October 1999, the applicant consulted with legal counsel and acknowledged he had been advised of the basis for the contemplated separation action. Following his consultation, he stated that he would submit a statement in his own behalf; however, the record is void of a statement.
11. On 8 November 1999, the applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 14, for misconduct.
12. Consistent with the chain of command's recommendations, the separation authority approved the recommended discharge on 3 December 1999 and directed the issuance of a General Discharge Certificate.
13. The applicant was discharged on 15 December 1999. 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 14-12b, for Misconduct. He completed 2 years, 5 months, and 14 days of net active service this period.
14. The applicant provided a memorandum from Veterans Affairs, dated 15 July 2024, stating he is currently being treated for Post-Traumatic Stress Disorder (PTSD).

15. 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.

16. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge. On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD), and Other Mental Health Issues are related to his request. 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 02 July 1997, 2) he received a Company Grade Article 15 on 18 May 1998 for, on or about 26 February 1998, failing to obey a lawful general regulation by wrongfully operating a motor vehicle while post driving privileges were suspended, 3) he received a Field Grade Article 15 on 21 April 1999 for, on or about 27 February 1999, being disrespectful in deportment towards a noncommissioned officer (NCO), 4) he was psychiatrically cleared for any administrative action deemed appropriate by his command on 30 August 1999, 5) he was medically cleared for administrative separation on 05 October 1999, 6) on 20 October 1999, the applicant's commander notified him that he was initiating actions to separate him under the provisions of AR 635-200, Chapter 14-12b, for a Pattern of Misconduct. The reason(s) for his recommendation was due to missed formations, disrespect towards an NCO, slept on duty, and failed to obey regulations, 7) the applicant was discharged on 15 December 1999 under the provisions of AR 635-200, paragraph 14-12b, for misconduct.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. An in-service Report of Mental Status Evaluation (MSE) dated 30 August 1999 for the purposes of Chapter 14 separation shows all domains of the MSE were within normal limits. The provider documented that the applicant had the mental capacity to understand and participate in the proceedings and was psychiatrically cleared for any administrative action deemed appropriate by command. His Report of Medical Examination dated 05 October 1999 for the purposes of Chapter shows psychiatric as 'normal' on clinical evaluation. The provider documented for the applicant to follow-up for sleep problem. The Report of Medical History dated 05 October 1999 shows he marked 'no' to all BH-related items, with the exception of frequent trouble sleeping, to which he marked 'don't know.'

d. In his undated self-authored statement, the applicant reported that he has continued to struggle with PTSD attributed to an experience during his military service. More specifically, he noted problems with sleep, dreams resulting in awakening, anger, depression, lack of self-worth, multiple DUI's, and inability to keep a job for longer than 90 days. He also reported a history of medication use to help treat his symptoms to include Melatonin and Trazodone for sleep, and antidepressants (Sertraline and Wellbutrin).

e. A review of JLV shows the applicant is service-connected through the VA for impaired hearing (0%, for treating purposes only). He is not service-connected for any BH conditions. A letter authored by a VA Licensed Clinical Social Worker (LCSW) dated 15 July 2024 shows that the applicant has been in treatment for PTSD through the Loma Linda VA since 2023. The provider opined that the applicant's traumatic event associated with his diagnosis of PTSD occurred in-service and that it is more likely than not that his diagnosis of PTSD is related to those events. The stressor associated with his diagnosis was documented as witnessing a friend suffer a medical emergency resulting in death while in basic training. Review of his problem list in JLV shows he has also been diagnosed and treated through the VA for Alcohol Dependence with Unspecified Alcohol-Induced Disorder, Cannabis Dependence with Unspecified Cannabis-Induced Disorder, Other Stimulant Dependence with Unspecified Stimulant-Induced Disorder, and Other Specified Depressive Episodes. Records show he has remained in treatment in the VA through present day for treatment of PTSD, Chronic.

f. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant has been diagnosed with PTSD that was attributed to his military service, which is a potentially mitigating BH condition. This Advisor would contend that the applicant's misconduct is mitigated by his diagnosis of PTSD.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed with PTSD by a VA BH provider, which was attributed to an in-service stressor.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed with PTSD by a VA BH provider, which was attributed to an in-service stressor.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. In-service medical records were void of any BH diagnosis or treatment history; however, it is of note that frequent trouble sleeping was noted on the applicant's separation physical. He is not service-connected through the VA for any BH conditions. Since

being discharged from the military, the applicant has been diagnosed and treated by the VA for PTSD, Chronic, which his treating provider opined was attributed to an in-service stressor. As there is an association between difficulty with authority figures, oppositionality, avoidance behaviors, sleep problems and trauma, there is a nexus between his misconduct of missed formations, disrespect towards an NCO, slept on duty, and failure to obey regulations and his diagnosis of PTSD. As such, BH mitigation is supported.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the majority of the Board found that relief was warranted, while a minority found that relief was not 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 evidence of record reflects that the applicant accepted nonjudicial punishment for repeated acts of misconduct. Consequently, the applicant's commander initiated separation proceedings in accordance with the applicable regulation. The Board reviewed and concurred with the medical advisory opinion, which found sufficient evidence that the applicant had been diagnosed with PTSD attributable to his military service. The advisory further noted that PTSD constitutes a potentially mitigating behavioral health condition. In consideration of these findings, the Board granted relief.

2. The Board considered the following Kurta questions under liberal consideration:

a. Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed with PTSD by a VA BH provider, which was attributed to an in-service stressor.

b. Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed with PTSD by a VA BH provider, which was attributed to an in-service stressor.

c. Does the condition or experience actually excuse or mitigate the discharge? Yes. In-service medical records were void of any BH diagnosis or treatment history; however, it is of note that frequent trouble sleeping was noted on the applicant's separation physical. He is not service-connected through the VA for any BH conditions. Since being discharged from the military, the applicant has been diagnosed and treated by the VA for PTSD, Chronic, which his treating provider opined was attributed to an in-service stressor. As there is an association between difficulty with authority figures,

oppositonality, avoidance behaviors, sleep problems and trauma, there is a nexus between his misconduct of missed formations, disrespect towards an NCO, slept on duty, and failure to obey regulations and his diagnosis of PTSD. As such, BH mitigation is supported.

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:

Mbr 1 Mbr 2 Mbr 3

:	:XXX	:XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:	:	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 15 December 1999 to show his character of service as Honorable.

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//