

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 August 2025

DOCKET NUMBER: AR20240010031

APPLICANT REQUESTS: upgrade of his uncharacterized discharge to general under honorable conditions.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored statement

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 before he went to basic training he was incarcerated for counterfeit money. The judge and his recruiter agreed that if he went into the Army and changed his life he would not prosecute. He notes he had been a drug addict since the age of 14 years old. He graduated from basic training and almost completed Advance Individual Training (AIT). When he returned from Christmas vacation, he tested positive for meth and was assaulted by two of the drill sergeants at Fort Lee that resulted in needing stitches on his nose. He was never offered treatment for his drug use/addiction. He is incarcerated off and on for over 20 years. He has been to three inpatient rehabilitation programs and 2 outpatient and completed all of them. He is trying to receive benefits while in prison. He feels he should have known better, and request to accept his application for a discharge adjustment.

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

- a. He enlisted in the Regular Army on 9 September 2004.
- b. On 3 January 2005 he had positive urinalysis test.

c. He was received 2 developmental counseling forms on the following dates:

- 10 January 2005
- 18 January 2005

d. On 18 January 2005 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 misconduct - use of illegal drugs. The commander recommended that his period of service be characterized as be Entry Level (uncharacterized) discharge. He acknowledged the same day.

e. On 20 January 2005 the applicant underwent a mental health evaluation and was Psychiatrically cleared for any administrative action deemed appropriate by Command. (available for the Board's review).

f. 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.

g. On 24 January 2005 he received non-judicial punishment for

- wrongful use of amphetamines
- wrongful use of DE methamphetamines
- wrongful use of methamphetamines

h. On 26 January 2005 the applicant underwent a medical evaluation and was cleared for any administrative action deemed appropriate by Command. (available for the Board's review)

i. On 7 February 2005 he was discharged uncharacterized, he completed 4 months and 29 days of net active service this period.

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. The applicant is applying to the ABCMR requesting to change his uncharacterized discharge to general, under honorable conditions. He contends that he experienced mental health conditions 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 9

September 2004; 2) On 3 January 2005, he had positive urinalysis test; 3) The applicant received 2 counseling statements: A) On 10 January 2005, to notify the applicant of chapter proceedings and B) On 18 January 2005, for wrongful use of a controlled substance; 4) On 24 January 2005, he received NJP for wrongful use of an illegal substance (amphetamines, D-methamphetamines, and methamphetamines); 5) The applicant was discharged on 7 February 2005, Chapter 14-12c(2), due to misconduct. His character of service is uncharacterized. The applicant completed 4 months and 29 days of net active service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents. The VA's Joint Legacy Viewer (JLV) was also reviewed. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts that he experienced mental health conditions that mitigate his misconduct. The applicant underwent a mental status examination by a mental health provider on 20 January 2005 where no mental health symptoms were reported. As a result of this examination, the applicant was diagnosed with polysubstance dependence and antisocial personality traits and was cleared for administrative separation procedures from a mental health perspective.

d. A review of JLV did not reveal any results. There is insufficient evidence the applicant has been diagnosed with a VA service-connected mental health condition, and he does not receive any VA service-connected disability for a mental health condition.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence at this time that the applicant was experiencing a mental health condition during service to warrant a change to his uncharacterized discharge status.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts mental health conditions including substance abuse disorders that are related to his request to change his uncharacterized discharge. The applicant was diagnosed with polysubstance dependence and antisocial personality traits following a mental status evaluation by a mental health provider.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts that mental health conditions including substance abuse disorders are related to his request to change his uncharacterized discharge. The applicant was diagnosed with polysubstance dependence and antisocial personality traits following a mental status evaluation by a mental health provider during his active service that existed prior to service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is sufficient evidence the applicant was experiencing difficulty adapting to military training due to a pre-existing substance use condition during his initial military training. The applicant was appropriately identified, evaluated, and administratively separated, which resulted in an uncharacterized discharge. Therefore, there is insufficient evidence at this time to change his characterization of service. However, the applicant's contention a mental health condition or experience is related to his request for mitigation, and this is sufficient for the board's consideration per Liberal 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 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 misconduct under the provisions of Army Regulation 635-200, chapter 14-12c (Commission of a Serious Offense). Based on the medical review the Board concurred that the characterization of service the applicant received upon separation was appropriate.

2. The Board considered the following Kurta questions:

a. Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts mental health conditions including substance abuse disorders that are related to his request to change his uncharacterized discharge. The applicant was diagnosed with polysubstance dependence and antisocial personality traits following a mental status evaluation by a mental health provider.

b. Did the condition exist or experience occur during military service? Yes, the applicant asserts that mental health conditions including substance abuse disorders are related to his request to change his uncharacterized discharge. The applicant was diagnosed with polysubstance dependence and antisocial personality traits following a mental status evaluation by a mental health provider during his active service that existed prior to service.

c. Does the condition or experience actually excuse or mitigate the misconduct? No, there is sufficient evidence the applicant was experiencing difficulty adapting to military training due to a pre-existing substance use condition during his initial military training. The applicant was appropriately identified, evaluated, and administratively separated,

which resulted in an uncharacterized discharge. Therefore, there is insufficient evidence at this time to change his characterization of service. However, the applicant's contention a mental health condition or experience is related to his request for mitigation, and this is sufficient for the board's consideration per Liberal Consideration.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

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. 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 5-11 of the regulation states Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment or who became medically disqualified under these standards prior to entry on active duty (AD) or active-duty training (ADT) for initial entry training may be separated. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by appropriate military medical authority within 6 months of the Soldier's initial entrance on AD for RA, or during ADT for initial entry training. Unless the reason for separation requires a specific characterization, a Soldier being separated for the convenience of the Government will be awarded a character of service of honorable, under honorable conditions, or an uncharacterized description of service if in entry-level status.

d. 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.

7. 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.

//NOTHING FOLLOWS//