

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 June 2025

DOCKET NUMBER: AR20240010129

APPLICANT REQUESTS: upgrade of his under honorable conditions (General) discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Outstanding Community Activist Award presented to him on 6 August 2016, in appreciation of his significant professional accomplishment which had advanced the quality of public education to the youth in a district of Illinois
- DeVry University transcript that shows he was awarded a Bachelor of Science degree in accounting on 24 October 2004
- Veterans Affairs decision letter effective 10 August 2022, that shows he had a 30% combined rating evaluation for service connection right knee strain and hypertension
- 80 pages of medical documents that show he has received treatment for various illnesses and injuries, including back spasms and sleep apnea

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 experienced multiple deaths and acts of injustice during his time in the Army. He entered the military during the Gulf War as a Chemical Operation Specialist. His entire platoon was sent off to war; he has flashbacks and nightmares from all the lives that were lost. He was selected to stay behind for advanced training and Airborne School, where he would injure his ankle. He was prescribed Ibuprofen for pain relief so he could complete all of his training. He became very stressed and felt helpless during the Coronavirus Disease 2019 epidemic, he wanted to help. This was the same feeling he had during various times while serving. He currently sees a counselor for post-traumatic stress disorder (PTSD). He never knew his discharge was frowned upon until his request for a school grant was denied.

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

- a. He enlisted in the Regular Army on 16 October 1990. He reenlisted on 18 September 1992, and again on 16 March 1995.
- b. He received formal counseling on the following dates/for:
 - 11 July 1996; personal and marital problems, indebtedness
 - 7 October 1996; instructed to provide financial support to his family
- c. He tested positive for marijuana, on or about 1 November 1996.
- d. He received additional counseling on 18 November 1996, for driving with a suspended license and an expired vehicle registration.
- e. He accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice on 22 November 1996, for wrongfully using marijuana between on or about 17 September 1996, and on or about 18 October 1996. His punishment included reduction to E-4, forfeiture of \$677.00 pay per month for two months, and 45 days extra duty and restriction.
- f. He underwent a mental status evaluation, on 10 December 1996. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
- g. His commander notified the applicant on 23 December 1996, that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, paragraph 14-12c, for commission of as serious offense. He noted the applicant's positive test for marijuana.
- h. His commander formally recommended the applicant's separation, prior to his expiration term of service, under the provisions of Army Regulation 635-200, paragraph 14-12c.
- i. He acknowledged that he had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to him, on 27 December 1996. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him. He declined to submit a statement in his own behalf.
- j. By legal review on 21 January 1997, the applicant's separation action was found to be legally sufficient for further processing.

k. Consistent with the chain of command's recommendations, the separation authority approved and directed issuance of a General Discharge Certificate.

l. The applicant was discharged on 20 February 1997. 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 14-12c, for misconduct. His service was characterized as under honorable conditions (General). He completed 6 years, 4 months, and 5 days of net active service this period.

m. The applicant petitioned the Army Discharge Review Board for upgrade of his under honorable conditions (General) discharge. On 26 April 2000, the Board voted to deny relief and determined his discharge was both proper and equitable.

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.

MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge. He asserts experiencing PTSD while on active service, which mitigates his misconduct. 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 16 October 1990; 2) The applicant was counseled between July-November 1996 for indebtedness, the need to provide financial support to his family, and driving with a suspended license and an expired vehicle registration; 3) The applicant also was counseled and received non-judicial punishment in November 1996 for using marijuana; 4) The applicant was discharged on 20 February 1997, Chapter 14-12c, for misconduct. His service was characterized as under honorable conditions (general).

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) and hardcopy VA medical documentation provided by the applicant were also examined.

c. The applicant asserts he experienced PTSD while on active service, which mitigates his misconduct. There is insufficient evidence the applicant was diagnosed with a mental health condition including PTSD, while on active service. He underwent a mental status evaluation, on 10 December 1996, as part of his administrative separation proceedings. The applicant was not diagnosed with a mental health condition, and he was cleared from a psychiatric perspective for administrative action deemed appropriate by Command.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition including PTSD, and he does not receive any service-connected disability for a mental health condition including PTSD.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a mental health condition or experience, which mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced PTSD, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD while on active service, which mitigates his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD, while he was on active service. The applicant did engage in avoidant behavior such as using illegal drugs, which could be a natural sequela to PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mitigating mental health condition during active service. In addition, there is no nexus between the applicant's reported PTSD and his misconduct of indebtedness, not providing financial support to his family, driving with a suspended license and an expired vehicle registration. Yet, the applicant contends he was experiencing PTSD which mitigates his misconduct, and per Liberal Consideration, his contention is sufficient for the Board's 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, his post service accomplishments, medical documents, 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 for testing positive for marijuana. The Board found no error or injustice in the separation proceedings and designated

characterization of service assigned during separation. Furthermore, the Board noted that there was insufficient evidence to support the applicant had a mental health condition or experience, which might mitigate his misconduct. In addition, the Board noted that the applicant did not own his own behavior. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

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 misconduct? Yes, the applicant asserts he experienced PTSD, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD while on active service, which mitigates his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD, while he was on active service. The applicant did engage in avoidant behavior such as using illegal drugs, which could be a natural sequela to PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mitigating mental health condition during active service. In addition, there is no nexus between the applicant's reported PTSD and his misconduct of indebtedness, not providing financial support to his family, driving with a suspended license and an expired vehicle registration. Yet, the applicant contends he was experiencing PTSD which mitigates his misconduct, and per Liberal Consideration, his contention is sufficient for the Board's consideration.

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.

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. 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 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. 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.
4. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR) on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the mental health condition was not diagnosed until years later. 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.

5. 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.

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 on the basis of equity, injustice, or clemency grounds, Boards 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.

//NOTHING FOLLOWS//