

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 May 2025

DOCKET NUMBER: AR20240010477

ON BEHALF OF THE APPLICANT, COUNSEL REQUESTS:

- upgrade of his general under honorable conditions discharge to honorable
- change to the separation authority to "AR 625-200, paragraph 5-3"
- change narrative reason to reflect "Secretarial Authority"
- change the separation code
- remove any adverse medical diagnosis [sic] from his medical records

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

- DD Form 149 (Application for Correction of Military Record)
- 12-page legal brief, with Exhibits 1 thru 20

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. Counsel states in a 12-page brief in support of the application which is available for the Board's review in supporting documents:
  - a. The applicant's 1.5 years of service in the Army, his training, and deployment. Restating the applicant's statement, experiences while deployed and post deployment, as well as what led him to go absent without leave (AWOL). Counsel discusses the applicant's mental health and treatments.
  - b. Counsel argues the applicant's characterization of service is unjust and continues to burden him since separation. His incorrect diagnosis of an adjustment disorder inhibits him from reenlisting and furthering his military career. Further stating, the applicant's request for removal of adverse medical information, specifically his improper diagnosis of an adjustment disorder, is within the jurisdiction of the ABCMR, no other

administrative remedy is available to the applicant. Counsel elaborates the following areas:

- Despite the change to his reentry code, the applicant remained prejudiced due to the ADRB's denial of his request to change the narrative reason for separation and his separation code
- A separation status of "misconduct (desertion)" is a prejudicial, calls applicant's otherwise honorable character into question, and impacts his ability to obtain employment in both military and civilian fields
- Applicant's command further exacerbated the situation by threatening him with confinement and the possibility of a Court-Martial, thus creating apprehension for him to return to his duty station
- Despite seeing medical providers, he was never properly examined nor diagnosed, but still had derogatory medical information incorrectly added to his file.
- Applicant sought civilian medical providers who evaluated his behavioral state and medical records and determined that he does not exhibit any symptoms of having any acute psychiatric process that would impair his mental function
- Any diagnosis of having an adjustment disorder on his medical records was incorrectly diagnosed based on the unprecedented circumstance presented by the COVID-19 pandemic

c. Counsel concludes, in light of the facts and arguments presented, applicant respectfully submits this application to upgrade his narrative reason for separation from "Misconduct" to "Secretarial Authority" with an appropriate corresponding separation code. The applicant has been thoroughly punished and regrets his actions deeply; he requests nothing more than the opportunity to move beyond this mistake and continue to grow personally and professionally. He has maintained his physical fitness and with the hope and anticipation that he will be able to rejoin the Armed Forces, or civilian law enforcement.

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

- He enlisted in the Regular Army on 23 July 2019
- The complete facts and circumstances related to the applicant's discharge are not available for review
- Accordingly, he was discharged on 9 April 2021 with a general under honorable conditions character of service, he completed 1 year and 8 months net active service this period

4. On 6 June 2022, In a telephonic personal records review, the Board determined the reentry eligibility (RE) code was inequitable based on the applicant's personal statement, demonstrated desire to reenlist, and the matters surrounding the AWOL (leaving COVID restrictions). Therefore, the Board voted to grant relief in the form of an upgrade of the reentry code to RE-3. The Board determined the Characterization, Narrative Reason, and SPD code were proper and equitable and voted not to change them.
5. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

#### **6. MEDICAL REVIEW:**

- a. The applicant is applying to the ABCMR requesting the following: 1) an upgrade of his under honorable conditions (general) discharge to honorable, 2) change the separation authority to AR 635-200, paragraph 5-3, 3) change the narrative reason to reflect "Secretarial Authority," 4) change the separation code, and 5) remove any adverse medical diagnosis from his medical records. Through counsel, the applicant contends he was misdiagnosed with Adjustment Disorder in-service. 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 23 July 2019, 2) the complete facts and circumstances related to his discharge are not available for review, 3) the applicant was discharged on 09 April 2021 under the provisions of AR 635-200, paragraph 14-12c(1), with the narrative reason for separation as Misconduct (desertion), a separation code of JKF, and reentry code of '4,' 4) on 6 June 2022, the ADRB determined the reentry eligibility code was inequitable based on the applicant's personal statement, demonstrated desire to reenlist, and the matters surrounding the AWOL (leaving COVID restrictions). Therefore, the Board voted to grant relief in the form of an upgrade of the reentry code to RE-3. The Board determined the Characterization, Narrative Reason, and SPD code were proper and equitable and voted not to change them.
- 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. Lack of citation or discussion in this section should not be interpreted as lack of consideration.
- c. The applicant included select in-service medical records as part of his application. He was identified as a tracer to a positive COVID-19 contact on 29 October 2020. He presented to the medical clinic on 09 September 2020 due to being symptomatic and was placed on a 14-day isolation quarantine. He tested positive for COVID-19 on 29 October 2020, and it was documented that he had tested positive 7 weeks ago,

recovered, and that it was most likely he was still showing positive from when he was previously sick. It was documented that he did not meet criteria to be removed from isolation.

d. In-service medical records were available for review in JLV from 25 July 2019 through 26 January 2021. The applicant first presented to BH as a walk-in on 05 February 2020 expressing a desire to separate from the Army. He was not diagnosed with a psychiatric condition and was deemed fit for duty. He presented for a BH intake on 12 March 2020 due to symptoms of depression, anxiety, and occupational stress, stating he was poorly treated by his unit and expressing a desire to be separated from the Army. He was diagnosed with Occupational Problem, was scheduled for individual therapy, and was placed on a no weapons profile for 30 days. He continued to follow-up with BH on approximately a weekly basis due to occupational stressors and a desire to separate from the military. On 21 April 2020, his diagnosis was updated to Adjustment Disorder with Depressed Mood and his temporary profile was extended. The applicant was psychiatrically hospitalized from 20-21 May 2020 due to suicidal ideation with preparatory behavior secondary to his occupational stressors. Following his hospitalization, he was monitored on the At-Risk Case Tracking (ARCT) through 24 June 2020 and was removed after he had demonstrated sufficient stability post-hospitalization. It was documented on 21 May 2020 that his commander indicated that a Chapter 13 separation was going to be initiated. Beginning 22 May 2020, the applicant expressed second thoughts about his administrative separation and a desire to be retained in the military. The applicant underwent a chapter 13 separation evaluation under the provisions of AR 635-200 on 25 June 2020. The evaluating provider documented that the applicant was diagnosed with Adjustment Disorder with Depressed Mood per his treating provider. It was documented that he did not have a condition that warranted referral for a Medical Evaluation Board (MEB), did not meet the Medial Retention Determination Point (MDRP), and was cleared for administrative action deemed appropriate by command, including Chapter 13 separation. He followed up with BH through 16 July 2020. His final BH follow-up on 16 July 2020 documented that he was fighting his chapter separation and was trying to be transferred to a new unit. His diagnosis was documented as Adjustment Disorder with Depressed Mood and the provider documented that they would allow the applicant's BH profile to expire on 21 July 2020. The applicant underwent a mental Status Evaluation (MSE) on 26 January 2021 for the purposes of Chapter 14 separation with the reason(s) noted as being AWOL and for failure to adhere to General Order 1E. He was not diagnosed with a psychiatric condition at the time of the encounter. The evaluating provider concluded that the applicant did not meet criteria for a psychiatric condition that would warrant disposition through medical channels, that he met medical retention standards IAW AR 40-501, Chapter 3, and that he was psychiatrically cleared for any administrative actions deemed appropriate by command.

e. A review of JLV shows the applicant is not service connected through the VA for any conditions.

f. The applicant's service records were reviewed. A memorandum dated 10 March 2021 shows the applicant's commander proposed a recommendation for separation under the provisions AR 635-200, Chapter 14-12c(1), Absent Without Leave. The specific factual reason(s) for the action recommended was documented as absenting himself from his unit from on or about 17 November 2020 to on or about 07 December 2020.

g. The Medical Advisory included in a previous petition to the ADRB for relief as summarized in Docket Number AR20210015872 dated 21 October 2021 documented that the applicant was diagnosed with Adjustment Disorder in-service; however, it was determined that there were no mitigating BH conditions present and that it was unlikely that his diagnosis of Adjustment Disorder contributed to his desertion charge. The applicant's subsequent petition to the ADRB summarized in Docket Number AR 20220000788 dated 09 September 2021 shows the Medical Advisor again found that the applicant was diagnosed with Adjustment Disorder in-service, though opined that the condition did not mitigate his misconduct.

h. The applicant provided civilian health records as part of his application. A letter from a physician (specialty unknown) at Franklin Community Health Network dated 12 March 2024 documented that he underwent a screening on 31 October 2023 and did not meet criteria for Major Depression at the time of his screening and was not experiencing any acute psychiatric processes that disrupted daily functioning.

i. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant met criteria for a mitigating BH condition in-service. Although records show the applicant was diagnosed with Adjustment Disorder with Depressed Mood in-service, Adjustment Disorders that are acute (i.e., lasting less than 6 months), do not constitute mitigating conditions and fall under the purview of AR 635-200, Chapter 5-14. As such, this Advisor would contend that there is insufficient support for BH mitigation.

j. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with Adjustment Disorder with Depressed Mood in-service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with Adjustment Disorder with Depressed Mood in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was initially diagnosed with Adjustment Disorder with Depressed Mood in April 2020 and his last BH encounter documenting the diagnosis was in July 2020. Adjustment Disorders that are acute (i.e., lasting less than 6 months), do not constitute mitigating conditions and fall under the purview of administrative separations IAW AR 635-200, Chapter 5-14. As such, there is insufficient evidence that the applicant was diagnosed with a mitigating BH condition in-service and BH mitigation is not supported.

k. Regarding the applicant's request to remove the diagnosis of Adjustment Disorder from his medical records, there is insufficient evidence that the applicant was misdiagnosed in-service and thus insufficient evidence that the diagnosis should be removed from his records. In-service medical records show he was diagnosed with Adjustment Disorder with Depressed Mood due to his occupational stressors and desire to separate from the military. Adjustment Disorders are diagnosed when there is evidence of emotional or behavioral symptoms in response to an identifiable stressor, and, once the stressor or its consequences have been terminated, the symptoms do not persist for more than an additional six months. The applicant's medical records clearly document the applicant's diagnosis in response to an identifiable stressor and subsequent BH documentation shows he no longer met criteria for the condition following remission of the stressor. Thus, the onset and course of the condition is consistent with the diagnostic criteria per DSM-V-TR and there is insufficient evidence that he was misdiagnosed in-service.

#### 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official opine based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant met criteria for a mitigating BH condition in-service.

2. The opine noted, although records show the applicant was diagnosed with Adjustment Disorder with Depressed Mood in-service, Adjustment Disorders that are acute (i.e., lasting less than 6 months), do not constitute mitigating conditions and fall under the purview of AR 635-200, Chapter 5-14. As such, this Advisor would contend that there is insufficient support for BH mitigation.

## Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with Adjustment Disorder with Depressed Mood in-service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with Adjustment Disorder with Depressed Mood in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was initially diagnosed with Adjustment Disorder with Depressed Mood in April 2020 and his last BH encounter documenting the diagnosis was in July 2020. Adjustment Disorders that are acute (i.e., lasting less than 6 months), do not constitute mitigating conditions and fall under the purview of administrative separations IAW AR 635-200, Chapter 5-14. As such, there is insufficient evidence that the applicant was diagnosed with a mitigating BH condition in-service and BH mitigation is not supported.

3. The Board noted the applicant was credited with 1 year and 8 months of net active service this period and discharged for misconduct (desertion) and was provided an under honorable conditions (general) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Furthermore, the Board found at the time of separation, documentation supports the narrative reason for separation properly identified on the DD Form 214. As such, the Board agreed under liberal consideration changes to the applicant's narrative reason and separation authority are not warranted. The Board determined there was insufficient evidence of an error or injustice which would warrant a change in the separation code. Based on this, the Board denied.

## BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

GRANT FULL RELIEF

GRANT PARTIAL RELIEF

GRANT FORMAL HEARING

**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.

[REDACTED]

[REDACTED]

[REDACTED]

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 (AR) 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to their normal expiration of term of service.
  - a. 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.
  - b. 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. A characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

3. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

4. The Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta Memorandum]. 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 (TBI), 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 sexual assault or sexual harassment was unreported, or 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. 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.

a. Guidance documents are not limited to under other than honorable conditions discharge characterizations but rather apply to any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from general to honorable characterizations.

b. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.

c. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual

harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

5. 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.

//NOTHING FOLLOWS//