

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 May 2025

DOCKET NUMBER: AR20240010482

APPLICANT REQUESTS: through counsel, correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show in:

- Item 24 (Character of Service), an upgrade from bad conduct to honorable
- Item 25 (Separation Authority), "Secretarial Authority" instead of Army Regulation (AR) 635-200, Chapter 3
- Item 26 (Separation Code), "Secretarial Authority" instead of JJD
- Item 28 (Narrative Reason for Separation), "Secretarial Authority" instead of Court-Martial, Other

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's Brief (9 pages)
- Exhibit 1 – DD Form 214, 28 August 2009
- Exhibit 2 – Applicant Statement
- Exhibit 3 – Court-Martial Charges
- Exhibit 4 – Chronological Record of Medical Care, dated 19 March 2008, which shows the applicant had a medical history of anxiety, post-traumatic stress disorder (PTSD), and opioid abuse
- Exhibit 5 – Mental Health Intake Interview dated 20 March 2008, which shows he was diagnosed with anxiety, PTSD, and opiate abuse. He was previously diagnosed with panic disorder and PTSD, with prescribed medication. (Available for review by the Board in the supporting documents)
- Exhibit 6 – Mental Health Program Group Activity Notes (Available for the Board to review in the supporting documents)
 - Certificate of Completion, dated 26 March 2008, which shows he completed Anger Management
 - Certificate of Completion, dated 4 April 2008, showing he completed the U.S. Navy Bureau of Medicine and Surgery Alcohol and Drug Impact
- Exhibit 7 – Character Letter from R_A_ (Letter available for the Board to review in the supporting document)

- Exhibit 8 – Character Letter from J_B_ (Letter available for the Board to review in the supporting documents)

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 his military journey began in February 2006. He joined the Army to serve his country and help others. The applicant explains in his 3-page statement, which is available for the Board's review in the supporting documents:

- Loss of his friends before deployment
- Treating wounded Soldiers and civilians as a medic in Afghanistan
- Loss of his roommate during deployment
- He needed a short break during deployment to regroup but the break never came
- He took a discarded vial of morphine
- Owned up to his mistake and told his platoon sergeant and admitted that he needed mental help
- Facing criminal charges/court-martial
- The need for help and healing from the past
- Farming and involvement in the church and community

3. The applicant's counsel states in his 9-page legal brief:

a. The applicant commenced service with the United States Army on 20 March 2006. He joined his unit at Fort Sill for basic training and quickly adapted to the rigors of military life. However, tragedy struck the applicant, and his command informed him that two of his close hometown friends died in a car accident. Following basic training he attended advanced individual training at Fort Sam Houston, TX to train as a medic. He received orders to report to the 173rd Brigade Combat Team in Vicenza, Italy, where he grew close to his roommate T_W_. Eventually, orders arrived that the brigade would be deploying for 15 months to Afghanistan. The applicant returned home for two weeks; however, tragedy struck the applicant again.

b. In May 2007, the applicant's battalion arrived in eastern Afghanistan, about 8 miles from the Pakistan border. The applicant notes that this was one of the most dangerous parts of the country and he began working at the aid station. His responsibility was to treat sick Soldiers, triage and treat seriously wounded Soldiers,

assist in surgeries, and treat NATO troops, Afghan police and civilians, and wounded enemy combatants. The applicant notes that this environment of “controlled chaos” is seared into his mind, and he never will forget the looks that scared patients gave him and the smells of the aid station. On 4 July 2007, he received the combat medic badge after performing medical care while under fire from enemy combatants.

c. After a few months, he received news that T_W_, his roommate in Italy, was killed in action. This news led him to take a discarded vial of morphine. He took the vial because he was “overwhelmed and looking for relief” and used the morphine to self-medicate. The next day, he realized he had made a mistake and confided this to a close friend. He decided to own up to his mistake and he informed his platoon sergeant and requested a break to get the mental help he needed. However, instead of getting him the assistance he needed, the Army opened an investigation into the applicant; he eventually self-medicated three more times with morphine.

d. Counsel argues that over the past decade, the Department of Defense has released memoranda with “substantial clarifying guidance” for this Honorable Board’s consideration in evaluating discharge reviews and records corrections. The Wilkie Memo states, “It is consistent with military custom and practice to honor sacrifices and achievements, to punish only to the extent necessary to rehabilitate to the greatest extent possible, and to favor second chances in situations which individuals have paid for their misdeeds.” The applicant enlisted in the Army and answered a call that very few do. Since his separation, he has worked tirelessly to rebuild his reputation from an event that “haunts [the Applicant] to this day.” Counsel expounds on the following areas:

- Applicant continues to serve his community as a full-time farmer of a 35-acre organic farm, is a family man and heavily involved with his church
- Although his misconduct resulted in court-martial, his sacrifice and generally meritorious service warrant an “Honorable” character of service (top marks in training as medic and several decorations)
- He had been previously diagnosed/treated for PTSD
- Because of his role as a medic, he was exposed to myriad horrors as a result of combat
- His grief, coupled with PTSD and anxiety resulted in his momentary lapse of judgment
- Character letters noting the applicant’s impeccable character, dedication, and resilience

e. Counsel concludes that the applicant does not contest the findings of the court-martial, and has made strides through his personal, professional, and spiritual life to bounce back and become a productive member of society. Since his separation, he has worked tirelessly to improve himself and to improve the community around him. He has

been rehabilitated since the adverse circumstances leading to his discharge from the Army.

f. Counsel's complete brief and supporting documents are available for the Board to review.

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

a. He enlisted in the Regular Army on 20 March 2006.

b. DA Form 4430 (Department of the Army Report of Result of Trial) shows on 16 March 2008, at Bagram Airfield, Afghanistan, the applicant was found guilty by a special court-martial of:

- Charge I, one specification of on divers occasions between 15 September 2007 and 15 October 2007, wrongfully using morphine
- Charge II, specification one: on 29 July 2007, stealing 50 mL of morphine, a value less than \$500.00, the property of the U.S. Army
- Charge II, specification two: on 15 August 2007, stealing 50 mL of morphine, a value less than \$500.00, the property of the U.S. Army
- Charge II, specification three: on or about 15 September 2007, stealing 30 milligrams of morphine in three syrettes, military property, of a value less than \$500.00, property of the U.S. Army
- Charge II, specification four: on or about 15 October 2007, stealing 30 milligrams of morphine in three syrettes, military property, of a value less than \$500.00, property of the U.S. Army
- Charge III, specification one: on or about 2 October 2007, with intent to deceive, made a false statement to first lieutenant L__
- Charge III, specification two: on or about 29 July 2007, with intent to deceive, made a false statement to specialist B__
- The court sentenced him to reduction to private/E-1, forfeiture of \$898.00 pay per month for 7 months, confinement for 7 months, and a bad conduct discharge

c. Special Court-Martial Order Number 39, issued on 21 May 2009, shows pursuant to Article 66, Uniform Code of Military Justice, a modified sentence to reduction to the grade of private/E-1, forfeiture of \$898.00 pay per month for 7 months, confinement for 5 months, and a bad conduct discharged, adjudged on 16 March 2008, as promulgated in corrected Special Court-Martial Order Number 4, dated 6 May 2008, shows the sentence had been affirmed. That portion of the sentence extending to confinement had been served. The provisions of Article 71(c) had been complied with; the bad conduct discharge would be duly executed.

d. He was discharged on 28 August 2009. His DD Form 214 shows he was discharged under the provisions of AR 635-200 (Active Duty Enlisted Administrative Separations), chapter 3, by reason of court-martial, other, in the rank/grade of private/E-1, and his service was characterized as bad conduct. He completed 3 years, 1 month, and 6 days of net active service this period. This form also shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): National Defense Service Medal, Afghanistan Campaign Medal with two campaign stars, Global War on Terrorism Expeditionary Medal, Army Service Ribbon, and NATO Medal
- Item 18 (Remarks): Service in Italy from 14 November 2006 – 19 April 2008 and member has not completed first full term of service
- Item 26 (Separation Code): JJD

5. 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.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his bad conduct discharge and other corresponding changes to his DD214. He contends he experienced PTSD, which is related to his requests. 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 20 March 2006 and completed AIT as a 68W (medic); 2) The applicant was deployed to Afghanistan when he was found guilty by special court-martial, on 16 March 2008, for: A) wrongfully using morphine; B) stealing morphine, property of the U.S. military, on 4 occasions; and C) making false statements to a 1LT and a SPC; 3) The applicant was discharged on 28 August 2009, Chapter 3, by reason of court-martial, other. His service was characterized as bad conduct. He completed 3 years, 1 month, and 6 days of net active service this period.

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

c. The applicant contends he experienced PTSD, which mitigates his misconduct. There is evidence the applicant was reporting anxiety symptoms prior to his deployment. He was initially seen by behavioral health services on 06 February 2007 for symptoms of anxiety, panic, and insomnia, which he reported since December 2006. The applicant reported a history of taking psychiatric medication for depression prior to

enlisting in the military. He was diagnosed with an unspecified Anxiety Disorder (NOS), and he was recommended for further treatment and referred for psychiatric medication. He was seen again by behavioral health services on 08 February 2007. During this appointment, he reported experiencing panic attacks since October 2006 without a known stressor. He was diagnosed with Panic Disorder without Agoraphobia, and he was seen the same day by a primary care provider and prescribed psychiatric medication. He was seen for follow-up appointments at individual therapy and medication management appointments where continued to report anxiety, and he was concerned about his upcoming deployment. Due to the applicant's concern about his upcoming deployment, an appointment was scheduled with the military behavioral health provider also scheduled to deploy with the applicant's unit. This appointment occurred on 28 February 2007 to establish care and expectations prior to deployment. On 02 May 2007, the applicant was seen as a walk-in appointment by behavioral health services due to reported grief related to the loss of a friend to a car accident, but the applicant felt ready to deploy. During his deployment, there is insufficient evidence the applicant engaged in behavioral health treatment till 20 October 2007 when he was facing legal problems related to theft and use of morphine. He was again diagnosed with Anxiety NOS, along with Opioid Dependence and Bereavement without complications. He continued in regular individual therapy and medication management appointments till he left Afghanistan. The applicant also he attended group and individual therapy while incarcerated, along with medication management appointments. He was diagnosed with an Anxiety Disorder NOS, Panic Disorder, and PTSD related to some combat exposure.

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

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence to support the applicant had a condition or experience that partially 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 was experiencing PTSD, which mitigates his misconduct. The applicant was diagnosed and treated for anxiety disorders prior to his deployment. He was also diagnosed and treated for anxiety disorders during his deployment after facing legal problems related to his opioid dependence, and he was diagnosed with similar anxiety disorders and PTSD after being incarcerated.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing PTSD, which mitigates his misconduct. The

applicant was diagnosed and treated for anxiety disorders prior to his deployment. He was also diagnosed and treated for anxiety disorders during his deployment after facing legal problems related to his opioid dependence, and he was diagnosed with similar anxiety disorders and PTSD after being incarcerated.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Partially, there is sufficient evidence beyond self-report the applicant was experiencing significant anxiety and panic symptoms prior to his deployment. In addition, there is evidence he was exposed to combat, which later resulted in a PTSD diagnosis while on active service. There is evidence the applicant was provided behavioral health treatment and psychiatric medication for his anxiety prior to his deployment, and he was made aware of behavioral health resources available to him while he was deployed. The applicant did wrongfully use morphine, which is a natural sequelae to both anxiety and PTSD. However, the applicant did in a deployed environment take advantage of his role as a medic and steal a controlled medication meant for critically injured Soldiers, which is notably different than buying or obtaining illegal drugs. In addition, there is no nexus between the applicant's anxiety and PTSD and his misconduct of making false statements in that: 1) this type of misconduct is not a part of the natural history or sequelae the applicant's anxiety and PTSD; 2) Anxiety and PTSD do not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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 partial mitigation of that misconduct found in the medical review, the Board concluded there was sufficient evidence to grant clemency by upgrading the applicant's characterization of service to General, Under Honorable Conditions. However, the Board concluded there was insufficient evidence or appropriate justification to grant any of the other requested relief.

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: Under Honorable Conditions (General)
- 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 all other requested relief.

//SIGNED//
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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 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 3 states a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or a special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

b. 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.

c. 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.

d. Chapter 15 states that Secretarial Plenary Authority is the prerogative of the Secretary of the Army and will be accomplished only by his authority. Secretarial plenary separation authority is exercised sparingly and used when no other provision of this regulation applies. Separation under this chapter is limited to cases where the early separation of a Soldier is clearly in the best interest of the Army. Separations under this chapter are effective only if approved in writing by SECARMY or the Secretary's approved designee as announced in updated memoranda.

3. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, chapter 3, court-martial, other, would receive a separation code of "JJD."

5. 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; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to 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 that misconduct which led to the discharge.

6. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

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. 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.

//NOTHING FOLLOWS//