

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 May 2025

DOCKET NUMBER: AR20240010505

APPLICANT REQUESTS:

- reconsideration of his previous request for upgrade of his under honorable conditions (general) discharge to honorable
- change of his narrative reason from "Court-Martial Other" to "Secretarial Authority"
- change of his separation code to from JJD to JFF (Secretarial Authority)
- change of his reentry code from 4 to RE-3
- personal 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), 1 November 2024
- Petitions for relief dated 15 January 2024, 9 July 2024, 1 November 2024, 14 January 2025, 11 February 2025, 13 February 2025, 14 February 2025, 26 February 2025, 3 March 2025, 7 March 2025, 18 March 2025, 20 March 2025, 25 March 2025, and 11 April 2025
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 31 August 2007
- Medical Documentation
- Legal Documentation
- Personal Achievements
- Letters to the President, Vice President, Secretary of Defense, and Secretary of the Army
- Army Board for Correction of Military Records Case AR20230003601, 29 November 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20230003601 on 29 November 2023.

2. The applicant states in multiple self-authored statements that he seeks correction of his separation code, reentry code, and narrative reason for separation due to the legal injustices which incurred during his special court-martial and subsequent post-trial processing. Although he was granted an upgrade to his characterization of service, the decision to retain his narrative reason of court marital, reentry code, and separation code taint his record, perpetuates the stigma, misrepresents the totality of his circumstances, and further fails to reflect the Secretary's decision to mitigate his separation. He argues the Kurta, Wilkie, and Hagel memorandums, regulatory guidance, case law, his service and post service, and his mental health conditions being in support of his request. He explains in multiple submissions to the Board, which are available for the Board's review in supporting documents the following:

- partial relief being granted
- unaddressed errors
- erroneous Staff Judge Advocate recommendation
- legal misrepresentation
- multiple Command failures
- medical and mental health conditions
- post service achievements
- proof of rehabilitation
- failure to consider his mental health conditions

3. On his DD Form 149, he annotates other mental health is related to this request.

4. A review of the applicant's service records show the following:

a. A DD Form 2808 (Report of Medical Examination) shows he underwent a medical examination prior to his enlistment on 18 July 2002 and was qualified for military service.

b. He enlisted in the Regular Army on 22 October 2002, for a 5-year period.

c. His duty status changed from present for duty to absent without leave (AWOL) effective 19 July 2003.

d. Court-martial charges were preferred against him for violations of the Uniform Code of Military Justice (UCMJ); the relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL from 19 July 2003 and remained AWOL until 8 June 2004, when he surrendered himself to military authorities.

e. On 13 December 2004, a DA Form 4700 (Medical Record – Supplemental Medical Data) shows he was treated for an anxiety/panic attack at the Bayne-Jones

Emergency Medical Services and was medically cleared for transport but could not go via air.

f. Special Court-Martial Order (SCMO) Number 7, dated 15 June 2005, shows he was found guilty by a special court-martial of intending to shirk important service, namely: Deployment to Cuba in support of Operation Enduring Freedom, by quitting his unit on or about 19 July 2003 and remaining absent in desertion until on or about 8 June 2004. The court sentenced him to reduction to the grade of E-1, forfeiture of \$795.00 pay per month for 9 months, and to be discharged from service with a bad conduct discharge. The sentence was adjudged on 3 December 2004. The sentence was approved, except for the part extending to the bad conduct discharge. He was credited with 30 days confinement. The record of trial was forwarded for appellate review.

g. An extract from his military medical record shows, in part, he was treated for anxiety disorder (not otherwise specified (NOS)) on 29 June 2006.

h. The U.S. Army Court of Criminal Appeals, Notice of Court-Martial Order Correction, dated 6 March 2007, ordered SCMO Number 7, dated 15 June 2005, be corrected as follows:

(1) To reflect in the arraignment paragraph, the applicant's middle initial of his name be changed from "E" to "S."

(2) By adding in line six of the specification of Charge I, after the words, "Finding: Guilty" the words "except for the word and figures '8 June 2004,' substituting therefor the word and figures '30 August 2003.' Of excepted word and figures 'Not Guilty,' of the substituted word and figure 'Guilty.'

i. Extracts from his military medical record shows, in part,

(1) He was seen by a psychologist on 11 January 2007, for anxiety disorder. He reported suffering with various forms of anxiety that included obsessive compulsive disorder, social anxiety, panic attacks, and somatic complaints. He reported experiencing several significant stressors over the past couple of years that included a 5-month confinement for a 30-day AWOL from the Army in 2004.

(2) He was treated for anxiety disorder NOS and follow-up for anxiety/panic attacks on 22 August 2007.

(3) He was seen by a mental health provider for anxiety disorder (NOS), on 29 August 2007. He reported that his anxiety symptom had recently increased due to a number of life stressors including approaching involuntary separation from the Army for actions in 2005, limited social support, and recently learning of the death of a former

squad leader. He reported that he dishonored himself and his family by his actions in 2005 and wanted to redeem himself by reenlisting in the Army. He believed that seeking treatment was necessary to achieve this goal.

j. The appellate review and SCMO showing the applicant's sentence was affirmed and ordered to be duly executed is not available for review.

k. The applicant was discharged on 31 August 2007, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 3, as a result of court-martial. His service was characterized as bad conduct, with separation code of “JJD” and reentry code of “4”. He completed 3 years, 5 months, and 8 days of net active service this period.

l. On 1 June 2012, the Army Discharge Review Board after careful consideration of his military records and all other available evidence, determined that he was properly and equitably discharged. Accordingly, his request for a change in the type and nature of his discharge was denied.

m. In his previous request (AR20230003601) on 24 October 2019, after reviewing the application and all supporting documents, the Board unanimously recommended denial of his request; however, the Deputy Assistant Secretary of the Army (Review Boards) found there was sufficient evidence to grant partial relief.

n. He was reissued a DD Form 214 showing administrative correction of time lost to show 19 July 2003 to 29 August 2003 and upgrade of characterization of service from bad conduct to under honorable conditions (general).

5. He additionally provides:

a. 16 various submissions to the Board consisting of numerous letters and correspondence for the Board requesting full relief and reconsideration of correction to his narrative reason for separation and reentry code, most importantly arguing he was suffering from mental health conditions, he attempted numerous occasions to report his mental health conditions to his chain of command and sought treatment for his mental health conditions.

b. Various personal achievements which include but are not limited to his receipt from the million-veteran program of lapel pin, numerous accolades and achievements for his years as a Free and Accepted Mason and Shriner, certificates of completion, multiple membership cards, transcripts, certificate of achievements, and thank you letter from the American Civil Liberties Union (ALCU) for his generosity.

c. Letters to the President, Vice President, Secretary of Defense, and the Secretary of the Army, where he wrote about his military service, post military service accolades, the error and injustices he faced. He additionally requested assistance and guidance for full relief of his request to correct those injustices and restore his ability to serve his country in any capacity.

d. Legal documents where he asserts the Staff Judge Advocate failed to update the offense information showing his AWOL time of over a year opposed to the corrected time of 19 July 2003 to 30 August 2003 and argues the Board made their decision based on false information.

6. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request for upgrade of his under honorable conditions (general) discharge to honorable, to change his narrative reason from "Court-Martial Other" to "Secretarial Authority," to change his separation code to from JJD to JFF (Secretarial Authority) and change his reentry code from 4 to RE-3. 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 22 October 2002, 2) Court-Martial charges were preferred against the applicant for being absent without leave (AWOL) from 19 July 2003 until 08 June 2004, 3) on 15 June 2005, the applicant was found guilty by a Special Court-Martial of intending to shirk important service, namely: Deployment to Cuba in support of Operation Enduring Freedom, by quitting his unit on or about 19 July 2003 and remaining absent in desertion until on or about 8 June 2004, 5) the U.S. Army Court of Criminal Appeals, Notice of Court-Martial Order Correction, dated 6 March 2007, ordered SCMO Number 7, dated 15 June 2005, be corrected as follows: (1) To reflect in the arraignment paragraph, the applicant's middle initial of his name be changed from "E" to "S. (2) By adding in line six of the specification of Charge I, after the words, "Finding: Guilty" the words "except for the word and figures '8 June 2004,' substituting therefor the word and figures '30 August 2003.' Of excepted word and figures 'Not Guilty,' of the substituted word and figure 'Guilty,' 6) the applicant was discharged on 31 August 2007, under the provisions of Army Regulation (AR) 635-200, Chapter 3, as a result of court-martial. His service was characterized as bad conduct, with separation code of "JJD" and reentry code of "4". He completed 3 years, 5 months, and 8 days of net active service this period, 7) the applicant's previous petition for relief to the ADRB was denied on 01 June 2012, 8) In his previous request to the ABCMR as summarized

in Docket Number AR20230003601, the Board unanimously recommended denial of his request; however, the Deputy Assistant Secretary of the Army (Review Boards) found there was sufficient evidence to grant partial relief. He was reissued a DD Form 214 showing administrative correction of time lost to show 19 July 2003 to 29 August 2003 and upgrade of characterization of service from bad conduct to under honorable conditions (general).

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's behavioral health history is well-outlined in the previous Medical Advisory contained in Docket Number AR20230003601 dated 29 November 2023 and thus only the most salient findings will be included as part of this Advisory. Medical records included as part of his application and available via JLV were reviewed. The applicant's Report of Medical Examination dated 18 July 2002 shows psychiatric was deemed 'normal' on clinical evaluation. An undated memorandum submitted by a psychiatrist from Bayne-Jones Army Community Hospital documented that the applicant had been engaged in BH treatment since 18 August 2004 for Specific Phobia due to air travel. A Medical Record Supplemental Medical Data sheet dated 13 December 2004 shows he was diagnosed with Anxiety and Panic attack and that he was medically cleared for transport but not by air. A medical note dated 29 June 2006 shows the applicant was diagnosed with Anxiety and prescribed Atenolol (beta blocker). A medical note updated on 28 December 2006 shows the applicant was diagnosed with Anxiety and was referred to BH. A BH note dated 11 January 2007 shows he presented for an intake noting a significant history of anxiety which had been present for several years. He was diagnosed with Anxiety Disorder NOS and Essential Hypertension. A diagnosis of Hypochondriasis was added on 22 January 2007. On 24 May 2007, he agreed to a trial of Paxil (antidepressant) for treatment of his anxiety. He was started on Citalopram (antidepressant) for treatment of anxiety on 22 August 2007. Records show he continued to follow-up with behavioral health for anxiety through 12 September 2007.

d. The Medical Advisory in Docket Number AR20230003601 dated 29 November 2023 was reviewed. The Advisor opined that, although the applicant was not formally diagnosed with Anxiety and Hypochondriasis until after the misconduct occurred, his history and self-report support that the conditions were likely present prior to his misconduct. It was further documented that his records since being discharged from the military documented diagnoses of Posttraumatic Stress Disorder (PTSD) and Generalized Anxiety Disorder (GAD), to which the providers opined were secondary to or exacerbated by his service. The Advisor determined that there was a nexus between the applicant's anxiety and trauma-related disorders and thus indicated mitigation was supported.

e. A note from Corsica River Mental Health Services dated 17 May 2010 shows the applicant was evaluated as part of an Annual psychiatric Evaluation. It was documented that there was no change in diagnosis; however, the diagnosis was not specified. An undated/unlabeled note authored by an M.D. shows the applicant was started on BuSpar (anxiety) and to taper and discontinue Klonopin (anxiety/benzodiazepine). Therapy was recommended, with a note for possible trauma-focused therapy.

d. A review of JLV shows the applicant is 30% service-connected through the VA for Neurosis, Generalized Anxiety Disorder (GAD).

e. 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 Specific Phobia, Anxiety Disorder NOS, and Generalized Anxiety Disorder, which are potentially mitigating BH condition(s). Consistent with the previous Medical Advisory, this Advisor would contend that the applicant's misconduct is mitigated by his anxiety-based diagnoses.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with Specific Phobia and Anxiety Disorder NOS in-service. Since being discharged from the military, he has been diagnosed and 30% service-connected through the VA for GAD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with Specific Phobia and Anxiety Disorder NOS in-service. Since being discharged from the military, he has been diagnosed and 30% service-connected through the VA for GAD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Review of in-service records shows the applicant was diagnosed and treated for Anxiety Disorder NOS, Hypochondriasis, and Specific Phobia in-service (air travel). As there is an association between avoidance behaviors and anxiety, there is a nexus between his misconduct of going AWOL and his diagnoses of Anxiety Disorder NOS, Specific Phobia, and GAD. Thus, BH mitigation is supported.

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 consideration for requesting upgrade of discharge characterization of service. The evidence of record confirms that court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ). The DD Form 458 (Charge Sheet) shows he was charged with being absent without leave (AWOL) from 19 July 2003 until 8 June 2004, when he surrendered to military authorities. Special Court-Martial Order Number 7, dated 15 June 2005, reflects that the applicant was found guilty by a special court-martial of intending to shirk important service, specifically deployment to Cuba in support of Operation Enduring Freedom, by quitting his unit on or about 19 July 2003 and remaining absent in desertion until on or about 8 June 2004.

2. The Board noted, the court sentenced the applicant to reduction to the grade of E-1, forfeiture of pay for nine months, and discharge with a bad conduct discharge. These proceedings were conducted in accordance with law and regulation, and the sentence was duly approved. The Board considered the medical advisory opinion, which noted sufficient evidence that the applicant has been diagnosed with Specific Phobia, Anxiety Disorder NOS, and Generalized Anxiety Disorder, conditions that are potentially mitigating behavioral health factors. After careful consideration, the Board did not concur with the advisory opinion. The Board determined that while the applicant's behavioral health diagnoses are acknowledged, the evidence does not establish a direct nexus between these conditions and the misconduct of prolonged desertion. The seriousness of the offense, involving intentional absence to avoid deployment, outweighed any potential mitigating factors. Based on the foregoing, the Board concluded that the applicant's bad conduct discharge, narrative, reason, RE Code, and SPD Code was proper and equitable.

3. 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 was diagnosed with Specific Phobia and Anxiety Disorder NOS in-service. Since being discharged from the military, he has been diagnosed and 30% service-connected through the VA for GAD.

b. Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with Specific Phobia and Anxiety Disorder NOS in-service.

Since being discharged from the military, he has been diagnosed and 30% service-connected through the VA for GAD.

c. Does the condition or experience actually excuse or mitigate the discharge?
 Yes. Review of in-service records shows the applicant was diagnosed and treated for Anxiety Disorder NOS, Hypochondriasis, and Specific Phobia in-service (air travel). As there is an association between avoidance behaviors and anxiety, there is a nexus between his misconduct of going AWOL and his diagnoses of Anxiety Disorder NOS, Specific Phobia, and GAD. Thus, BH mitigation is supported.

4. 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:

<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, with respect to courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of the Secretary's Department may extend only to actions taken by reviewing authorities under the Uniform Code of Military Justice (UCMJ) or action on the sentence of a court-martial for purposes of clemency. The Secretary of the Army shall make such corrections by acting through boards of civilians within the executive part of the Army.
2. Title 10, U.S. Code, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Court-martial convictions stand as adjudged or modified by appeal through the judicial process, 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.
3. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

4. Army Regulation (AR) 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.

5. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Chapter 3 prescribes basic eligibility for prior-service applicants for enlistment and includes a list of Armed Forces reentry eligibility (RE) codes.

- RE-1 applies to persons completing an initial term of active service who are considered qualified to reenter the U.S. Army if all other criteria are met
- RE-3 applies persons who are not considered fully qualified for reentry or continuous service at the time of separation, but disqualification is waivable
- RE-4 applies to persons separated from their last period of service with a nonwaivable disqualification

6. AR 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full-time training duty. The separation program designator "JFF" corresponded to "Secretarial Authority," and the authority, Army Regulation 635-200, paragraph 5-3.

7. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge was separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate

b. A general discharge was a separation from the Army under honorable conditions. When authorized, separation authorities could issue a general discharge to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

8. 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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; 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 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.

9. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and Service 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//