

IN THE CASE OF: ██████████

BOARD DATE: 14 August 2025

DOCKET NUMBER: AR20240010512

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under honorable conditions (general) characterization of service and correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his narrative reason for separation as "Secretarial Authority."

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), with self-authored statement
- Legal Brief, dated 12 August 2024
- Army Service Record (60 pages)
- Department of Veterans Affairs (VA) documents, (130 pages)
- Statement of support, dated 6 January 2021

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 AR20210013230 on 15 February 2022.
2. The applicant states he experienced the worst time in his life while deployed to Afghanistan. They experienced rocket attacks all day, and he witnessed the death of his battle buddy in an Improvised Explosive Device (IED) attack. He witnessed a victim of a few Vehicle-Borne IED attacks. He also experienced racial profiling numerous times. He was falsely accused of smoking synthetic marijuana. He was a great Soldier who was accused of something he did not do.
3. Counsel states the applicant was an exemplary Soldier who spent nine months in Afghanistan. It was a very traumatic experience which resulted in him being awarded a 100 percent (%) disability rating for post-traumatic stress disorder (PTSD) from the VA. He has never recovered from the incidents he experienced. He was disciplined on two occasions for which he fully acknowledged and took ownership of his mistakes. He was then falsely accused of smoking "spice." No evidence was ever found that he was in

possession of the drug, and he passed a subsequent drug test. Liberal consideration should be given to his situation, and PTSD should be considered as a mitigating factor.

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

a. He enlisted in the Regular Army on 19 October 2009, with service in Afghanistan from 16 April 2011 to 29 December 2011.

b. He received non-judicial punishment on two occasions:

- On 27 July 2011, for disobeying a lawful order from a noncommissioned officer and disobeying a lawful general order, on or about 23 July 2011. He was reduced to private/E-2.
- On 30 September 2011, for violating a lawful general order by wrongfully possessing and using a substance with the intent to obtain an altered state of mind and for making a false official statement to an investigator, on or about 15 and 16 September 2011. He was reduced to private/E-1.

c. On 21 November 2011, his commander notified him of his intent to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c, by reason of commission of a serious offense.

d. He was advised by consulting counsel of the basis for the contemplated action to separate him and its effects; of the rights available to him; and the effects of any action taken by him to waive his rights. In a statement in his own behalf, he requested to be retained. He further stated the situation was a one-time mistake. He was at the wrong place at the time and associating with the wrong crowd of people.

e. On 23 November 2011, the chain of command formally recommended his separation, prior to his expiration term of service.

f. On 26 November 2011, the separation authority approved the recommended separation and directed the issuance of an under honorable conditions (general) characterization of service.

g. Accordingly, he was discharged on 27 January 2012, with an under honorable conditions (general) character of service, by reason of misconduct (serious offense). He completed 2 years, 3 months, and 9 days of net active service this period.

h. The Army Discharge Review Board considered the applicant's request for an upgrade of his character of service on 15 March 2013. After careful review, the Board determined he was properly and equitably discharged and denied his request for relief.

i. The ABCMR considered his request for an upgrade of his character of service and corrections to his DD Form 214 on 15 February 2022. After careful review, the Board determined there was insufficient evidence of an error or injustice which would warrant a change to his characterization of service, separation code, reentry code, and narrative reason for separation. His request for relief was denied.

5. The applicant provides Army Service Records, VA documents, and a statement of support from his mother, dated 6 January 2021, wherein she states her son has not been himself after serving in the military, He experienced racism and deployed to Afghanistan where he saw many explosions and his fellow Soldiers were killed.

6. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

7. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request for an upgrade of his under honorable conditions (general) characterization of service and correction of his DD Form 214 to show his narrative reason for separation as "Secretarial Authority." The applicant contends PTSD as related to his request.

b. 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:

- Applicant enlisted in the Regular Army on 19 October 2009, with service in Afghanistan from 16 April 2011 to 29 December 2011.
- He received non-judicial punishment on two occasions:
- On 27 July 2011, for disobeying a lawful order from a noncommissioned officer and disobeying a lawful general order, on or about 23 July 2011. He was reduced to private/E-2.
- On 30 September 2011, for violating a lawful general order by wrongfully possessing and using a substance with the intent to obtain an altered state of mind and for making a false official statement to an investigator, on or about 15 and 16 September 2011. He was reduced to private/E-1.
- On 21 November 2011, his commander notified him of his intent to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c, by reason of commission of a serious offense.
- Applicant was discharged on 27 January 2012, under the provisions of Army Regulation 635-200, para 14 – 12C, for misconduct (serious offense). His service was characterized as under honorable conditions (general) with separation code "JKQ" and reenlistment code "RE-3".

- The ADRB considered the applicant's request for an upgrade of his character of service on 15 March 2013. After careful review, the Board determined he was properly and equitably discharged and denied his request for relief.
- ABCMR considered his request for an upgrade of his character of service and corrections to his DD Form 214 on 15 February 2022. His request for relief was denied.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states he experienced the worst time in his life while deployed to Afghanistan. They experienced rocket attacks all day, and he witnessed the death of his battle buddy in an Improvised Explosive Device (IED) attack. He witnessed a victim of a few Vehicle-Borne IED attacks. He also experienced racial profiling numerous times. He was falsely accused of smoking synthetic marijuana. He was a great Soldier who was accused of something he did not do. His counsel further states the applicant was an exemplary Soldier who spent nine months in Afghanistan. It was a very traumatic experience which resulted in him being awarded a 100 percent (%) disability rating for post-traumatic stress disorder (PTSD) from the VA. He has never recovered from the incidents he experienced. He was disciplined on two occasions for which he fully acknowledged and took ownership of his mistakes. He was then falsely accused of smoking "spice." No evidence was ever found that he was in possession of the drug, and he passed a subsequent drug test. Liberal consideration should be given to his situation, and PTSD should be considered as a mitigating factor.

d. Active-duty electronic medical records available for review show the applicant participated in a mental status evaluation for the purpose of separation on 3 November 2011. He was not diagnosed with a behavioral health condition, had no prior history of behavioral health treatment, and was psychiatrically cleared for any administrative action deemed appropriate by command.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected for PTSD.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his misconduct.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected PTSD on his application as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 100% service connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. The applicant was discharged due to disobeying a lawful order, wrongful possession and use of a substance, and making a false official statement to an investigator. The available VA electronic medical record shows the applicant is 100% service connected for PTSD. Given the nexus between PTSD and the use of substances to alleviate/cope with the symptoms of his behavioral health condition, the applicant's wrongful possession and use of a substance is mitigated by his BH condition. However, it is noted the applicant asserts he was not in possession of any substance and his urinalysis was negative for any substance. In addition, given the association between PTSD and difficulty with authority, his misconduct of disobeying a lawful order is also mitigated by his BH condition. The applicant's misconduct of making a false official statement to an investigator would not be mitigated by his BH condition since there is no association between PTSD and lying. However, the unmitigated misconduct is far outweighed by his service-connected PTSD.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the majority of the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant received two non-judicial punishment for disobeying a lawful order from a noncommissioned officer, disobeying a lawful general order, violating a lawful general order by wrongfully possessing and using a substance with the intent to obtain an altered state of mind, and for making a false official statement.

- a. Character of Service: Deny. One potential outcome discussed was to grant relief based upon the available documentation and the majority of the misconduct found to be mitigated by a medical condition. However, the Board concluded based upon the pattern of misconduct leading to the applicant's separation and not all misconduct being mitigated the current characterization of service was appropriate and did not warrant a change.
- b. Narrative Reason for Separation: Deny. One potential outcome discussed was to grant relief based upon a large majority of the misconduct being mitigated by the applicant's medical condition. However, based upon the pattern of

misconduct leading to the applicant's separation and not all misconduct being mitigated, the Board concluded the current narrative reason for separation was appropriate and did not warrant a change.

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 discharge? Yes. The applicant selected PTSD on his application as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 100% service connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. The applicant was discharged due to disobeying a lawful order, wrongful possession and use of a substance, and making a false official statement to an investigator. The available VA electronic medical record shows the applicant is 100% service connected for PTSD. Given the nexus between PTSD and the use of substances to alleviate/cope with the symptoms of his behavioral health condition, the applicant's wrongful possession and use of a substance is mitigated by his BH condition. However, it is noted the applicant asserts he was not in possession of any substance and his urinalysis was negative for any substance. In addition, given the association between PTSD and difficulty with authority, his misconduct of disobeying a lawful order is also mitigated by his BH condition. The applicant's misconduct of making a false official statement to an investigator would not be mitigated by his BH condition since there is no association between PTSD and lying. However, the unmitigated misconduct is far outweighed by his service-connected PTSD.

The Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service and his narrative reason for separation.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	█	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 amendment of the ABCMR decision rendered in Docket Number AR20210013230 on 15 February 2022.



 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. Section 1556 of Title 10, U.S. 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 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, and reviews to Army Board for Correction of Military Records (ABCMR) applicants prior to adjudication.

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

a. 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.

b. Separations under paragraph 5-3 (Secretarial Plenary Authority) are the prerogative of the Secretary of the Army. This authority is exercised sparingly and seldom delegated. It is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army.

c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD Codes) provides the specific authorities, narrative reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. The regulation shows that the appropriate narrative reason to assign to Soldiers being separated under the provisions of Army Regulation 635-200, paragraph 14-12c, with separation code JKQ, is misconduct (serious offense).

4. 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. 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.

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.

//NOTHING FOLLOWS//