

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 April 2025

DOCKET NUMBER: AR20240010548

APPLICANT REQUESTS: upgrade of his under other than honorable conditions discharge.

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)

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 posttraumatic stress disorder (PTSD), anxiety, depression and bipolar has gotten worse due to 3d divorce and court incarceration at Bell County law enforcement. Currently homeless as well as in jail receiving mental health services. Script is difficult to read but available on the application for the Board's review.
3. A review of the applicant's service record shows:
 - a. He enlisted in the U.S. Army Reserve (USAR) on 5 June 2008.
 - b. He entered a period of active duty training (ADT) on 18 June 2008. Orders 263-00009, issued on 19 September 2008, shows he was awarded primary military occupational specialty 35M (Human Intelligence Collector). He was honorably released from ADT on 5 February 2009 and transferred back to his USAR unit.
 - c. The Army Military Human Resource Record (AMHRR) is void of the specific facts and circumstances concerning the events which led to the applicant's discharge from the Army Reserve. The applicant's AMHRR does contain a properly constituted discharge order: Orders 11-261-00037, issued 18 September 2011, which indicate the

applicant was reduced in rank from private first class to private1 effective 18 September 2011. He was also discharged under the provisions of Army Regulation (AR) 135-178 (Enlisted Administrative Separations), with a characterization of service of under other than honorable conditions effective 25 September 2011.

4. On 25 July 2018, 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.

5. On 10 April 2023, 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.

6. 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.

7. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to something more favorable. He contends he experienced an undiagnosed mental health condition, including PTSD, Traumatic Brain Injury (TBI), and Intimate Partner Violence (IPV) that mitigates his misconduct

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:

- The applicant enlisted into the U.S. Army Reserves and entered active duty for training on 18 June 2008. He was honorably released back to his unit on 5 February 2009.
- The AMHRR is void of the specific facts and circumstances concerning the events which led to the applicant's discharge from the Army Reserve. The applicant's AMHRR does contain a properly constituted discharge order: Orders 11-261-00037, issued 18 September 2011, which indicate the applicant was reduced in rank from private first class to private1 effective 18 September 2011. He was also discharged under the provisions of Army Regulation (AR) 135-178 (Enlisted Administrative Separations), with a characterization of service of under other than honorable conditions effective 25 September 2011.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts his PTSD, depression, bipolar, and anxiety have worsened since his third divorce and incarceration. He also indicates he is homeless and in need of benefits. He indicated PTSD, TBI, IPV, and "other mental health" as issues or conditions related to his request. There were not mental health or medical records included with the application. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed he initiated care with the VA through an ER visit for chest pain and anxiety on 5 August 2021. Documentation showed he reported a history of diagnoses of bipolar disorder and anxiety and that he was currently homeless. He was admitted to the psychiatric unit, although he denied suicidal or homicidal ideation, and he discharged on 18 August 2021 with a medication for mood stabilization and a diagnosis of Bipolar Disorder. He was transferred to a domiciliary program and continued with mental health treatment through group and individual therapy. He discharged from this program on 22 October 2021, and at a follow up outpatient visit he reported being employed and adherent to medications for mood, anxiety, and sleep. His most recent contact was through the Veterans Crisis Line in September 2023, and he reported homelessness and need for hospitalization.

e. MedChart and HRR were reviewed and a permanent Behavioral Health profile for depression (dated 19 August 2009) with PULHES of 111123 was noted. However, there were no case management notes or a line of duty.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a diagnosed mental health condition while on active service. Additionally, without the facts and circumstances related to his misconduct, no opinion regarding mitigation can be offered.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, and a TBI at the time of the misconduct. The only record from his time in service was a permanent BH profile for depression in August 2009. VA records starting in 2022 showed a diagnosis of Bipolar Disorder.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Without knowledge of the basis for separation, no opinion regarding mitigation under liberal consideration can be made. However, the applicant's assertion of an undiagnosed mental health condition as a mitigating factor, per Liberal Consideration, warrants consideration by the board.

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 relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the lack of information related to the misconduct leading to the applicant's separation and the findings outlined in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

//SIGNED//

X

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 (AR) 135-178 sets forth the policies, standards, and procedures to ensure the readiness and competency of the U.S. Army while providing for the orderly administrative separation of Army National Guard and U.S. Army Reserve (USAR) enlisted Soldiers for a variety of reasons. The separation policies throughout the different Chapters in this regulation promote the readiness of the Army by providing an orderly means to judge the suitability of persons to serve on the basis of their conduct and their ability to meet required standards of duty performance and discipline. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, and convictions by civil authorities.

a. An honorable characterization is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. If a Soldier's service has been honest and faithful, it is appropriate to characterize that service as under honorable conditions. Characterization of service as general (under honorable conditions) is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.

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.

6. 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//