

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 May 2025

DOCKET NUMBER: AR20240010854

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 3 November 2009 to show his narrative reason for discharge as medical or hardship vice misconduct (minor infractions)

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- DD Form 214
- Associate of Applied Science Diploma
- Judgement Entry Granting Motion for Sealing of Record
- State of South Carolina Permit to Perform Breath Alcohol Test
- Certificates of Completion
- Bachelor of Arts Diploma
- Glock Certificate
- Criminal Watch Dog Report
- Master of Science Diploma
- Letter from the Army Discharge Review Board (ADRB)
- ADRB Upgrade
- Department of Veterans Affairs (VA) Medical Records

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, in pertinent part:

- During the course of his service, he fell upon some hard times financially
- His wife left him for his best friend

- He was treated at Fort Bragg by both a psychologist and psychiatrist for adjustment disorder, anxiety, depression, and insomnia
- He has been unable to obtain any records of his treatment from Fort Bragg
- The mental health issues were major contributing factors for the minor infraction he committed
- Prior to this offense and since, he has not engaged in any illegal activity
- He was told by the psychiatrist that he was not fit for duty
- He was told he would receive an honorable discharge and be separated due to medical issues
- His superior informed him he would not be getting a medical discharge and would be separated due to misconduct with an under honorable conditions (general) discharge
- The ADRB upgraded his discharge from under honorable conditions (general) to honorable
- The ADRB did not have the authority to change his narrative reason for separation to medical but they changed it from misconduct (serious offense) to misconduct (minor infractions)
- He would like his discharge to reflect medical reasons
- The original medical discharge proposed was hindered by upset and retaliatory command staff
- He still suffers from the issues he was being treated for, while in the service
- He has been unable to obtain any VA disability benefits to help address these issues

3. The applicant provides and his service record shows:

- On 19 June 2008, he entered active duty in the Regular Army
- On 15 July 2009, a Judgment Entry, was completed and shows he was charged with one count of burglary to which he pled guilty to and was found guilty of; the form includes his sentence
- On 17 September 2009, he underwent a Report of Behavioral Health Evaluation he was diagnosed with adjustment disorder with depressed mood; he was psychiatrically cleared for any administrative action deemed appropriate by the command
- His medical examination shows he has depression with anxiety, insomnia, and mild elevation triglycerides
- On 22 September 2009, he received a Developmental Counseling Form for being convicted of burglary and he was being considered for separation from the Army; he agreed with the counseling and signed the form
- On 5 October 2009, he was flagged for adverse action

- On 8 October 2009, his commander initiated separation for him being charged with one count of burglary; his commander was recommending an under honorable conditions (general) discharge
- On 8 October 2009, the applicant completed his election of rights
- On 15 October 2009, the appropriate approval authority approved the applicant's separation and directed he receive an under honorable conditions (general) discharge
- On 3 November 2009, he was discharged accordingly; his initial DD Form 214 had the narrative reason for discharge as misconduct (serious offense) and his character of service was under honorable conditions (general)
- On 13 May 2013, he received his Associate in Applied Science, General Business
- On 7 November 2013, a Judgment Entry Granting Motion for Sealing of Record granted his motion for sealing the record of conviction
- On 2 October 2015, he was authorized to perform breath alcohol tests
- From 16 October 2015 through 18 May 2018, he completed several law enforcement courses
- On 12 May 2016, the ADRB made a decision on the applicants request to upgrade his discharge stating the ADRB determined he was properly and equitably discharged and denied his request
- On 1 June 2017, he received his Bachelor of Arts, General Studies
- On 24 July 2018, he completed the GLOCK Armorer's Course
- On 4 January 2019, he received a Criminal Watch Dog report which shows misdemeanor traffic violations
- On 1 May 2020, he received his Master of Science, Management
- On 20 June 2024, the ADRB made a decision on the applicants request to upgrade his discharge and upgraded his discharge to honorable and changed the narrative reason for separation to misconduct (minor infractions)
- VA Medical Records, which will be reviewed by the Army Review Boards Agency (ARBA) Medical Section who will provide a medical review
- The applicant's service record is void of a medical evaluation board or physical evaluation board

4. Based on the applicant's records showing he was diagnosed with depression with anxiety, the ARBA Medical Section provided a medical review for the Board's consideration.

5. MEDICAL REVIEW:

a. Background: The applicant is requesting correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 3 November 2009 to show his narrative reason for discharge as medical or hardship versus misconduct (minor infractions). He contends PTSD and OMH 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 June 2008.
- On 14 July 2009, he was convicted by a state court of burglary. The court sentenced him to community control for 12 months, including 19 days imprisonment, payment of fines and court fees, abstinent from alcohol, restitution, maintaining employment, and others.
- Applicant was discharged from active duty on 3 November 2009. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged in accordance with paragraph 14-12b of AR 635-200 with an under honorable conditions (general) discharge. He completed 1 year, 4 months, and 15 days of active service. His DD Form 214 shows separation code JKQ, narrative reason for separation "Misconduct, Serious offense," and RE code 3.
- On 20 June 2024, the ADRB upgraded his discharge to honorable and changed the narrative reason for separation to misconduct (minor infractions).

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, "during the course of service I fell upon some hard times financially. To add to the issues, my wife of the time left me for my best friend. This created further emotional and financial distress in my life. I was treated at Fort Bragg by both a psychologist and psychiatrist for adjustment disorder, anxiety, depression, and insomnia. I have been unable to obtain any records of treatment from Fort Bragg, even though the review board medical staff was able to find some. These mental health issues were major contributing factors for the minor infraction I committed, as I was not in my right mind. Prior to this one offense and since this one offense, I have not been engaged in any illegal activity."

d. Active-duty electronic medical records available for review show the applicant's first encounter with behavioral health services occurred on 9 July 2009, related to legal problems. He was diagnosed with Adjustment Disorder based on his stressors. On 4 August 2009 the applicant was seen as a walk-in and reported having been recently released from jail related to a robbery. He further reported marital stressors, difficulty sleeping, mood issues, and was seeking medication to alleviate his symptoms. The applicant was referred for a medication evaluation, recommended for supportive psychotherapy, and his diagnosis remained Adjustment Disorder. On 19 August 2009, he was evaluated by psychiatry and diagnosed with Adjustment Disorder with Depressed Mood related to legal, occupational, and marital stress. He was started on medication to address his sleep issues and was placed on a 90-day non-deployable profile due to his medications. The record shows he was provided with ongoing supportive therapy and medication management. On 17 September 2009, a mental status examination was completed, and he was found to meet retention standards. On

23 September 2009, he reported decreased marital stress and a pending chapter 14 due to his conviction. He also completed a separation physical the same day and was found fit for duty. During a session on 2 October 2009, he continued to report escalating stressors related to being chaptered out of the Army, owing the Army \$5,500 to repay his bonus, his felony conviction, and his wife moving out with their daughter. During his session on 5 October 2009, the applicant reported he had stopped worrying about his wife and was focusing on getting himself set up once discharged from the Army. On 21 October 2009, he reported being investigated for adultery with the wife of another soldier and was scheduled for discharge on 3 November 2009, unless orders were canceled due to the adultery investigation. His provider noted no duty limitations and a diagnosis of Adjustment Disorder. Overall, the applicant's available service record does not contain a DA Form 3349 (Physical Profile), nor does it evidence:

- he was issued a permanent physical profile rating
- he suffered from a medical condition, physical or mental, that affected his ability to perform the duties required by his MOS and/or grade or rendered him unfit for military service
- he was diagnosed with a medical condition that warranted his entry into the Army Physical Disability Evaluation System (PDES)
- he was diagnosed with a condition that failed retention standards and/or was unfitting.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and there is no medical documentation substantiating his assertion of PTSD. On 7 April 2010, the applicant participated in a mental health evaluation. He did not report any symptoms consistent with PTSD and was diagnosed with Depression, NOS, and Alcohol Dependence based on his self-reported symptoms. He participated in a follow-up assessment on 19 April 2010 and reported having been diagnosed with Antisocial Personality Disorder. He endorsed behaviors consistent with the diagnosis including frequent disregard for social norms, deceitfulness/persistent lying, aggressive acts towards others (including pulling guns on family members) and lack of remorse when engaging in significantly disruptive behavior (such as killing his and others' pets in early teens). He was diagnosed with Alcohol Dependence and Antisocial Personality Disorder, per an addendum on 3 May 2010.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support a referral to the IDES process. The applicant's sole behavioral health diagnosis while in service was Adjustment Disorder related to situational stressors of relationship issues and legal problems. An Adjustment Disorder is a transient reaction to stress and is not a condition that would typically fail Army retention criteria nor is it a ratable condition. In addition, the applicant contends PTSD was diagnosed post military service, however, there is no

medical documentation evidencing a diagnosis with this condition. Regardless, a diagnosis of PTSD would not imply failure to meet Army retention standards, and a subsequent diagnosis is not indicative of an injustice at the time of service. Furthermore, even an in-service diagnosis of PTSD is not automatically unfitting per AR 40-501 and would not automatically result in the medical separation processing. Based on the documentation available for review, there is no indication an omission or error occurred that would warrant a referral to the IDES process.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Not applicable.

(2) Did the condition exist or experience occur during military service? Not applicable.

(3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable.

BOARD DISCUSSION:

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 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 Board reviewed the applicant's medical records and the advisory opinion provided by medical authorities. The medical advisory concluded that there is insufficient evidence to support referral of the applicant to the IDES process. The advisory noted that the applicant's sole behavioral health diagnosis during service was Adjustment Disorder, which was attributed to situational stressors involving relationship issues and legal problems. The record contains no medical documentation evidencing a diagnosis of PTSD during the applicant's period of service.

2. The Board concurred with the medical advisory's findings. Under governing regulations, referral to the IDES process requires substantiated medical evidence demonstrating a condition that fails to meet Army retention standards. Adjustment Disorder, as diagnosed in the applicant's case, is generally considered a condition that does not warrant referral to IDES absent evidence of significant impairment. The absence of medical documentation supporting a diagnosis of PTSD further undermines the applicant's claim. Moreover, even if a diagnosis of PTSD had been established,

such a diagnosis does not automatically imply failure to meet retention standards. The Board emphasized that subsequent diagnoses made after separation are not indicative of error or injustice at the time of service, as determinations must be based on the medical evidence available during the period of service. Therefore, the Board found no error or injustice with the narrative reason for separation or a condition that warranted the applicant's referral to the IDES.

3. The Board considered the following Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Not applicable.

(2) Did the condition exist or experience occur during military service? Not applicable.

(3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable.

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 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 635-5 (Personnel Separation Documents) prescribes the separation documents that must be prepared for Soldiers on retirement, discharge, release from active-duty service, or control of the Active Army. It states when completing the DD Form 214 in block 28 (Narrative Reason for Separation) This is based on regulatory or other authority and can be checked against the cross reference in Army Regulation 635-5-1.
3. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities, reasons for separating Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows the SPD for discharge for misconduct (minor infractions) is JKN. It does not provide a narrative reason for separation for bipolar disease.
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 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;

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.

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 on the basis of 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. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) states:

a. The mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.

b. An enlisted Soldier may not be referred for, or continue, physical disability processing when action has been started under any regulatory provision which authorizes a characterization of service of under other than honorable conditions.

c. Exceptions to paragraph b above are if the case comes within the limitations above, the commander exercising general court-martial jurisdiction over the Soldier may abate the administrative separation. This authority may not be delegated. A copy of the decision, signed by the General Court Martial Convening Authority (GCMCA), must be forwarded with the disability case file to the PEB. A case file may be referred in this way if the GCMCA finds the following:

(1) The disability is the cause, or a substantial contributing cause, of the misconduct that might result in a discharge under other than honorable conditions.

(2) Other circumstances warrant disability processing instead of alternate administrative separation.

d. Paragraph 4-30 (Grade on Retirement or Separation for Physical Disability) provides that the grade at which a Soldier is retired or receives disability severance pay will be the highest of the options listed below in accordance with the provisions of Title 10, USC, sections 1212 and 1372, respectively, and as implemented by AR 15-80 (Army Grade Determination Review Board and Grade Determinations) for determinations of highest grade satisfactorily held. Grade to which the Soldier would have been promoted had it not been for the physical disability for which the Soldier was determined unfit - In general, this provision pertains to Soldiers on a promotion list. For Active Army and Reserve Component enlisted disability cases, this option is implemented under the provisions of AR 600-8-19 (Enlisted Promotions and Reductions). Promotion orders are not issued.

7. Title 38, USC, section 1110 (General - Basic Entitlement): For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

8. Title 38, USC, section 1131 (Peacetime Disability Compensation - Basic Entitlement): For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war,

the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

9. Title 10, U.S. Code, section 1556 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//