

IN THE CASE OF: ██████████

BOARD DATE: 14 August 2025

DOCKET NUMBER: AR20240011010

APPLICANT REQUESTS: in effect, upgrade of his under 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)
- Department of Veterans Affairs (VA) Form 21-4138 (Statement in Support of Claim), 23 September 2024
- witness statement

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 he had undiagnosed post-traumatic stress disorder (PTSD) during his time of service and is requesting an upgrade of his character of service.

3. The applicant enlisted in the Regular Army on 29 September 2003.

4. The applicant's records contain numerous DA Forms 4856 (Developmental Counseling Form) which reflect he was counseled on the following occasions for the following misconduct between July 2004 – October 2004:

- 28 July 2004, for failure to report for work call formation
- 8 September 2004, for missing work call formation on 7 September 2004
- 13 September 2004, for leaving physical training (PT) formation and not coming back until after lunch
- 14 September 2004, for failure to report to morning formation at 0530 and missing a ruck march

- 20 October 2004, for signing out for sick call, but not showing up at the Troop Medical Clinic for sick call and not having an appointment
- 20 October 2004, for failure to report to the 0615 PT formation on 19 October 2004
- 20 October 2004, for failure to report to the 0615 PT formation on 18 October 2004, and lying by stating he had been cleared to miss the formation, which was not true
- 29 October 2004, for failing to report to staff duty desk on 28 October 2004, not reporting to work on 29 October 2004, and being absent without leave (AWOL)

5. Multiple DA Forms 4187 (Personnel Action) show the applicant's following duty status changes:

- from present for duty (PDY) to AWOL on 29 October 2004
- from AWOL to DDY on 4 November 2004

6. The applicant's pass privileges were suspended on 8 November 2004 and again on 16 November 2004, as a result of being AWOL, flight risk, excessive failure to repair, and pending Uniform Code of Military Justice (UCMJ) action.

7. A DA Form 2627 (Record of Proceedings under Article 15, UCMJ) shows the applicant accepted nonjudicial punishment (NJP) on 10 December 2004, for failing to go at the time prescribed to his place of duty at work call formation on 28 July 2004, 13 September 2004, and 29 October 2004.

8. Multiple additional DA Forms 4856 reflect the following additional counseling the applicant received between February 2005 – April 2005

- 2 February 2005, for missing the 0615 and 0900 formations on 2 February 2005
- 24 February 2005, for missing the 0615 and 0900 formations on 24 February 2005
- 11 April 2005, for being late to the 0830 formation
- 13 April 2005, for missing the 0615 and the 0900 formations on 12 April 2005
- 14 April 2005, for failing to report to the 0615 and 0900 formations on 14 April 2005
- 15 April 2005, for failing to report to the School the Soldiers Program on 15 April 2005
- 18 April 2005, for failing to report back to work on time after sick call on 18 April 2005
- 22 April 2005, for failure to report at the 0530 and 0900 formations
- 25 April 2005, for failing to report at the 0615 formation on 25 April 2005, and not responding to attempts to reach you through text message until later in the day

- 26 April 2005, for failing to report at the 0615 formation on and still not reporting over 24 hours later, rendering him AWOL

9. Multiple additional DA Forms 4187 reflect the applicant's following duty status changes from April 2005 – July 2005:

- from PDY to AWOL on 26 April 2005
- from AWOL to dropped from the rolls (DFR) on 26 May 2005
- from DFR to civilian confinement on 26 July 2005
- from DFR to PDY on 26 July 2005
- from PDY to civilian confinement on 26 July 2005

10. A DA Form 3822-R (Report of Mental Status Evaluation) shows:

- the applicant underwent a mental status evaluation on 8 September 2005, for the purpose of administrative discharge
- he was found to meet the retention requirements of Army Regulation 40-501 (Standards of Medical Fitness)
- he had no psychiatric disease that warranted disposition through medical channels
- he was cleared for any administrative action deemed appropriate by his command

11. On 29 September 2005, the applicant was notified by his immediate commander of his initiation of action to separate him under other than honorable conditions the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 14, due to commission of a serious offense, based on his AWOL from 26 April 2005 through 26 July 2005. He was advised of his right to consult with counsel and to submit statements in his own behalf.

12. On 3 October 2005, the applicant acknowledged having been advised by consulting counsel of the basis for the contemplated action to separate him under the provisions of Army Regulation 635-200, chapter 14, for commission of a serious offense, based on his AWOL from 26 April 2005 through 26 July 2005. He requested consulting counsel representation and submitted statements in his own behalf.

13. The applicant's self-authored statement shows:

a. He left his unit on 26 April 2005, and did not return for 3 months. He was wrong to do so and regrets making that choice, but at the time he thought the things that led up to that decision were more than he could handle. He did not take pride in knowing he was the cause of the single most destructive and irresponsible thing he could have done for his family's well-being or that he let down his battle buddies.

b. He has a wife and two young children and going to college after his separation from the Army was his goal when he joined, and he won't be able to afford it without the GI Bill. He was requesting a discharge characterization of general instead of under other than honorable conditions, to enable him to earn a degree so he could secure his children's future. He gave what he had for 2 years. He was a bad Soldier, but he is not a bad husband or father and wants to be able to provide for his family.

14. The applicant's command sergeant major responded to the applicant's statement on 6 October 2005, indicating he felt the applicant's service was far less than honorable, he was not a team player, and during his unauthorized absence, his fellow Soldiers were conducting theater specific training in preparation for deployment without him pulling his weight. He therefore felt the applicant's service should be characterized as under other than honorable.

15. On 10 October 2005, the applicant's battalion commander recommended approval of the applicant's discharge under other than honorable conditions under the provisions of Army Regulation 635-200, chapter 14, for commission of a serious offense.

16. On 14 October 2005, the approval authority directed the applicant's discharge under other than honorable conditions under the provisions of Army Regulation 635-200, chapter 14, for commission of a serious offense.

17. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was given an under other than honorable conditions discharge on 31 October 2005, under the provisions of Army Regulation 635-200, chapter 14, due to misconduct, commission of a serious offense, with corresponding Separation Code JKQ. His rank/grade is shown as private (PV1)/E-1 and he was credited with 1 year, 9 months, and 25 days of net active service.

18. The applicant provided a witness statement which shows:

a. He served with the applicant at Fort Carson, CO, and felt him to be sharp, diligent, punctual, proficient, and easy to work alongside. There was a period where something noticeably changed with the applicant and he seemed distant, having mood swings and kind of seemed checked out.

b. The applicant finally revealed to him that one of the sergeants in their noncommissioned officer (NCO) support channel said he had a bet with another sergeant that the applicant would kill himself. The applicant expressed a desire to speak with a counselor or therapist, but was ridiculed and told to suck it up and be a Soldier. That NCO told the applicant to, "just do it; we know you want to kill yourself." The applicant was different after that, as he imagines anybody would be. He cannot

confidently say this is why the applicant is currently jobless and homeless, but he can 100 percent say the person he first met at Fort Carson, CO was noticeably different after being told he should kill himself.

19. An Army Review Boards Agency (ARBA) letter, 25 April 2025, shows the applicant was requested to submit copies of the medical documents that support his PTSD, but he did not respond.

20. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his other than honorable discharge. He contends he experienced PTSD during his time in service that mitigates his misconduct. 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 29 September 2003; 2) The applicant received at least 8 formal counselings between July 2004 through November 2004 for infractions such as: A) Failure to report to his duty location, B) Failure to follow direct orders, C) Lying to a NCO, D) Malingering, E) Going AWOL (28 October 2004 to 04 November 2004, and F) Conduct unbecoming; 3) On 10 December 2004 the applicant received NJP for failing to go to his place of duty at the time prescribed on 28 July 2004, 13 September 2004, and 29 October 2004; 4) Then the applicant received at least 10 additional counselings between February 2005 and April 2005 that included infractions such as: A) Missing/being late to formations, B) Failure to report to his place of duty, C) Not responding to attempts to contact the applicant, and again for D) Going AWOL (26 April 2005 to 26 July 2005); 5) On 31 October 2005, the applicant was discharged, Chapter 14- misconduct, commission of a serious offense. His service was characterized as under other than honorable conditions. He completed 1 year, 9 months, and 25 days of net active service with lost time between 29 October 2004 and 04 November 2004 and between 26 April 2005 and 26 July 2005.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also reviewed. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced PTSD that mitigates his misconduct. The applicant underwent a mental status examination by an active-duty mental health provider on 08 September 2005 where no mental health symptoms were reported, and no diagnosis was rendered. As a result of this examination, the applicant was cleared for administrative separation procedures from a mental health perspective. There is insufficient evidence that the applicant officially reported or was diagnosed with a mental health condition while on active service.

d. A review of JLV did not reveal any results. There was insufficient evidence the applicant has been diagnosed by the VA with service-connected PTSD, and he does not receive any service-connected disability for PTSD.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a diagnosed mental health condition or experience including PTSD that 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 experienced PTSD, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD while on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. The applicant did engage in avoidant behavior such as failing to follow orders, going AWOL, and failing to report to his place of duty at the time prescribed, which all could be a natural sequelae to PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. In addition, there is no nexus between the applicant's reported PTSD and the applicant's misconduct of malingering and lying to an NCO in that: 1) these types of misconduct are not a part of the natural history or sequelae of PTSD and; 2) PTSD broadly does not impact one's ability to distinguish right from wrong and act in accordance with the right. Yet, the applicant contends he experienced a mental health condition or experience while on active service that mitigates his misconduct, and the applicant's contention is sufficient for consideration per the Liberal Consideration Policy.

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 determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the medical advisory that there was insufficient evidence to warrant a

behavioral health condition that contributed to his actions. Furthermore, the Board noted the applicant’s nonjudicial punishment, his numerous counseling statement, and his commander citing the reason for separation being a commission of a serious offense, based on being absent without leave from 26 April 2005 through 26 July 2005. The Board determined there was no error or injustice and denied relief.

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 misconduct? Yes, the applicant asserts he experienced PTSD, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD while on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. The applicant did engage in avoidant behavior such as failing to follow orders, going AWOL, and failing to report to his place of duty at the time prescribed, which all could be a natural sequelae to PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. In addition, there is no nexus between the applicant’s reported PTSD and the applicant’s misconduct of malingering and lying to an NCO in that: 1) these types of misconduct are not a part of the natural history or sequelae of PTSD and; 2) PTSD broadly does not impact one’s ability to distinguish right from wrong and act in accordance with the right. Yet, the applicant contends he experienced a mental health condition or experience while on active service that mitigates his misconduct, and the applicant’s contention is sufficient for consideration per the Liberal Consideration Policy.

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

█ █ █ 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.

8/15/2025

X █

CHAIRPERSON

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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. 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 (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) 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 (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment. 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.
3. 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 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 grounds. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs 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. 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.

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

a. Paragraph 1-13 (Reduction in grade) provides that when a soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade.

b. Chapter 14 (Separation for Misconduct) establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, use of illegal drugs, and convictions by civil authorities. 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 considered appropriate for a Soldier discharged under this chapter.

c. Chapter 3 (Character of Service and Description of Separation) provides:

(1) An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct.

(2) 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.

(3) A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial when the reason for separation is based upon a pattern of behavior that constitutes a significant departure from the conduct expected of Soldiers of the Army or when the reason for separation is based upon one or more acts or omissions that constitutes a significant departure from the conduct expected of Soldiers of the Army. Examples of factors that may be considered include the following:

- use of force or violence to produce serious bodily injury or death
- abuse of a special position of trust
- disregard by a superior of customary superior-subordinate relationships
- acts or omissions that endanger the security of the United States or the health and welfare of other Servicemembers
- deliberate acts or omissions that seriously endanger the health and safety of other persons

5. 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//