

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 May 2025

DOCKET NUMBER: AR20240011189

APPLICANT REQUESTS: reconsideration of his previous request to correct his characterization of service from under honorable conditions (general) to fully honorable service.

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

- DD Form 149 (Application for Correction of Military Record)
- Record of Emergency Data
- Servicemembers Group Life Insurance
- Orders 135-0213, Headquarters III Corps, Fort Hood, TX
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) Benefits Letter
- DA Form 2-1 (Personnel Qualifications Record)
- Enlisted Record Brief
- Army Board for Correction of Military Records (ABCMR) Proceedings, Docket Number AR20190004153

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20190004153 on 31 October 2019.
2. The applicant states, in effect, he is requesting a discharge upgrade base on an undiagnosed mental condition that he had while serving in the military that affected his performance and military experience.
3. The applicant enlisted in the Regular Army on 20 July 2000.
4. The applicant accepted non-judicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on:

- 4 June 2001, for failure to go to his appointed place of duty at the prescribed time on or about 30 and 31 May 2001
- 9 August 2001, for assaulting another Soldier, by striking at him with his fist on or about 14 July 2001
- 20 November 2001, for being absent without leave (AWOL) from his unit at Fort Hood, TX, from on or about 18 September to 9 October 2001

5. On 5 April 2002, the applicant had a command directed mental health evaluation, due to his pending separation action for misconduct. The results of that evaluation are not in the available evidence.

6. The applicant's immediate commander notified the applicant of his intent to initiate separation actions against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b, for misconduct – pattern of misconduct.

7. On 5 April 2002, the applicant acknowledged he had been advised of his right to consult with counsel, he was advised of the basis for the contemplated action to separate him and of the rights available to him. He also elected to submit a statement in his own behalf. In his statement, he indicated in pertinent part:

- he would like the chance to rehabilitate himself and to become a better Soldier
- he was having family issues, and it was very hard for him to reject his family
- he requested to be given another chance and to have his punishment suspended

8. On 5 May 2002, he accepted NJP for failure to go to his appointed place of duty at the time prescribed, on or about 10, 11, 18, and 25 March 2002.

9. The applicant's immediate and intermediate commanders formally recommended the applicant's separation from the military under the provisions of AR 635-200, paragraph 14-12b, by reason of a pattern of misconduct.

10. On 9 May 2002, the separation authority approved the recommendation and directed the issuance of a General Discharge Certificate.

11. On 23 May 2002, the applicant was discharged. He had completed 1 year, 9 months, and 13 days of net active service this period. His DD Form 214 shows in:

- item 24 (Character of Service) Under Honorable Conditions (General)
- item 25 (Separation Authority) AR 635-200, paragraph 14-12b
- item 28 (Narrative Reason for Separation) "Misconduct"
- item 29 (Dates of Time Lost During This Period) "Under 10 USC 972: 20010918-20011008"

12. The applicant provided a letter from the VA certifying that he is receiving service-connected disability compensation from the VA.

13. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR for reconsideration of his previous request to upgrade his characterization of service from under honorable conditions (general). He contends he experienced mental health conditions, which is related to his request for an upgrade. 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 20 July 2000; 2) The applicant accepted non-judicial punishments (NJPs) between June-November 2001 for: A) failure to go to his place of duty on time; B) for assaulting another Soldier; and C) for being AWOL from 18 September-9 October 2001; 3) On 5 May 2002, he accepted NJP for failure to go to his appointed place of duty at the time prescribed, on 10, 11, 18, and 25 March 2002; 4) The applicant was discharged on 23 May 2002, Chapter 14-12b- Pattern of Misconduct. His character of service was determined Under Honorable Conditions (General).\

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) and VA medical documentation provided by the applicant were also reviewed.

c. The applicant contends he experienced mental health conditions, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service. On 5 April 2002, the applicant had a command directed mental health evaluation, due to his pending separation action for misconduct. The results of that evaluation were not in the available evidence or in the electronic medical record.

d. A review of JLV provided evidence the applicant began to engage with the VA in 2013 for assistance with homelessness. In 2018, the applicant underwent a Compensation and Pension (C&P) evaluation for PTSD, but he was not diagnosed with a service-connected mental condition including PTSD. However, he was diagnosed with service-connected physical conditions as the result of multiple other C&P evaluations. Later in 2023, the applicant underwent another C&P evaluation for mental health conditions, and he was diagnosed with service-connected Bipolar Disorder (70%SC).

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence to support the applicant had a condition or experience that partially 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 was experiencing a mental health condition, which mitigates his misconduct. He was diagnosed with service-connected Bipolar Disorder in 2023 by the VA.

(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, which mitigates his misconduct. He was diagnosed with service-connected Bipolar Disorder in 2023 by the VA.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Partially, there is sufficient evidence beyond self-report the applicant was experiencing Bipolar Disorder, while on active service. The applicant did engage in avoidant behavior such as not showing up on time and going AWOL, which can be a natural sequelae to Bipolar Disorder. However, there is no nexus between the applicant's Bipolar Disorder and his misconduct of assault in that: 1) this type of misconduct is not a part of the natural history or sequelae of Bipolar Disorder; 2) Bipolar Disorder does not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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 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 evidence of record shows the applicant accepted non-judicial punishment (NJP), under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on multiple occasions:

- 4 June 2001 – for failure to go to his appointed place of duty at the prescribed time on or about 30 and 31 May 2001
- 9 August 2001 – for assaulting another Soldier by striking him with his fist on or about 14 July 2001
- 20 November 2001 – for being absent without leave (AWOL) from his unit at Fort Hood, Texas, from on or about 18 September to 9 October 2001\

- 5 May 2002 – during separation proceedings, for failure to go to his appointed place of duty at the prescribed time on or about 10, 11, 18, and 25 March 2002

2. The Board reviewed the applicant's record of repeated NJPs and considered the medical advisory opinion. The advisory suggested there was sufficient evidence to support that the applicant had a condition or experience that partially mitigated his misconduct. However, the Board did not concur with this assessment. The Board determined that the applicant's misconduct was well-documented, recurrent, and not sufficiently excused or explained by medical evidence. Under governing regulations, the Board may consider medical or behavioral health conditions as mitigating factors when evaluating misconduct. However, mitigation requires substantiated evidence that the condition directly impaired the applicant's ability to conform to military standards. In this case, while the medical advisory suggested partial mitigation, the Board found the applicant's misconduct—including repeated failures to report, assault, and AWOL—was not adequately explained by the medical evidence provided. The Board emphasized that repeated NJPs over a sustained period reflect a pattern of misconduct inconsistent with military discipline and standards. Therefore, the Board denied relief.

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 misconduct? Yes, the applicant asserts he was experiencing a mental health condition, which mitigates his misconduct. He was diagnosed with service-connected Bipolar Disorder in 2023 by the VA.

b. 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, which mitigates his misconduct. He was diagnosed with service-connected Bipolar Disorder in 2023 by the VA.

c. Does the condition or experience actually excuse or mitigate the misconduct? Partially, there is sufficient evidence beyond self-report the applicant was experiencing Bipolar Disorder, while on active service. The applicant did engage in avoidant behavior such as not showing up on time and going AWOL, which can be a natural sequelae to Bipolar Disorder. However, there is no nexus between the applicant's Bipolar Disorder and his misconduct of assault in that: 1) this type of misconduct is not a part of the natural history or sequelae of Bipolar Disorder; 2) Bipolar Disorder does not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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 amendment of the ABCMR decision rendered in Docket Number AR20190004153 on 31 October 2019.

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 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member'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. Chapter 14 of this regulation 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, conviction by civil authorities, desertion, or absences without leave. 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. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

3. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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.

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, Boards 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.

//NOTHING FOLLOWS//