

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 August 2025

DOCKET NUMBER: AR20240011223

APPLICANT REQUESTS: upgrade of his under honorable conditions (General) 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) Disability Letter, 26 January 2021
- VA Rating Decision Letter, 27 January 2021

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 did not provide a statement; however, he did indicate post-traumatic stress disorder (PTSD) as a condition related to his request.
3. The applicant provides his VA documents as proof of his service connected PTSD with a 70% rating effective 18 November 2020.
4. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 17 May 1989, for a 3-year term of service. He had immediate reenlistments on 23 August 2002 and 25 May 2005.
 - b. His foreign service includes the below assignments:
 - Iraq - from 4 January 2005 to 13 January 2006
 - Iraq - from 17 January 2003 to 17 July 2003
 - Bosnia-Herzegovina – from 11 May 2001 to 18 November 2001

c. A DA Form 4856 (Developmental Counseling Form), 5 July 2007 shows the applicant was counseled for wrongful use of compressed air.

d. Two-DA Form's 2823 (Sworn Statement) show the following:

(1) Sergeant D___ H___, 5 July 2007 states he was conducting a check of the Conex yard at 0105 hours when he noticed a backpack. He went closer and saw a pair of boots sticking out and found an individual in the sitting position with an empty aerosol can in his arm. He kicked the individual boots a couple of times with no response. He radioed the tactical operation center (TOC) who sent the fire department and responding patrols. He took the individual's weapon, backpack, and the aerosol can and placed them on the top of the cots. The individual began to wake up, he retrieved his identification card and asked him what was he doing. He responded with "I just came back from emergency leave because my mom died, and I'm having problems with my unit."

(2) The applicant, 5 July 2007, states he was inhaling the canned air through his mouth, and this was his first time since the incident at Fort Benning. He stated that he was not a harm to himself or others. However, due to the state of mind he was in, the canned air was to prevent him from doing bodily harm to another service member. He was uncertain at the time if he would cause harm to a Soldier.

e. On 20 July 2007, he accepted nonjudicial punishment for wrongful misuse of a canned propellant by inhaling it through his mouth at Camp Bucca, Iraq, on or about 5 July 2007; his punishment included reduction to the grade of specialist/E-4.

f. Two DA Forms 2823 show the following:

(1) Private First-Class J___ G___, 20 September 2007 states on 18 September 2007 around about 1900 hours, he observed the applicant with a green can of air duster raised to his mouth huffing, with a small can of rip it. As the applicant began to huff the air duster he began to go into convulsions and spilled the rip it on the floor. While the applicant was slumped over heavily breathing, he went into his area and immediately grabbed the can of air from him. The applicant looked up at him and asked, "what are you doing." He left the tent and threw the canned air away. He went back in the tent and the applicant said "he knew what he was doing and it was his way of dealing with things and he was not going to stop." He was asked later if he had seen the applicant huffing, he notified his supervisor and informed him of the 18 September 2007 incident.

(2) Private C___ H___, 20 September 2007, states he walked into the area of operation and went to his bunk, Private First-Class J___ G___ started talking to the applicant about how he needed to leave the huffing alone and he was only hurting himself. He walked out the living area and saw the applicant put his head down and say,

“his head hurting.” He thought he was acting strange. He had two Article 15’s himself so he wanted to stay out the conversation. He walked back in the room and saw Private First-Class J___ G___ take a can of air from the applicant. He heard the applicant say, “it does not matter, I’ll get another one.” He walked out of the tent with Private First-Class J___ G___.

g. A DA Form 4856, 2 October 2007, that shows the applicant was counseled for wrongful use of a canned propellant by inhaling through his mouth also known as “huffing” this was his third offense in a nine-month period. He also received separation counseling in accordance with Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12b.

h. A DA Form 3822-R (Report of Mental Status Evaluation), 5 October 2007 shows he was psychiatrically cleared for any administrative action deemed appropriate by command.

i. A DA Form 8003 (Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) enrollment shows the applicant was command referred to the program for suspected alcohol and/or other drug problem. It was also noted that his performance was rated as good, and he had no disciplinary problems.

j. On 24 October 2007, his immediate commander notified him of his intent to initiate separation action for a pattern of misconduct under the provisions of Army Regulation 635-200, paragraph 14-12b. The reasons for his proposed action are the following specific allegations: on 5 July 2007 and 18 September 2007, he wrongfully used canned propellant by inhaling it through his mouth. The applicant acknowledged receipt of notification of separation on the same date.

l. On 26 October 2007, the applicant consulted with counsel. He was advised of the basis for the contemplated action to separate him for a pattern of misconduct under the provisions of Army Regulation 635-200, Chapter 14, and its effects, of the rights available to him, and the effect of any action taken by him in waiving his rights. He acknowledged:

- he waived his rights to an administrative separation board
- he elected not to submit statements in his own behalf
- he understood that an under honorable conditions (General) discharge is the least favorable characterization of service he may receive
- he understood he may expect to encounter substantial prejudice in civilian life is an under honorable conditions (General) discharge is issued to him
- he understood that if he received a discharge certificate or characterization which is less than honorable, he may apply to the Army Discharge Review Board or the Army Board for Correction of Military Records for upgrading

m. On 31 October 2007, consistent with the chain of command recommendations, the separation authority approved the applicant's discharge. His service would be characterized as under honorable conditions (General).

n. On 11 December 2007, he was discharged with an under honorable conditions (General) characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 7 years, 4 months, and 15 days of active service with no lost time. It also shows he was awarded or authorized:

- Army Commendation Meda (2nd Award)
- Army Achievement Medal
- USA/USAF Presidential Unit Citation
- Army Good Conduct Medal (2nd Award)
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Kosovo Campaign Medal
- Iraq Campaign Medal
- Non-Commissioned Officer Professional Development Ribbon
- Army Service Ribbon
- NATO Medal

5. A review of the applicant's record confirms he is eligible for an award and campaign credits that are not recorded on his DD Form 214. The entries will be added to his DD Form 214 as administrative corrections and will not be considered by the Board.

6. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

7. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgraded under honorable conditions (general) character of service. He asserts his experience of PTSD is related to his request. 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 17 May 1989; 2) The applicant deployed once to Bosnia-Herzegovina and three times to Iraq; 3) On 20 July 2007, the applicant accepted nonjudicial punishment for wrongful misuse of a canned propellant, while

deployed to Iraq; 4) On 2 October 2007, the applicant was counseled for wrongful misuse of a canned propellant by inhaling through his mouth also known as "huffing." This was his third offense in a nine-month period. He was also received separation counseling IAW Army Regulation 635-200, Chapter 14-12b; 5) On 11 December 2007, the was discharged, Chapter 14-12b for a pattern of misconduct with an under honorable conditions (general) characterization of service. He completed 7 years, 4 months and 15 days of active service with no lost time.

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

c. The applicant asserts he was experiencing PTSD, which mitigates his misconduct. There applicant was initially seen by behavioral health services during his third deployment to Iraq in July 2007. He was referred by his Command due concerns for his safety. The applicant reported experiencing UCMJ action related to being caught using compressed air. He described long term abuse of canned air with initially starting during his first deployment in 2003. He also reported using it in a garrison environment and had attended two sessions of substance abuse treatment at ASAP prior to this deployment. He described recently using it to attempt suicide and avoid hurting others in his unit in response to the recent death of his mother and illness of his grandmother along with ongoing occupational problems. He was diagnosed with interpersonal and occupational problems and was recommended for 1:1 observation and removal of his weapon. In addition, he was recommended for continued behavioral health treatment and was prescribed a sleep aid medication to help with his reported insomnia and nightmares. He was seen again by behavioral health three days later for a safety evaluation. He continued in behavioral health treatment where he was provided stress management and supportive counseling on a monthly basis along with medication management. On 05 October 2007, the applicant was seen for a mental status evaluation while deployed as part of his administrative separation proceedings. He denied any continued "huffing", and he was diagnosed with Inhalant Abuse. The applicant was also cleared from a psychiatric perspective for administrative action deemed appropriate by Command. On 29 October 2007, the applicant was found again unconscious with compressed air, and he was referred for medical treatment. There is evidence the applicant was later Command Referred to ADAPCP for substance abuse treatment.

d. A review of JLV provided evidence the applicant began to engage with the VA in 2009, and he has been diagnosed with service-connected PTSD (SC70%) since 2020.

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 which mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced PTSD, which mitigates his misconduct. The applicant was diagnosed with service-connected PTSD by the VA in 2020.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD, which mitigates his misconduct. The applicant was diagnosed with service-connected PTSD by the VA in 2020.

(3) Does the condition/experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing PTSD, while on active service. The applicant did engage continued substance abuse of canned air, which can be an avoidant behavior and a natural sequelae to PTSD. Therefore, per Liberal Consideration, the applicant's misconduct, which led to his discharge is mitigable.

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 record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The Board found no error or injustice in the separation proceedings and designated characterization of service.

2. The Board considered the following Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? 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, which mitigates his misconduct. The applicant was diagnosed with service-connected PTSD by the VA in 2020.

(3) Does the condition/experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing PTSD, while on active service.

3. The Board concurred with the medical review finding that the applicant had a behavioral health condition during service; however, the Board determined there was insufficient evidence of in-service mitigating factors to overcome the misconduct. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.


4. Prior to closing the discussion, the Board noted and concurred with the administrative note below to more accurately depict the military service of the applicant.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XX	XX	XX	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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's service records shows his DD Form 214, for the period ending 11 December 2007, is missing important entries that affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by:

- a. Deleting in Item 18 "MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE"
- b. Adding:
 - Item 12f (Foreign Service): 1 year and 10 days
 - Item 18 (Remarks): IMMEDIATE REENLISTMENTS THIS PERIOD: 20020823 and 20050524
 - Item 18: "MEMBER HAS COMPLETED FIRST FULL TERM OF SERVICE"
 - Item 18: "Continuous Honorable Active Service from 20000727-20050523"
 - Item 18: "SERVICE IN IRAQ: 20030117-20030717 and 20050104-20060113"

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 (Personnel Separations – Enlisted Personnel), in effect at the time), sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states 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 and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 14-12b (Patter of Misconduct) states Soldiers are subject to separation per this section for the following:

(1) discreditable involvement with civil or military authorities.

(2) conduct prejudicial to good order and discipline; discreditable conduct and conduct prejudicial to good order and discipline includes conduct violative of the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army Regulations, the civil law, and time-honored customs and traditions of the Army.

3. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

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, 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. 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 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. Army Regulation 635-8 (Separation Processing and Documents), currently in effect, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active-duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

a. Item 12f (Foreign Service) states from the Enlisted Record Brief/Officer Record Brief show the total amount of foreign service performed during the period covered by block 12c (Net Active Service This Period).

b. Item 18 (Remarks), states for active-duty Soldiers deployed with his or her unit during their continuous period of active service, enter "SERVICE IN (name of country deployed) FROM (inclusive dates for example, YYYYMMDD-YYYYMMDD).

c. Item 18 (Remarks), states, for enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, enter "IMMEDIATE REENLISTMENTS THIS PERIOD" and specify inclusive dates for each period of reenlistment.

d. Item 18 (Remarks) states, Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable," enter "Continuous Honorable Active Service From" (first day of service for which DD Form 214 was not issued) Until (date before commencement of current enlistment). Then, enter the specific periods of reenlistment as prescribed above.

e. Item 18 (Remarks) states, if an enlisted Soldier has completed the first full term of enlistment, refer to the enlistment contract and any extensions to those initial enlistment documents and compare the term of enlistment to the net service in block 12c of the DD Form 214. If Soldier has completed or exceeded the initial enlistment, enter "HAS." If block 12c of the DD Form 214 is less than the Soldier's commitment, enter "HAS NOT."

7. 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 (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//