

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 August 2025

DOCKET NUMBER: AR20240011526

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) characterization of service.

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

- DD Form 149 (Application for Correction of Military Record)
- Psychological Evaluation, dated 19 August 2013
- Email, Cantrell Counseling, dated 2 June 2014
- Court documents, filed on 31 July 2014

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 during the time leading to his discharge, he had undiagnosed and untreated post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and major depressive disorder. The lack of treatment limited his impulse control and impaired his ability to cope with stressors and triggers.

3. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 8 June 2005.

b. He served in Iraq from 5 July 2006 to 28 December 2006.

c. A Commander's Report and accompanying Serious Incident Report show that on 15 March 2007, he assaulted his squad leader with his privately owned vehicle. As a result, his squad leader sustained minor injuries. The applicant was apprehended on 16 March 2007 and charged with aggravated assault and hit and run with injury.

d. On 25 March 2007, he was arrested for violating a no-contact order.

e. On 12 April 2007, he was charged with "Harassment/Domestic Violence" for an incident that occurred on 10 February 2007. 358 days of his 365 day jail sentence were suspended. He was required to serve seven days in jail, complete a Certified Domestic Violence Program, and a no-contact order was imposed.

f. On 25 April 2007, he was arrested for domestic violence and violating a no-contact order.

g. On 2 May 2007, he was sentenced to 268 days in jail.

h. A memorandum from the 57th Transportation Battalion, dated 11 May 2007, states that due to civilian confinement, he was unable to complete a Mental Health Evaluation and Army Career and Alumni Program (ACAP) checklist in preparation for his separation from service.

i. On 26 October 2007, his commander notified him of her intent to separate him from service under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-5, by reason of conviction by civil court.

j. He was advised by consulting counsel of the basis for the contemplated action and its effects; of the rights available to him; and the effect of any action taken by him to waive his rights.

k. His chain of command recommended approval, with an under honorable conditions (General) characterization of service.

l. On 31 October 2007, the separation authority approved the recommended separation and directed the issuance of an under honorable conditions (General) characterization of service.

m. Accordingly, he was discharged on 9 November 2007, by reason of misconduct, with an under honorable conditions (General) characterization of service. He completed 1 year, 7 months, and 11 days of net active service.

n. The Army Discharge Review Board considered his request for an upgrade of his service characterization on 21 August 2015 and 18 January 2024. On both occasions, the Board determined he was properly and equitably discharged. His request for relief was denied.

4. The applicant provides court-documents from the Superior Court of the State of Washington, filed on 31 July 2014, and a corresponding psychological evaluation and email from Cantrell Counseling. The documents show the court imposed an exceptional sentence of 12 months of custody, in lieu of the standard 41-54 months for violation of a

court order with domestic violence, due to the applicant's mitigating medical and mental health conditions.

#### 5. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (General) discharge to an honorable character of service. He contends he experienced a traumatic brain injury (TBI) and mental health conditions including Post Traumatic Stress Disorder (PTSD), which are 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 8 June 2005; 2) The applicant deployed to Iraq from 05 July-28 December 2006; 3) A Commander's Report and accompanying Serious Incident Report show that on 15 March 2007, the applicant assaulted his squad leader with his privately owned vehicle. The applicant was apprehended on 16 March 2007 and charged with aggravated assault and hit and run with injury; 4) On 25 March 2007, the applicant was arrested for violating a no-contact order; 5) On 12 April 2007, the applicant was charged with "Harassment/Domestic Violence" for an incident that occurred on 10 February 2007. He was required to serve seven days in jail, complete a Certified Domestic Violence Program, and a no-contact order was imposed; 6) On 25 April 2007, he was arrested for domestic violence and violating a no-contact order, and on 02 May 2007, he was sentenced to 268 days in jail; 7) On 26 October 2007, the applicant's commander notified him of her intent to separate him from service under the provisions Chapter 14-5, by reason of conviction by civil court; 8) The applicant was discharged on 9 November 2007, by reason of misconduct, with an under honorable conditions (General) characterization of service. He completed 1 year, 7 months, and 11 days of net active service; 9) The Army Discharge Review Board reviewed and denied the applicant's request for an upgrade of his service characterization on 21 August 2015 and 18 January 2024.

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 civilian/forensic medical documentation provided by the applicant were also examined.

c. The applicant contends he experienced TBI and mental health conditions including PTSD, which mitigate his misconduct and warrant an upgrade. There is insufficient evidence the applicant engaged in behavioral health treatment while on active service. He underwent a behavioral health screening prior to his deployment on 05 June 2006. He denied any history of behavioral health symptoms or treatment. He was approved to deploy. On 09 November 2006, the applicant was seen by medical providers for treatment for a self-inflicted head injury which was caused by the applicant repeatedly

hitting his head on a military vehicle and resulted in the applicant being diagnosed with significant laceration on his head and a concussion. Later on, 01 December 2006, the applicant again repeatedly hit his head on a fence opening his wound. This self-harm behavior and the earlier behavior was reported to be a result of stress from marital and parental problems. The applicant was reported seeing the Chaplain for counseling, and he was later returned to garrison due to his child being removed from his wife's custody as a result of her substance abuse. While in garrison, he was seen for Command Directed Evaluation (CDE) at behavioral health services initially on 28 February 2007. His Command referred him due to numerous civilian legal and military related problems. He had been incarcerated twice for domestic violence incidents, and he also recently lost custody of his child. His Command stated they attempted to work with the applicant and his family concerns, but due to his irritability and self-harm behavior, they requested an evaluation to assess his suitability for continued service. The applicant was seen over multiple days for completion of this evaluation. On 08 March 2007, the applicant was seen as an emergency walk-in appointment by the military psychologist completing his CDE. The applicant was involved that morning in a physical altercation with an individual reportedly involved in an affair with his wife, and he had violated his no contact order with his wife, which was now resulting in UCMJ action and civil legal consequences. He was diagnosed with an Adjustment Disorder with Mixed Emotional Feature. The applicant's CDE was completed on 14 March 2007. He reported a history of childhood abuse, violence towards others, and residential behavioral health treatment for anger management and depression prior to the military. The applicant did report symptoms consistent with PTSD, but he did not meet full criteria, and he was provided multiple psychological testing, semi-structured diagnostic interview, a review of medical records, and a full-clinical interview. The applicant did meet criteria for an Anxiety Disorder, Not Otherwise Specified (NOS) with a rule out of PTSD, Antisocial Personality Disorder traits, and marital, occupational and legal problems. He was recommended for further treatment and to be held accountable for his behavior and misconduct. The applicant's Command was notified of these recommendations. The applicant did not engage in further treatment due to his incarceration.

d. A review of JLV provided evidence the applicant has been diagnosed with a service-connected PTSD (currently 70% SC) by the VA as a result of a Compensation and Pension Evaluation in December 2007. The applicant submitted a forensic evaluation provided by his Public Defender on 19 August 2013, which was completed by civilian forensic and clinical psychologist. The applicant was noted to have experienced two TBIs. One occurred during his deployment, which was noted previously as the self-inflicted concussion and the other occurred after his discharge as a result of an accident. The applicant underwent psychological testing, which resulted in him being diagnosed with PTSD, Panic Disorder without Agoraphobia, Major Depressive Disorder, and Personality Disorder Not Otherwise Specified. He was recommended for further behavioral health treatment and be released from custody. The applicant also provided an email from civilian psychologist, dated 02 June 2014.

The applicant was noted to be diagnosed with PTSD and TBI. Finally, the applicant provided court documents from charges in 2013 related to domestic violence. The applicant was noted by his defense attorney to have a history of PTSD and TBI.

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 condition or experience, which mitigates his misconduct during active service.

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 TBI and mental health conditions including PTSD, which mitigate his misconduct during active service. The applicant was diagnosed and treated for a concussion as a result of a self-inflicted injury during active service. He was also diagnosed with an Adjustment Disorder, Anxiety Disorder NOS, and traits of a Personality Disorder while on active service. After his discharge, he was diagnosed with service-connected PTSD by the VA. Following another TBI and additional charges related to domestic violence, the applicant provided evidence of being diagnosed with PTSD, TBI, and other mental health conditions including a Personality Disorder after being discharged from the military.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a TBI and mental health conditions including PTSD, which mitigate his misconduct during active service. The applicant was diagnosed and treated for a concussion as a result of a self-inflicted injury during active service. He was also diagnosed with an Adjustment Disorder, Anxiety Disorder NOS, and traits of a Personality Disorder, while on active service. After his discharge, he was diagnosed with service-connected PTSD by the VA.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is sufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD and had experienced a concussion during active service. The additional evidence the applicant provided related to his mental health and cognitive functioning following a significant TBI after his discharge from the military and were related to later civilian charges domestic violence. However, there is no nexus between the applicant's PTSD, history of self-inflicted concussion, and other diagnosed mental health conditions during his active service and the applicant's misconduct of aggravated assault and hit and run with injury, repeatedly violating a no-contact order, harassment, and domestic violence in that: 1) these types of misconduct are not a part of the natural history or sequelae of the applicant's diagnosed history of concussion and other mental health conditions including PTSD during active service; 2) the applicant's diagnosed history of concussion and other mental health conditions including PTSD during active service do 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 mitigates 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 Board noted the applicant's serious misconduct of aggravated assault, domestic violence, violating a no-contact order, and civilian conviction. In addition, the Board reviewed and concurred with the medical advisor's review finding insufficient evidence to support the applicant had a condition or experience, which mitigates his misconduct during active service. Therefore, the Board determined there was no error or injustice in the characterization of service he received at the time of his discharge 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 was experiencing a TBI and mental health conditions including PTSD, which mitigate his misconduct during active service. The applicant was diagnosed and treated for a concussion as a result of a self-inflicted injury during active service. He was also diagnosed with an Adjustment Disorder, Anxiety Disorder NOS, and traits of a Personality Disorder while on active service. After his discharge, he was diagnosed with service-connected PTSD by the VA. Following another TBI and additional charges related to domestic violence, the applicant provided evidence of being diagnosed with PTSD, TBI, and other mental health conditions including a Personality Disorder after being discharged from the military.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a TBI and mental health conditions including PTSD, which mitigate his misconduct during active service. The applicant was diagnosed and treated for a concussion as a result of a self-inflicted injury during active service. He was also diagnosed with an Adjustment Disorder, Anxiety Disorder NOS,

and traits of a Personality Disorder, while on active service. After his discharge, he was diagnosed with service-connected PTSD by the VA.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is sufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD and had experienced a concussion during active service. The additional evidence the applicant provided related to his mental health and cognitive functioning following a significant TBI after his discharge from the military and were related to later civilian charges domestic violence. However, there is no nexus between the applicant's PTSD, history of self-inflicted concussion, and other diagnosed mental health conditions during his active service and the applicant's misconduct of aggravated assault and hit and run with injury, repeatedly violating a no-contact order, harassment, and domestic violence in that: 1) these types of misconduct are not a part of the natural history or sequelae of the applicant's diagnosed history of concussion and other mental health conditions including PTSD during active service; 2) the applicant's diagnosed history of concussion and other mental health conditions including PTSD during active service do 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 mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

The Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

REFERENCES:

1. Title 10, U.S. Code (USC), 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 Army Board for Correction of Military Records (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. Section 1556 of Title 10, USC, 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 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, and reviews to ABCMR applicants prior to adjudication.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if such were merited by the Soldier's overall record.

4. 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.

5. 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 (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) 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; traumatic brain injury; 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.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NR 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.

//NOTHING FOLLOWS//