

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 August 2025

DOCKET NUMBER: AR20240013285

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge to general, under honorable conditions
- correct discharge date to reflect 6 January 2024 vice 6 December 2023
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- VA Form 21-4138 (Statement in Support of Claim)
- HCA Florida Statement, 19 July 2024

FACTS:

1. The applicant states he is requesting an upgrade of his discharge to honorable and correction of his discharge date. Following his deployment, he was under stress when the incident occurred within his unit. He believes seeking mental health assistance in Special Forces units is strongly discouraged. On December 2023 he underwent surgery, since his DD Form 214 reflected a 6 December 2023 discharge date the government is attempting to charge him for that surgery. His DD Form 214 was not officially signed until 16 January 2024. The applicant marked post-traumatic stress disorder (PTSD) as a condition related to his request.

2. The applicant provides:

a. A VA Form 21-4138 shows in section II (Remarks) a brief overview of the applicant's military history.

b. An HCA Florida statements shows that the applicant's insurance coverage was terminated prior to services provided on 27 December 2023 and he would be responsible for the amount owed.

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

a. He enlisted in the Regular Army on 5 June 2001.

b. On 5 May 2023, the applicant received a general officer memorandum of reprimand (GOMOR) for:

- driving under the influence
- causing a motor vehicle accident that resulted in the death of the passenger
- driving approximately 111 miles per hour in a 35 miles per hour zone

c. On 9 May 2023, the applicant acknowledged receipt of the GOMOR. He chose to submit written matters.

d. On 26 May 2023, legal counsel for the applicant submitted 6 pages of agreement. Counsel stated there was insufficient evidence to conclude that the applicant was driving the vehicle at the time of the accident, and he deserves a fair opportunity to construct a rebuttal to the allegations. Moreover, the applicant's duty performance; professional achievements, and proven value to the Army warrants withholding adverse action until his civilian case was resolved. He respectfully reiterated the applicant's request to rescind the GOMOR or delay filing decision until the applicant's civilian case was resolved.

e. On 23 June 2023, after thoroughly reviewing all matters the convening authority directed the GOMOR be filed in the applicant's Army Military Human Resource Record.

f. On 18 July 2023, the applicant acknowledgement receipt of the filing determination.

g. The service record is void of the facts and circumstances pertaining to the applicant's discharge processing.

h. Orders number 333-0500, dated 29 November 2023 discharged the applicant with an effective date of 6 December 2023.

i. Orders number 335-0502, dated 1 December 2023 amended the applicants discharge date to reflect 6 January 2024.

j. On 6 December 2023, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 6 years, 2 months, and 23 days of active service with no lost time. He was assigned separation code JKQ and the

narrative reason for separation listed as "Misconduct (Serious Offense) ," with reentry code 4.

k. On 30 December 2024, he was issued a DD Form 215 (Correction to DD Form 214) amending the following:

- Block 12b (Separation Date this Period) – delete 2023 12 06/add 2024 01 06
- Block 12c (Net Active Service this Period) – delete 0006 02 23/add 0006 03 23

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

5. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

6. 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.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions discharge (UOTHC) to general, under honorable conditions. His request to correct his discharge date to reflect 06 January 2024 vice 06 December 2023 is outside of the scope of this Advisory and will not be addressed. On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (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 05 June 2001, 2) he received a GOMOR on 05 May 2023 for driving under the influence, causing a motor vehicle accident that resulted in the death of passenger, and driving approximately 111 miles per hour in a 35 miles per hour zone, 3) on 23 June 2023, the GOMOR was filed in the applicant's Army Military Human Resource Record, 4) the applicant was discharged on 06 December 2023 (later corrected via DD Form 215 to 06 January 2024) under the provisions of AR 635-200, under other than honorable conditions, due to Misconduct (Serious Offense), with a separation code of JKQ, and a reentry code of '4.'

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

c. Military medical records available via JLV were reviewed. Review of records shows the applicant first reported experiencing BH-related symptoms to his primary care manager (PCM) on 01 November 2022. He reported experiencing anxiety over the course of the previous 10 months which was impacting work, family relations, and sleep and endorsed the following symptoms: increased worrying, irritability, sleep problems, short temper, and decreased motivation. He was started on Zoloft (antidepression) and referred to BH. At the time of his follow-up with his PCM on 10 November 2022, he reported improvement in his mood and anxiety with the use of Zoloft though was having residual sleep difficulties and thus Trazodone was started to address sleep.

The applicant completed a BH intake on 04 December 2022 and reported he had been having difficulties since returning home from his deployment to Colombia. More specifically, he reported experiencing irritability, feeling on edge, and being notified by his team Sergeant there were several occasions where his temper was an issue. The applicant reported experiencing an adverse event during his deployment and the provider documented that Eye Movement Desensitization Reprocessing (EMDR) may be helpful in the future when he is ready [*Advisor's Note: EMDR is one of the three primary treatment modalities for trauma/PTSD*]. He was diagnosed with Adjustment Disorder with Anxiety and was released without limitations. The applicant was in a motor vehicle accident (MVA) on 05 December 2022, which is the incident that ultimately led to his separation. He was evaluated in the emergency room and reported he had experienced a loss of consciousness. He was discharged home the same day.

The applicant was command-referred to the Alcohol and Drug Abuse Prevention Training (ADAPT) program on 06 December 2022 with the reason(s) for referral noted as DUI and accidental injury. It was noted that alcohol was suspected to be involved in the recent MVA. The ADAPT intake was unavailable for review; however, a note dated 29 March 2023 documented that he had been cleared and deemed unfit for the ADAPT program.

The applicant presented to BH for a follow-up appointment on 19 December 2022 and reported in addition to his previous concerns, he had new onset insomnia, nightmares, anxiety, and depressive symptoms since the MVA. His diagnosis was documented as Adjustment Disorder with Mixed Anxiety and Depressed Mood, and he continued to follow-up with the provider on approximately a monthly basis until February 2023 when he was referred upon his request to a group therapy program (RESET) for additional resources. He completed the 6-week group therapy program from 28 February 2023 through March 2023. The applicant was admitted into the Intensive Outpatient Program (IOP) on 01 June 2023 with his diagnoses documented as Alcohol Use Disorder (AUD), Moderate, Adjustment Disorder with Anxious and Depressed Mood, and Other Trauma and Stressor Related Disorder with a rule out (R/O) of PTSD. He attended the IOP program through 07 August 2023 and his diagnoses were unchanged from the time of enrollment. At the time of discharge from the program he was prescribed Prozac

(antidepressant), Wellbutrin (antidepressant), Trazodone, and Prazosin (nightmares). The applicant attended treatment via the SUDCC aftercare program (individual) beginning 08 August 2023 through 07 November 2023. His diagnosis over the course of treatment was documented as Alcohol Use Disorder, Mild, and at his final visit was noted as AUD, Moderate, In Early Remission.

The applicant underwent a Mental Status Evaluation (MSE) on 06 June 2023 in conjunction with consideration for administrative separation. The evaluating provider documented that he was psychologically cleared for any administrative action deemed appropriate by the separation authority.

A Neurology note dated 28 November 2023 documented that he had a history of Traumatic Brain Injury (TBI) and Headaches and outlined onset and history of each (diagnosis documented as Personal History of TBI in his problem list in JLV). Regarding TBI, it was documented that he had experienced numerous concussive events during his career including multiple hard jump landings, firing heavy weaponry, breaching, IED blasts, motor vehicle rollovers in his career. The provider documented that his neurological examination was normal, there was no brain imaging to review, and that his headaches met criteria for Chronic Migraine, though noted Post-Traumatic Headaches often present as migraine.

d. A review of JLV shows the applicant has a 100% service-connected disability rating through the VA for various conditions, to include 70% for PTSD. Two VA Compensation and Pension (C&P) examinations were available for review via VBMS. The examination conducted on 24 December 2024 shows that the applicant was diagnosed with Other Specified Trauma and Stressor Related Disorder. It was noted that he had a history of AUD, though had no substance use for more than 2 years. The stressor(s) associated with his diagnosis were documented to have occurred during his 2021 deployment to Colombia and involved witnessing death, severe injury of a friend, and a mass shooting. His motor vehicle accident in 2022 was also documented as a stressor. At the time of his subsequent examination on 16 January 2025, he was diagnosed with PTSD. The stressors previously documented were reaffirmed, and some stressors not previously documented were noted including general inhumane treatment of people while on deployment, some events in SERE school, and the loss of his uncle in the MVA in 2022.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant has been diagnosed with PTSD and TBI, which are potentially mitigating conditions. His previous diagnoses of Adjustment Disorder (with Anxiety; with Mixed Anxiety and Depressed Mood) and Other Trauma and Stressor Related Disorder are subsumed by his diagnosis of PTSD. Although PTSD and TBI are potentially mitigating condition(s), this Advisor contends that the seriousness of the misconduct outweighs any relief offered by Liberal Consideration.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed with PTSD and TBI.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed with PTSD and TBI.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Review of the available records shows that the applicant has been diagnosed with PTSD and TBI, which are potentially mitigating conditions. Excessive alcohol use is often a self-medicating behavior, used to avoid and mask symptoms, and this can be associated with the natural history and sequelae of numerous conditions, to include trauma. As such, under Liberal Consideration, drinking and driving drunk is mitigated by PTSD. However, given the seriousness, the totality of the applicant's misconduct outweighs any relief offered by Liberal 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 applicant was separated for misconduct under the provisions of Army Regulation 635-200, for misconduct (serious offense) and the Board noted the seriousness of the offense. The Board also concurred with the medical advisory that although PTSD and TBI are potentially mitigating condition(s), that the seriousness of the misconduct outweighs any relief offered by Liberal Consideration.

2. The Board considered the following Kurta questions:

a. Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed with PTSD and TBI.

b. Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed with PTSD and TBI.

c. Does the condition or experience actually excuse or mitigate the discharge? No. Review of the available records shows that the applicant has been diagnosed with PTSD and TBI, which are potentially mitigating conditions. Excessive alcohol use is

often a self-medicating behavior, used to avoid and mask symptoms, and this can be associated with the natural history and sequelae of numerous conditions, to include trauma. As such, under Liberal Consideration, drinking and driving drunk is mitigated by PTSD. However, given the seriousness, the totality of the applicant's misconduct outweighs any relief offered by Liberal Consideration.

3. Regarding his request to correct his discharge date from 6 December 2023 to 6 January 2024. The Board acknowledged a DD Form 215 was issued on 30 December 2024 correcting his discharge date.

4. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent

evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

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 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. Paragraph 3-7b (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

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. Section 1556 of Title 10, United States 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//