

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 February 2024

DOCKET NUMBER: AR20190004063

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

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 19 January 2012
- Self-Authored Statement
- Letter of Recommendation
- Department of Veterans Affairs (VA) Rating Decision, dated 17 April 2013
- Honorable Mr. Hagel Memorandum (liberal consideration)
- Honorable Mr. Kurta Memorandum (clarifying guidance)

FACTS:

1. The applicant did not file within the three year time frame provided in Title 10, United States Code (USC), section 1552 (b); however, the Army Board for Correction of Military Records 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:

a. He is requesting that the U.S. Army change his character of discharge because he believes that he served his country honorably. He had several incidents of misconduct that resulted in him being punished for his behavior. He was in a period in his life where he struggled to maintain his military bearing and obligation to obey rules and regulations. This period in his life was one that he learned from and will no longer resort to. He was diagnosed with post-traumatic stress disorder (PTSD) upon release from active duty.

b. He believes that his record should be changed to honorable. He was placed in an alcohol treatment facility by the military and had gone through extensive rehabilitative treatment. He has stopped drinking hard alcohol for several months. He has turned his life around since these periods of misconduct. He fully recognized what he did was out of his character and will not return to those habits. He was not treated properly.

3. On 3 June 2009, the applicant enlisted in the Regular Army.

4. His service record shows he served in Iraq from 28 December 2009 to 26 June 2010.

5. A review of his service record also shows he was counseled on multiple occasions for:

- failing to report to physical training formation
- missing scheduled Army Substance Abuse Program (ASAP) appointments
- insubordinate conduct toward a noncommissioned officer (NCO)
- violation of restriction
- drinking while enrolled in ASAP
- being drunk on duty

6. On 16 September 2011, he received nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice for failing to go to his appointed place of duty on two occasions. His punishment consisted of extra duty, restriction, and oral admonition.

7. On 6 January 2012, the applicant's commander notified him of his proposed initiation of separation action under the provisions of Chapter 14, paragraph 14-12b, Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), based on a pattern of misconduct; specifically for failing to report to his appointed place of duty at the prescribed time on two occasions, multiple alcohol-related incidents, and being disrespectful toward a noncommissioned officer on multiple occasions. The commander advised the applicant of his rights.

a. The applicant consulted with legal counsel, was advised of the impact of the discharge action, and did not submit a statement in his own behalf. The unit commander subsequently recommended separation from the Army and waiver of further rehabilitative efforts.

b. The intermediate commander reviewed the proposed action and recommended approval with a general, under honorable conditions discharge.

c. The separation authority waived further rehabilitation and furnished the applicant a General, Under Honorable Conditions Discharge Certificate.

8. On 19 January 2012, the applicant was discharged with a general, under honorable conditions characterization of service, under the provisions of Chapter 14, paragraph 14-12b, AR 635-200, for a pattern of misconduct. He completed 2 years, 7 months, and 17 days of active service. He was awarded or authorized:

- Army Commendation Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal with campaign star
- Army Service Ribbon
- Overseas Service Ribbon

9. In support of his case, the applicant provided VA rating decision, dated 17 April 2013, that shows he received a service-connected disability rating of 100 percent (%) for PTSD. He also provided a letter of recommendation from sergeant first class (SFC) JJM that states, in pertinent part:

a. He has known the applicant since January 2011. He observed his performance as a Soldier and as a civilian leaving the Military. He first met the applicant in Fort Riley, Kansas where he was the Senior Specialist on the Fire Support Section. During this time the applicant performed his duty above his pay grade, leading Soldiers, training, and mentoring. Leaders above him continually sought his advice and opinion. The Company and Battalion leadership valued his knowledge and expertise.

b. The applicant, after leaving the Military has grown in different levels instead of regressing after his transition. Physically, mentally, and spiritually he has become a more focused and driven person. This shows by the degree in which he takes care of himself and others around him. The applicant is a person that is willing to help others in any way that he could. The applicant currently volunteers to help others during his time off inside and outside of the gym. From February 2014 until April 2018, SFC JJM was a Recruiter in Baltimore. During this period the applicant visited him and helped him talk to future ARMY applicants about his experiences and benefits while he was in the Army.

c. The applicant's Army story was inspirational to others and based on this he enlisted a total of eight applicants with his assistance. He also assisted him with volunteering in a company that helped that help with mentoring in Baltimore. The applicant during the incident of hurricane Maria in Puerto Rico, collected goods and donations for him to send to his family. In summary, he highly recommends the applicant for any position or endeavor that the applicant may want to pursue at any level. The applicant will be an asset for any organization.

10. On 12 September 2014, the Army Discharge Review Board denied the applicant's request for an upgrade of his discharge and determined he was properly and equitably discharged.

11. By regulation, 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 appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

12. 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.

MEDICAL REVIEW:

a. The applicant requests an upgrade of his Under Honorable Conditions, General, discharge to Honorable. He contends his misconduct was related to PTSD.

b. 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 into the Regular Army on 3 June 2009; 2) He served in Iraq from 28 December 2009 to 26 June 2010; 3) A review of records show he received multiple negative counseling statements; 4) On 16 September 2011, he received non-judicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice for failing to go to his appointed place of duty on two occasions; 5) On 19 January 2012, the applicant was discharged with a general, under honorable conditions characterization of service, under the provisions of Chapter 14, paragraph 14-12b, AR 635-200, for a pattern of misconduct.

c. The military electronic medical record, AHLTA, VA electronic medical record (JLV), and ROP were reviewed. A review of AHLTA shows the applicant's initial BH-related encounter occurred on 29 September 2010 whereby he presented as a walk-in at the ASAP clinic. The encounter documentation was sparse on information and the diagnosis reflected Unspecified Diagnosis. The applicant's next BH-related engagement occurred on 17 November 2009 whereby the applicant self-referred to ASAP due to excessive drinking and a previous arrest for underage drinking. He reported regular use of alcohol beginning at age 19 which consisted of drinking once every other week. Upon return from deployment he drank daily between July and October 2010, and currently drinks 3 to 4 mixed drinks on the weekends as of Mid-October 2010. He was diagnosed with Alcohol Abuse and recommended for outpatient ASAP treatment. On the same day the applicant self-referred to the BH clinic and reported a history of depressive episodes

with onset at age 17 that included a suicide attempt by overdose, at age 17, due to the termination of a relationship. He denied any subsequent SI or SA but endorsed feelings of helplessness, hopelessness, and low self-esteem during his episodes of depression. On 15 December 2010 the applicant was diagnosed with Adjustment Disorder with Mixed Emotional Features secondary to reported social issues. He reported vacillating mood – depending on events, believed he was being treated unfairly by others, and isolated as no one wanted to be around him. He was scheduled for outpatient follow-up and referred for medication evaluation. On 18 February 2011 he was seen for medication evaluation and reported problems with depression for the past 6 months to include depressed mood, social isolation, low energy, irritability, crying spells, and vague SI without intent or plan. He was diagnosed with MDD single episode, started on psychotropic medication and scheduled for follow-up. Records show the applicant began attending regular outpatient ASAP treatment on 30 March 2011 and remained in outpatient BH and ASAP treatment through December 2011.

d. A review of JLV shows the applicant 100 percent SC for PTSD. Initial PTSD DBQ dated 12 March 2013 shows the applicant reported combat-related trauma characterized by daily exposure to small arms, mortar, and rocket fire. Being involved in two IED explosions, witnessing the death of fellow Soldiers, combatants, and civilians, and having multiple near death experiences. He further reported that upon return on Fort Riley he noticed the onset of PTSD symptoms to include nightmares, insomnia, intrusive memories, mood dysphoria, exaggerated startle response, social anxiety, social isolation, and hypervigilance. He reportedly did not disclose the information on his PDHA due to stoicism and fear of mental illness stigmatization. He reported that he began to drink in excess to self-medicate and was ultimately administratively separated. The examiner deemed the applicant met criteria for PTSD secondary to combat. PTSD Review Examination dated 9 March 2017 shows the applicant continued to meet diagnostic criteria for PTSD and met criteria for Unspecified Depressive Disorder and Alcohol Use Disorder. Records show the applicant has engaged in outpatient BH treatment at the VA from March 2012 to present date with good results. His BH problem lists includes PTSD, Unspecified Depressive Disorder, Alcohol Dependence in remission, and Cannabis Dependence uncomplicated.

e. The applicant is requesting an upgrade of his Under Honorable Conditions, General, discharge to Honorable and contends his misconduct was related to PTSD. A review of the records shows the applicant 100 percent SC for PTSD secondary to combat. As there is a relationship between PTSD and substance use to self-medicate, PTSD and problems with authority figures, and PTSD with avoidance behavior, there is a nexus between the applicant's misconduct characterized by wrongful use of alcohol, disrespect of an NCO, and FTR such that his misconduct was mitigated by PTSD.

f. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence that the applicant had an experience or condition during his time in service that mitigated his misconduct.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant is 100 percent SC for PTSD.

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. combat. As there is a relationship between PTSD and substance use to self-medicate, PTSD and problems with authority figures, and PTSD with avoidance behavior, there is a nexus between the applicant's misconduct characterized by wrongful use of alcohol, disrespect of an NCO, and FTR such that his misconduct was mitigated by PTSD.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board concurred with the medical advisor's review that there is sufficient evidence the applicant had a condition or experience during his time in service that mitigated his misconduct. Based on a preponderance of the evidence, the Board determined that the characterization of service the applicant received upon separation should be corrected.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
█	█	█:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214, for the period ending 19 January 2012, showing a characterization of service as honorable.

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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, USC, section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 14 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, 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 appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. Only a general court-martial convening authority may approve an honorable discharge or delegate approval authority for an honorable discharge under this provision of regulation.
 - b. 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.
 - c. 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. On 3 September 2014, the Secretary of Defense (Honorable Mr. Hagel) directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC 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 (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 to 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 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.

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//