

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 December 2023

DOCKET NUMBER: AR20230004455

APPLICANT REQUESTS: an upgrade of his characterization of service from Under Honorable Conditions (General) to Honorable.

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

DD Form 149 (Application for Correction of Military Record), 11 February 2023

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, in effect, while he was deployed to Iraq he was suffering from post-traumatic stress disorder (PTSD) and instead of being helped by the Army he was discharged. PTSD is related to his request.
3. The applicant enlisted in the Regular Army on 26 January 2005, for a period of 4 years and 19 weeks.
4. His Enlisted Record Brief (ERB) shows the highest rank he obtained was Private First Class (PFC)/E-3 with a date of rank of 1 March 2006. It additionally shows:
 - military occupational specialty (MOS) 11B (Infantryman)
 - deployment combat duty in Iraq from 27 September 2005 to 7 September 2006
5. A memorandum for his first sergeant, shows on 8 July 2005, he failed to report to Air Assault School. He was counseled for failure to go to his appointed place of duty on 8 and 11 July 2005.
6. On 16 August 2005, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for failure to go to his

appointed place of duty on or about 8 July 2005 and on or about 11 July 2005. His punishment was forfeiture of \$288.00, restriction, and extra duty for 14 days.

7. A DA Form 2823 (Sworn Statement) from the applicant dated 13 May 2006, states he didn't want to continue using drugs (valium), so he made up a lie to get moved from the location where the drugs were. He then referenced his depression and lies about his life. When he fractured his hand from being angry, he was sent to a combat stress class, he was so angry with everything he started "cutting" himself. When his first sergeant asked what was going on, he confessed to the drugs and wanting out of the Army.

8. A DA Form 4856 (Development Counseling Form) states he was counseled by his platoon sergeant for malingering, which is a violation of the UCMJ, Article 115. He additionally was counseled for making up a story with the intent to avoid duty/service, intentionally injuring himself by punching a sandbag after he had a bad dream and feigned mental illness.

9. On 26 May 2006, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, of the UCMJ for violating a general order and wrongfully consuming valium, a controlled substance, also making a false statement(s), intentionally injuring himself by fracturing his hand, and avoiding duty by intentionally feigning mental derangement. His punishment was reduction to private/E-1, forfeiture of \$636.00 pay per month for two months, and extra duty for 45 days.

10. An additional DA Form 4856 (Development Counseling Form), states on 24 October 2006, he was counseled for trying to commit suicide on 17 October 2006 and a mental health appointment on 18 October 2006.

11. The applicant's separation packet includes medical documentation, which references a health appointment on 18 October 2006 with an assessment made from the applicant. It also contains a DA Form 3822-R (Report of Mental Status Evaluation) where Medical Corps, Captain J.N.M., Psychiatrist, stated the applicant has a chronic history of depressed mood and states he cannot remain in the U.S. Army. While he was deployed he was treated by mental health assets in Iraq, but he still reported distress at being in the Army. The psychiatrist diagnosed him with adjustment disorder with mixed anxiety and depressed mood and recommended the applicant be separated from the military per Chapter 5-17, Other Designated Physical or Mental Condition.

12. On 4 December 2006, the command initiated a flag on the applicant and his Chronological Record of Medical Care shows on the same date, the applicant attended an appointment for chapter separation.

13. On 4 January 2007, the applicant's immediate commander notified the applicant of his intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 5-17, Other Designated Physical or Mental Condition and Chapter 14-12c, Commission of a Serious Offense. He noted the specific reasons as the applicant having an Adjustment Disorder with Anxiety and Depressed Mood, violating a general order, wrongfully using valium, making two false official statements, and malingering twice in a hostile fire pay zone. The Commander recommended a general (under honorable conditions) discharge.

14. The applicant consulted with counsel on 18 January 2007 and was advised of the basis for the contemplated action to separate him and of the rights available to him. He elected not to submit a statement in his own behalf.

15. On 19 January 2007, the applicant's immediate commander formally recommended the applicant be separated under AR 635-200, Chapters 5 and 14.

16. On 19 January 2007, the applicant's intermediate commander recommended the applicant be separated under AR 635-200, Chapter 5-17 and Chapter 14, with a general (under honorable conditions) characterization of service.

17. On 24 January 2007, the separation authority directed the applicant be discharged under the provisions of AR 635-200, paragraph 14-12c, for commission of a serious offense. His characterization of service was general, under honorable conditions.

18. The applicant was discharged on 2 February 2007. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct (serious offense), in the grade of E-1. His service was characterized as under honorable conditions (general). He received a separation code of "JKQ" and reentry code "3". He completed 2 years and 7 days of net active service with 11 months and 7 days of foreign service. He was awarded or authorized the:

- National Defense Service Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Combat Infantryman Badge

19. There is no indication the applicant applied to the Army Discharge Review Board within that Board's 15-year statute of limitations.

20. Regulatory guidance states when an individual is discharged under the provisions of AR 635-200 Chapter 14, for misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

21. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency. 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.

22. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge. He asserts he was experiencing PTSD during his active service, which contributed to his misconduct.

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 26 January 2005; 2) The applicant was deployed to Iraq from 27 September 2005-7 September 2006; 3) On 26 May 2006, the applicant accepted nonjudicial punishment (NJP) for consuming valium, making false statement(s), intentionally injuring himself by fracturing his hand, and avoiding duty by intentionally feigning mental derangement; 3) On 18 October 2006, the applicant had a mental status evaluation (MSE) completed by a military psychiatrist. He was diagnosed with an Adjustment disorder with Mixed Anxiety and Depressed mood and recommended to be separated from the military per Chapter 5-17, Other Designated Physical or Mental Condition; 4) The applicant was discharged on 2 February 2007, Chapter 14-12c, by reason of misconduct (serious offense), in the grade of E-1. His service was characterized as under honorable conditions (general).

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and available medical records. The Armed Forces Health Longitudinal Technology Application (AHLTA) and the VA's Joint Legacy Viewer (JLV) were also examined.

d. The applicant noted PTSD as a contributing and mitigating factor in the circumstances that resulted in his misconduct. There is sufficient evidence while deployed the applicant was experiencing emotional distress. However, he was falsely reporting this distress was related to events occurring at home. In addition, he reported using opiates that he acquired from a local national. As the result of his distress and the serious nature of the events he was reporting, he was evacuated to be closer to a Combat Stress unit located in Iraq. The applicant also reported being dishonest about the reasons for why he broke his hand. The applicant described engaging in some self-harm behavior as the result of guilt for lying about his situation. After the applicant revealed his dishonestly, there is sufficient evidence that he was counseled and

received NJP for these acts, which likely impacted the mission. Due to the applicant being deployed, there is no available medical record of the applicant's behavioral health treatment in Iraq.

e. After returning from deployment, the applicant reengaged in behavioral health treatment on 18 October 2006. He reported a long-standing problem of depression and had attempted suicide while he was a teenager. He also continued to report difficulty adapting to the military, and he felt his depression had worsened since joining the Army. He was diagnosed with an Adjustment Disorder with Depression and Anxiety, and he was recommended for an administrative separation from the military for this condition and his inability to adapt. The applicant was recommended for follow-up psychotherapy and medication management, but the applicant only attended one follow-up appointment before his discharge. A review of JLV provided evidence the applicant has been diagnosed with service-connected PTSD related to his combat deployment, and the applicant receives service-connected disability for this condition since 2010.

f. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence to support the applicant had a condition or experience that partially 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 contends he was experiencing PTSD that contributed to his misconduct. He was diagnosed with an Adjustment Disorder with Depressed Mood and Anxiety while on active service and service-connected PTSD by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing PTSD that contributed to his misconduct. He was diagnosed with an Adjustment Disorder with Depressed Mood and Anxiety while on active service and service-connected PTSD by the VA.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially, there is sufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD while on active service. There is evidence the applicant had a history of depression, which was likely exasperated by his inability to adapt to the military and his combat deployment. The applicant reported distress while he was deployed and engaged in self-harm and self-medication of illegally obtained opiates. The applicant likely engaged in this behavior in an attempt to avoid his negative emotions. However, there is no nexus between the applicant's mental health conditions and the applicant's misconduct of fraudulent statements to his leadership given that: 1) this type of misconduct is not part of the natural history or sequelae of his mental health

conditions, including PTSD; 2) His mental health conditions, including PTSD do not affect one's ability to distinguish right from wrong and act in accordance with the right.

BOARD DISCUSSION:

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 DoD guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, record of service, the frequency and nature of his misconduct, the reason for his separation and whether to apply clemency. The Board noted the applicant's in-service diagnosis of Adjustment disorder with Mixed Anxiety and Depressed and post-service diagnosis of PTSD. Based upon the pattern of misconduct leading to the applicant's separation and the findings of the medical advisor showing only a partial mitigation could be contributed to the separation, the Board concluded insufficient evidence of an error or injustice was present warranting an upgrade.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	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.

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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, 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. 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.

3. AR 635-200 sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3, section II (Type of Characterization or Description) provides a description of the states the following types of characterization of service or description of service are authorized: separation with characterization of service as Honorable, General (under honorable conditions), or Under Other Than Honorable Conditions, and Uncharacterized (for entry level status) are authorized. These separation types will be used in appropriate circumstances unless limited by the reason for separation.

(1) Paragraph 3-7a 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.

(2) Paragraph 3-7b states 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.

b. Paragraph 5-17, states commanders who are special court-martial convening authorities may approve separation under this paragraph based on other physical or mental conditions not amounting to disability that potentially interfere with assignment to or performance of duty. A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition. Members may be separated for physical or mental conditions not amounting to disability, which is

sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired.

c. Chapter 14 (Separation for Misconduct) establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave.

(1) 14-12c(2) – Soldiers are subject to discharge for *Commission of a serious offense*. Commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the MCM. Specific instances of serious offenses include abuse of illegal drugs or alcohol

(2) 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.

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 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 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 to those conditions or experiences.

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