

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 February 2024

DOCKET NUMBER: AR20230004616

APPLICANT REQUESTS:

- an upgrade of his character of service from under honorable conditions (general) to honorable
- a change of separation code from JKQ to MBK

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored Statement
- Basic Combat Training Graduation Certificate
- Memorandum, subject: Waiver to Attend Ranger School
- Ranger Course Diploma
- DA Form 638 (Recommendation for Award)
- Permanent Orders 162-32
- DA Form 1059 (Service School Academic Evaluation Report)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 4 February 2005
- Three Character Letters
- Department of Veterans Affairs (VA) Disability Rating Decision
- VA Benefits Letter

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 he was prior enlisted and received an honorable discharge in 2001. Shortly after his separation, the events of September 11th occurred and after a year of school, he felt guilt that his brothers in the Army were going overseas while he was safe at home in college. He decided to reenlist in October 2002, and volunteered for an elite reconnaissance/surveillance unit in which all E-4's and above were required

to be Ranger-qualified. Soon after reenlisting he was put on orders to Iraq to conduct combat operations with his unit.

a. Before his combat experiences in Iraq, he was a highly dependable and exceptional Soldier. The missions and events he was a part of while deployed were high stress and weighed heavily on his mind; he still lives with these thoughts today.

b. After returning from Iraq, he was divorced within a couple of months, struggled heavily with posttraumatic stress disorder (PTSD), anxiety, panic attacks and suicidal ideations. He internalized his issues, turned to substance abuse to self-medicate and deal with his issues. He believes the severity of his PTSD from combat was the main contributing factor to his substance abuse. As a result, he failed a urinalysis which ultimately led to him being separated for misconduct and receiving a general, under honorable conditions discharge.

c. Following his discharge he struggled even more with depression, PTSD, thoughts of suicide guilt for taking the lives of others, and survivor's guilt. His wife convinced him to seek help in a 12-step group to help him deal with his issues. From there, he changed his life as best as he could and received an associate degree in machine shop technology and has been working as a tradesman and instructor ever since. He would like to have his characterization of service reconsidered, as he has since been rated by the VA for service-connected PTSD.

3. The applicant provides:

a. A letter that explains his combat stressors and experiences as a Senior Scout Observer on a Long Range Surveillance Team, while deployed to Iraq in 2003 and the effects of what combat did to him upon his redeployment.

b. Certificate of Achievement, for being named Honor Graduate for Company C, 2nd Battalion, 19th Infantry Regiment's cycle #038-98.

c. Memorandum, subject: Waiver to Attend Ranger School, dated 26 August 1999, endorsed by his immediate and intermediate commander.

d. Ranger Course Diploma, awarded to the applicant for the successful completion of the Ranger Course located at Fort Benning, Georgia on 18 February 2000.

e. The front page of a DA Form 638, recommending the applicant for the Army Commendation Medal for his actions between 21-23 April 2003 as a quick reaction force (QRF) team member. The second page of the form was not provided.

f. Permanent Orders 162-32, dated 11 June 2003, awarding the applicant the Good Conduct Medal.

g. DA Form 1059 dated 15 April 2004, that shows the applicant exceeded course standards and was a Commandant's List graduate for Primary Leadership Development Course (PLDC) Class 05-04.

h. DD Form 214, effective 4 February 2005, that shows the applicant was discharged from active duty with a general, under honorable conditions characterization of service for misconduct in accordance with AR 635-200, paragraph 14-12c.

i. Three character letters:

(1) D___ P___, Jr., states that over the course of 3 years he has had ample opportunity to assess the applicant's full character. He describes his work ethic and desire for professional growth as "unmatched," and says his natural leadership skills made him a role model for his peers. Due to his leadership ability and outstanding intestinal fortitude, he selected the applicant to attend the Ranger Course while he was still a junior Soldier although the course is normally reserved for noncommissioned officers. He goes on to say how out of hundreds of subordinates that have served under his charge in his over 18 years of service, the applicant was the best.

(2) I___ C___ describes the applicant as having excellent leadership skills, exceptionally focused, extremely organized, reliable and resourceful. He also states that he served with the applicant in combat and was impressed with his professionalism and ability to make rational decisions under extreme conditions.

(3) R___ U___ describes the applicant as a "model Soldier" who set examples for others to follow and embodies the Ranger Course motto of "rangers lead the way." He thought the applicant was crazy for re-enlisting after separating from the Army in 2001, but he noticed that a lot of the applicant's problems began following his deployment to Iraq. After visiting him following the deployment he suspected the applicant had turned to substance abuse, and it was confirmed once he was discharged. Following his own deployment, they would talk every few months about their combat experiences. He suggested that the applicant seek help for his issues from the VA, which he did, and he now receives a 70% disability rating for service-connected PTSD. He believes that his deployment experience greatly impacted his career and personal life.

j. A printout from the VA's website that shows a disability rating of 70% for service-connected PTSD, effective 8 June 2022. The document does not indicate a last name, only the first name of the applicant.

k. VA Benefit letter dated 30 March 2023, that summarizes the applicant's VA benefits entitlement. It also shows:

- Army, Honorable, March 19, 1998 to July 15, 2001
- Army, Under Honorable Conditions, October 2, 2002 to February 4, 2005

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

a. On 19 March 1998 the applicant enlisted in the Regular Army.

b. In a memorandum, dated 19 July 2000, the applicant was reprimanded by the commanding general of Headquarters, Joint Readiness Training Center (JRTC) and Fort Polk for operating a vehicle at a high rate of speed (82/45), failed field sobriety test, and refusing a chemical test for intoxication on 30 June 2000 by a Louisiana State Police officer.

c. On 10 August 2000, the applicant acknowledged receipt of the reprimand, and elected to submit matters within 7 days.

d. In an undated transmittal, the immediate commander noted that the applicant did not submit matters by the due date. The immediate and intermediate commanders recommended that the reprimand be filed in the applicant's Official Military Personnel File (OMPF).

e. On 23 October 2000, consistent with the chain of command recommendations, the commanding general directed the reprimand be filed in his OMPF.

f. On 15 July 2001, he was honorably released from active duty for completion of required service. His DD Form 214 shows he completed 3 years, 3 months, and 27 days of active service. His separation code reflects "MBK" and reentry code of "3." It also shows he was awarded or authorized:

- Army Achievement Medal (2nd Award)
- Army Lapel Button
- Army Good Conduct Medal
- Army Service Ribbon
- Parachutist Badge
- Ranger Tab

i. On 2 October 2002, he reenlisted in the Regular Army. He served in Iraq from 22 April 2003 to 11 December 2003.

j. In a memorandum, dated 22 June 2004, the applicant was reprimanded by the commanding general of Headquarters, XVIII Airborne Corps and Fort Bragg for refusing a lawfully requested Intoxilyzer 5000 test on 15 May 2004, while in physical control of a motor vehicle.

k. On 24 June 2004, the applicant acknowledged receipt of the reprimand, and elected to submit matters within 5 days.

l. In a memorandum dated 28 June 2004, he submitted matters on his behalf stating that he accepts full responsibility for his actions, there was no excuse for his poor judgement, and he is willing to accept any punishment that may come.

m. In a transmittal, dated 9 July 2004, the immediate commander recommended the reprimand be filed locally and noted that the applicant is a "good NCO with a lot of potential. He is an invaluable member of the F Co. team and the Army... and this instance should not characterize his potential for advancement and necessity as an outstanding leader." The intermediate commanders recommended that the reprimand be filed in the applicant's OMPF. His battalion commander noted his potential for service as "pretty impressive," and his value to service as "technically and tactically accomplished." His brigade commander noted his potential for service as "prior to this incident... unblemished," and his value to service as "...proven himself to be a great value to this organization and worthy of continued service in the Army."

n. Consistent with the intermediate commanders' recommendations, the commanding general directed the reprimand be filed in his OMPF.

o. A document labeled "FTDTL Drug Testing Results," shows that a specimen was collected on 9 August 2004 for an individual with the applicant's social security number and shows a positive result for amphetamines and methamphetamines.

p. On 13 September 2004, he accepted nonjudicial punishment for the wrongful use of amphetamines and methylenedioxyamphetamines. His punishment included reduction to specialist/E-4, forfeiture of \$946 pay per month for 2 months, suspended, to be automatically remitted if not vacated before 28 October 2004, and extra duty and restriction for 45 days.

q. His DD Form 2808 (Report of Medical Examination) shows on 20 October 2004, he was evaluated by a physician's assistant and was deemed qualified for service.

r. A Standard Form 600 (Chronological Record of Medical Care) shows on 4 November 2004, the applicant was evaluated by a psychiatric clinical nurse specialist, as requested by the command for separation proceedings. According to the provider he met retention requirements of Chapter 3, Army Regulation (AR) 40-501 (Standards of

Medical Fitness) and did not meet the criteria for a medical evaluation board. There was no evidence of an emotional or mental condition of sufficient severity to warrant disposition through medical channels. It also shows:

- normal behavior and fully alert
- fully oriented with flat mood
- clear thinking process and normal thought content with good memory

s. On 7 January 2005, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 14, AR 635-200 (Active Duty Enlisted Administrative Separations) for commission of a serious offense. The specific reasons for his proposed recommendation were based upon his positive urinalysis on 8 August 2004, for amphetamines, methylenedioxyamphetamine, methylenedioxymethamphetamine, and methamphetamines. The applicant acknowledged receipt of the notification of separation action on 12 January 2005.

t. After being given the opportunity to consult with legal counsel, he acknowledged:

- he was not entitled to have his case heard before an administrative separation board because he did not have more than 6 years of service
- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him
- he will be ineligible to apply for enlistment in the United States Army for a period of 2 years after discharge
- he may apply to the Army Discharge Review Board or the ABCMR for an upgrade request

u. On 13 January 2005, the immediate commander initiated separation action against the applicant for commission of a serious offense. He recommended that his period of service be characterized as general, under honorable conditions.

v. On 13 January 2005, consistent with the chain of command recommendation, the separation authority approved the discharge recommendation for immediate separation under the provisions of Chapter 14, AR 635-200, paragraph 14-12c for commission of a serious offense. He would be issued a General Discharge Certificate.

w. On 2 February 2005, he was discharged from active duty in accordance with chapter 14-12c of AR 635-200 with a general, under honorable conditions characterization of service. The separation code assigned is "JKQ" and his reentry code was "3." His DD Form 214 shows he completed 2 years, 4 months, and 3 days of active service. It also shows he was awarded or authorized:

- Army Commendation Medal
- Army Achievement Medal (3rd Award)
- Army Good Conduct Medal (2nd Award)
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon
- Parachutist Badge
- Military Free Fall Parachutist Badge
- Ranger Tab

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

6. AR 635-5-1 (Separation Program Designator Codes), prescribes the rules for separation program designator code control and usage. It shows for

- Misconduct (Serious Offense): JKQ, AR 635-200
- Completion of Required Service: MBK, AR 635-200

7. Also by regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as commission of a serious offense, 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.

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

MEDICAL REVIEW:

1. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge and a change to his separation code. He contends he was experiencing PTSD that mitigates his misconduct.

2. 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 reenlisted in the Regular Army on 2 October 2002 after an honorable term of service previously; 2) The applicant served in Iraq from 22 April 2003-11 December 2003; 3) In a memorandum, dated 22 June 2004, the applicant was reprimanded for refusing a lawfully requested Intoxilyzer 5000 test on 15 May 2004, while in physical control of a motor vehicle; 4) On 13 September 2004, he accepted nonjudicial

punishment for the wrongful use of amphetamines and methylenedioxyamphetamines; 5) The applicant was discharged on 2 February 2005, chapter 14-12c- for commission of a serious offense. His characterization of service was identified as general, under honorable conditions. The separation code assigned is "JKQ."

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

4. The applicant asserts he was experiencing PTSD as a result of his combat deployment to Iraq while on active service, which resulted in his misconduct. There was insufficient evidence the applicant reported symptoms of PTSD while on active service. On 4 November 2004, the applicant was evaluated by a psychiatric clinical nurse specialist, as requested by the command for separation proceedings for a Chapter 14. The applicant was not found to meet the criteria for a psychiatric condition which would warrant disposition through medical channels, and he was psychiatrically cleared for any administrative action deemed appropriate by command.

5. A review of JLV provided evidence the applicant has been diagnosed and treated for service-connected PTSD. The applicant receives service-connected disability for PTSD (70%) since June 2022.

6. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence to support the applicant had condition or experience that mitigated his misconduct.

7. Kurta Questions:

a. Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he was experiencing PTSD while on active service, and he has been diagnosed with service-connected PTSD by the VA.

b. Did the condition exist, or experience occur during military service? Yes, the applicant contends he was experiencing PTSD while on active service, and he has been diagnosed with service-connected PTSD by the VA.

c. Does the condition or experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence that the applicant was experiencing PTSD while on active service. The applicant had a history of misconduct associated with substance and alcohol abuse during his military service after returning from his combat deployment. PTSD can be associated with avoidant behavior. The applicant's alcohol and substance abuse could be an attempt to self-medicate or to avoid his negative emotional state. Avoidant behaviors are often a natural sequelae to PTSD. It is likely the applicant

abused illegal substances and alcohol to cope with his negative emotions while on active service. Therefore, there is evidence to support an upgrade in his discharge status.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.
2. The Board found sufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advisory official regarding the applicant's misconduct being mitigated by PTSD. The Board recommends upgrading the applicant's characterization of service to honorable.
3. A majority of the Board members found sufficient evidence to restore the applicant's rank/grade to SGT/E-5, based on the medical advisor's opinion that there was a nexus between the applicant's PTSD and the misconduct. The majority of the Board members recommend restoring the applicant's rank/grade to SGT/E-5 with a date of rank of 1 May 2003.
4. The Board determined it was inappropriate to change the applicant's separation code to MBK, because the corresponding narrative reason for separation, "completion of required active service." was not the reason for his discharge. Nevertheless, the Board felt relief was warranted, and determined the most appropriate course of action would be to recommend the applicant separation be changed, as a matter of compassion, to Secretarial Authority.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

█ █ █ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by voiding his DD Form 214 for the period ending 4 February 2005, and issuing him a new DD Form 214 for the period ending 4 February 2005, which includes the following block entries:

- 4a (Grade, Rate, or Rank) / 4b. (Pay Grade) - "SGT" / "E5"
- 11 (Primary Specialty) - "11B2P W8 INFANTRYMAN --2 YRS-4 MOS"
- 12h (Effective Date of Pay Grade) - "2003 05 01"
- 24 (Character of Service) - "Honorable"
- 25 (Separation Authority) - "Army Regulation 635-200, paragraph 5-3"
- 26 (Separation Code) - "JFF"
- 27 (Reentry Code) - "1"
- 28 (Narrative Reason for Separation) - "Secretarial Authority"

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to changing his Separation Code to MBK.

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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. AR 635-5 (Separation Documents) 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 all current active, prior active, and prior inactive 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.
3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. Table 2-2 identified the SPD code:
 - JKQ - Misconduct (serious offense), AR 635-200, paragraph 14-12c
 - MBK - Completion of Required Service, AR 635-200, chapter 4
4. AR 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. 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.
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.

8. 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//