

IN THE CASE OF: ██████████

BOARD DATE: 8 February 2024

DOCKET NUMBER: AR20230005033

APPLICANT REQUESTS: His under honorable conditions (general) discharge be upgraded to an honorable discharge.

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

- DD Form 149 (Application for Correction of Military Record) with personal statement
- Department of Veterans Affairs (VA) Compensation and Pension (C & P) Post-Traumatic Stress Disorder (PTSD) Examination
- VA rating examination

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 at the end of basic training a drill instructor (DI) flipped him out of his bed resulting in injuries to his back and both wrists, one having to be cast. He was advised by another DI to downplay the cause of the injuries. The pain continued, he struggled to get back in shape, and he hesitated to go on sick call, because it was frowned upon and resulted in disrespect from his peers. He developed severe anxiety when the DI who had assaulted him was assigned to the unit, and he started self-medicating, which including the use of cocaine. He was also diagnosed with PTSD by several professionals.
3. On the applicant's DD Form 149, he indicates post-traumatic stress disorder (PTSD) as a contributing and mitigating factor in the circumstances that resulted in his separation.
4. A review of the applicant's service record shows he enlisted in the Regular Army for 3 years on 2 October 2000 and completed training with award of the military occupational specialty 12B (Combat Engineer).

5. The available record does not include any disciplinary actions that may have occurred, any of the separation processing documentation, an Enlisted Record Brief, or DA Form 2-1 (Enlisted Qualification Record).

6. The applicant was discharged on 27 August 2002 in the grade of E-1. The DD Form 214 issued at that time shows he was separated under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c, for misconduct with a general discharge. He completed 1 year, 10 months, and 26 days of active duty service with no lost time.

7. The applicant provided copies of VA C & P examination and a VA Rating Decision that afforded him the diagnosis of PTSD and granted a 50 percent disability evaluation, with an effective date of 27 July 2022.

8. In determining whether to grant relief the Boards for Correction of Military/Navy Records (BCM/NR) can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

9. 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 2 October 2000; 2) The available record does not include any disciplinary actions that may have occurred, any of the separation processing documentation, an Enlisted Record Brief, or DA Form 2-1 (Enlisted Qualification Record); 3) The applicant was discharged on 27 August 2002 in the grade of E-1. The DD Form 214 issued at that time shows; he was separated under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14- 12c for misconduct with a general discharge.

c. The VA electronic medical record (JLV), and ROP were reviewed. The military electronic medical record, AHLTA, was not reviewed as it was not in use during the applicant's period of service. No military BH-related documents were provided for review. A review of JLV was shows the applicant 50 percent SC for PTSD. Initial PTSD DBQ dated 22 August 2022 shows the applicant reported being physically assaulted by a SSG during BCT at Fort Leonard Wood characterized by being thrown from his bunk, breaking one wrist, and injuring the other. He was purportedly told not to report the assault for fear of retribution. The SSG was reportedly later stationed with the applicant at Fort Lewis which caused the onset of anxiety and trauma related symptoms. The applicant reported he began to use alcohol and drugs as a form of self-medication of the

anxiety and PTSD symptoms. The examiner deemed the applicant reported sufficient symptoms to meet criteria for PTSD and found it related to military service. Records show the applicant began receiving outpatient treatment for PTSD at the VA on 3 November 2023 with primary complaints of anger, irritability, mood vacillation. Records appear to suggest the applicant received one additional session on 16 November 2023 with the same complaints. Records were void of any BH-related treatment encounters subsequent 16 November 2023.

d. 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 50 percent SC for PTSD secondary to a physical assault by a SSG during BCT who was later stationed with him at Fort Lewis, triggering anxiety and PTSD symptoms, reported leading to alcohol and drug use to self-medicate. As there is a relationship between PTSD and substance use to self-medicate, there is a nexus between the applicant's misconduct characterized by apparent wrongful use of substances – to include cocaine, and his SC diagnosis of PTSD such that the wrongful use of substances is mitigated by the diagnosis.

e. 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 50 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. A review of the records shows the applicant 50 percent SC for PTSD secondary to a physical assault by a SSG during BCT who was later stationed with him at Fort Lewis, triggering anxiety and PTSD symptoms, reported leading to alcohol and drug use to self-medicate. As there is a relationship between PTSD and substance use to self-medicate, there is a nexus between the applicant's misconduct characterized by apparent wrongful use of substances, to include cocaine, and his SC diagnosis of PTSD such that the wrongful use of substances is mitigated by the diagnosis.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered

the applicant's statement, his record of service, and the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the Army Review Boards Agency Behavioral Health Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors. While the Board concurred with the conclusion of the medical advising official regarding his misconduct being mitigated by PTSD, the Board noted that he received general discharge rather than an under other than honorable conditions discharge. The Board agreed that, had he received the lower character of service, and upgrade would be warranted; however, because he received a general discharge, the Board determined his character of service was not in error or unjust.

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 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.

6/3/2024

X █

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, 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. Title 10, USC, section 1556 provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. Army Regulation 635-200 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - 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.
 - d. Paragraph 14-12c (Commission of a Serious Offense) applied to Soldiers who committed a serious military or civilian offense, when required by the specific circumstances warrant separation and a punitive discharge was, or could be authorized for that same or relatively similar offense under the UCMJ.
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 (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 a 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. The Under Secretary of Defense for Personnel and Readiness issued guidance to DRBs and BCM/NR on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, Boards 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//