

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 December 2023

DOCKET NUMBER: AR20230005374

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under honorable conditions (general) discharge to an honorable discharge.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharger from the Armed Forces of the United States)
- DA Form 1059 (Service School Academic Evaluation Report (AER)) (two)
- Enlisted Record Brief
- Department of Veterans Affairs (VA) document

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20160006221 on 15 February 2018.
2. The applicant states he feels he was suffering from post-traumatic stress disorder (PTSD) at the time of the misconduct that led to his discharge. He feels this condition affected his judgement and cognitive skills. He was also in a lot of pain at the time, and it may have caused him to use unconventional methods to self-medicate. He was a good Soldier and only made one mistake in his 8 years of service.
3. The applicant enlisted in the Regular Army on 10 June 2003 for a period of 3 years. Upon completion of initial entry training, he was assigned to a unit at Fort Sill, OK. He was subsequently reassigned to a unit in South Korea, where he reenlisted on 27 October 2005.
4. The applicant was reassigned to a unit in Germany in June 2006 and deployed to Iraq from 4 September 2006 to 14 November 2007.
5. He was reassigned to a unit at Fort Bliss, TX in July 2008. He was promoted to the rank/grade of staff sergeant (SSG)/E-6 on 1 December 2008. He deployed to Iraq from 18 November 2009 to 28 July 2010.

6. On 8 February 2011, the applicant was counseled due to testing positive for cocaine during a recent unit urinalysis. He admitted to making a mistake and using the illegal drug. He was advised that continued conduct of this nature could result in punishment under the provisions of the Uniform Code of Military Justice (UCMJ).
7. On 11 February 2011, the applicant accepted field grade nonjudicial punishment under the provisions of Article 15, of the UCMJ for, between on or about 3 January 2011 and on or about 7 January 2011, wrongfully using cocaine. His punishment consisted of reduction from SSG to sergeant (SGT)/E-5 and extra duty for 20 days.
8. On 2 March 2011, the applicant was counseled regarding traffic warrants issued to him for failing to control speed, failing to maintain proof or registration, and jaywalking.
9. The applicant's DA Form 2166-8 (Noncommissioned Officer (NCO) Evaluation Report) rendered for the period from 1 April 2010 through 31 March 2011 shows his rater and senior rater indicated that he failed to uphold three of the Army Values; he needed improvement in three areas of values and NCO responsibilities; he consistently performed below standards; and his potential for increased responsibility was questionable.
10. The applicant's immediate commander notified the applicant of his intent to initiate actions to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, for misconduct-abuse of illegal drugs. He was advised that he was being recommended for a general, under honorable conditions discharge, but the final determination of his characterization of service would be made by the separation authority. The applicant acknowledged receipt of the proposed separation notification on 13 May 2011.
11. The applicant underwent a behavioral health evaluation and was determined to have the mental capacity to understand and participate in administrative proceedings.
12. On 23 May 2011, the applicant acknowledged that he was advised of the reasons for separation and of the rights available to him. He consulted with counsel and submitted a conditional election of rights wherein he elected:
 - to waive consideration of his case by an administrative separation board (ASB) conditioned upon his receipt of a general discharge
 - to waive personal appearance before an ASB conditioned upon his receipt of a general discharge
 - not to submit statements in his own behalf.
 - to request consulting counsel and representation by military counsel and/or civilian counsel at no expense to the Government

13. On 16 April 2003, the applicant's immediate commander formally recommended his separation prior to his expiration term of service, under the provisions of Army Regulation 635-200, paragraph 14-12c(2), by reason of misconduct-abuse of illegal drugs. The interim command concurred.

14. On 3 June 2011, the separation authority approved the recommendation for separation, and directed the applicant be issued a general, under honorable conditions discharge.

15. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show he was discharged from the Regular Army on 15 June 2011, under the provisions of Army Regulation 635-200, paragraph 14-12c(2), by reason of Misconduct (Drug Abuse), with separation code "JKK" and reentry code "4." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 8 years and 6 days of net active service this period. He completed his first full term of service. He was awarded or authorized the:

- Iraq Campaign Medal with three Campaign Stars
- Army Commendation Medal
- Army Achievement Medal (4th Award)
- Army Good Conduct Medal (2nd Award)
- National Defense Service Medal
- Korean Defense Service Medal
- NCO Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon (3rd Award)
- Driver and Mechanic Badge with Driver-Wheeled Vehicle Clasp

16. The applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of his discharge. On 10 June 2015, the applicant was informed that after careful review of his application, military records, and all other available evidence, the ADRB determined he was properly and equitably discharged and denied his request.

17. The applicant petitioned the ABCMR for an upgrade of his discharge. On 6 March 2018, the applicant was informed the ABCMR had considered his application under procedures established by the Secretary of the Army and denied his request.

18. On 9 June 2023, a member of the Army Review Boards Agency (ARBA) staff requested the applicant provide a copy of medical documents in support of his PTSD and other mental health conditions and afforded him a 30-day window to respond. To date, the applicant has not responded.

19. The applicant provides:

- An AER that shows he successfully completed the Warrior Leader Course during the period from 8 April 2008 through 7 May 2008
- An AER that shows he successfully completed the Unit Supply Specialist Basic NCO Course during the period from 23 January 2009 through 26 February 2009
- A VA form printed on 16 June 2022 which shows, in part, he was awarded a 100 percent service connected disability rating for PTSD by the VA

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

21. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request for an upgrade of his under honorable conditions (general) discharge to an honorable discharge. He contends he was experiencing physical pain and PTSD that mitigated 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 in the Regular Army on 10 June 2003; 2) The applicant served in Iraq from 18 November 2009-28 July 2010; 3) On 11 February 2011, the applicant accepted nonjudicial punishment (NJP) for using cocaine; 4) On 2 March 2011, the applicant was counseled regarding traffic warrants issued to him for failing to control speed, failing to maintain proof or registration, and jaywalking; 5) The applicant was discharged on 15 June 2011, Chapter 14-12c (2), by reason of misconduct (drug abuse). His character of service was under honorable conditions (general).

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

d. The applicant asserts he was experiencing ongoing physical pain and PTSD as a result of his deployment to Iraq. The applicant was initially seen by Army Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) on 01 February 2011, and he was referred for a more in-depth interview on 07 February at the Army Substance Abuse Program (ASAP). The result of this evaluation was the applicant was diagnosed with Cocaine-Related Disorder. At the time, he did not report symptoms of any other psychiatric condition, but he did have a history of shoulder pain. The applicant stated that he only using cocaine over the holiday break, but he denied ongoing substance abuse. He also declined substance abuse treatment beyond a two-day program. There

is insufficient evidence the applicant engaged in any additional behavioral health treatment for any condition during his active service. The applicant completed a Behavioral Health Evaluation as part of his separation proceedings. He was not diagnosed with a mental health condition beyond cocaine abuse, and he was not recommended for further behavioral health treatment. He was found to have the mental capacity to understand and participate in administrative proceedings.

e. A review of JLV provided evidence the applicant was seen for a Compensation & Pension (C&P) Evaluation initially after his discharge in 2011. He did not report any mental health conditions, and he was not diagnosed with a service-connected mental health condition. The applicant sought assistance from the VA in 2014 for homelessness, and he completed a C&P Evaluation for PTSD in 2014. He was not diagnosed with service-connected PTSD as a result of this evaluation any other mental health condition. The applicant continued to experience difficulty with homelessness and polysubstance abuse. As a result, he also began to experience increased difficulty with depression and anxiety. He completed another C&P evaluation in 2016 and 2019, and the applicant was eventually found to be 100% disabled for service-connected PTSD.

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

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he was experiencing ongoing pain and PTSD while on active service, which mitigates his misconduct. The applicant was eventually diagnosed with service-connected PTSD in 2016 by the VA, and there was evidence he was reporting pain as the result of a shoulder injury while on active service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing ongoing pain and PTSD while on active service, which mitigates his misconduct. The applicant was eventually diagnosed with service-connected PTSD in 2016 by the VA, and there was evidence he was reporting pain as the result of a shoulder injury while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially, there is sufficient evidence that the applicant was deployed to an active combat environment during his active service. There is also evidence the applicant was reporting pain as the result of a shoulder injury while on active service. However, the applicant's report of drug abuse was a short-term choice over a holiday break. He was evaluated by multiple behavioral health providers while on active service, where he

denied any behavioral health symptoms or ongoing self-medicating substance abuse. After his discharge, he continued to deny behavioral health symptoms, and after two C&P evaluations, he was still not diagnosed with service-connected PTSD. However, after ongoing homelessness, poly-substance abuse, and resultant behavioral health symptoms, the applicant was diagnosed with service-connected PTSD as the result of his current report of behavioral health symptoms. Therefore, there is insufficient evidence the applicant was experiencing a mitigating mental health condition while on active service. However, there is evidence his experiences in the military impacted his mental health currently. Therefore, it is not recommended his discharge be upgraded to honorable at this time. However, the applicant contends he was experiencing a mental health condition that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's 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 DoD guidance for consideration of discharge upgrade requests. The Board considered the applicant's his record of service, the frequency and nature of his misconduct, the reason for his separation and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors for the misconduct and the applicant provided no evidence of post-service achievements or letters of support to weigh a clemency determination. After due consideration of the case, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

2. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

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 to amend the decision by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20160006221 on 15 February 2018.

2/28/2024

X [Redacted Signature]

CHAIRPERSON

[Redacted Name]

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.

ADMINISTRATIVE NOTES

1. Army Regulation 635-8 (Separation Processing and Documents), currently in effect, states for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable," enter "CONTINUOUS HONORABLE SERVICE FROM (first day of service for which DD Form 214 was not issued) UNTIL (date before commencement of current enlistment)." Then, enter the specific periods of reenlistment as prescribed above.

2. The evidence of record confirms the applicant enlisted on 10 June 2003 and had immediate reenlistments for the periods of 20030610-20051026 (10 June 2003 to 26 October 2005) and 20051027-20081209 (27 October 2005 to 9 December 2008).

3. Based on the foregoing, amend the applicant's DD Form 214, ending 16 October 1985 by adding the following comment to item 18 (Remarks): "CONTINUOUS HONORABLE SERVICE FROM 20030610 TO 20081209."

REFERENCES:

1. Title 10, U.S. Code, 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.

2. 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 regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body.

3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. 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.

c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). 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 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 post-traumatic stress disorder; 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.

//NOTHING FOLLOWS//