

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 March 2024

DOCKET NUMBER: AR20230005609

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (General) discharge
- a change to the narrative reason for separation to medical disability vice misconduct

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge)
- Self-Authored Statement
- Army Military Human Resource Record (AMHRR)
- Two Department of Veterans Affairs (VA) Disability Rating Decisions
- VA Summary of Benefits
- Two Letters from Medical Providers
- Letter from Broward College
- Letter from Florida Atlantic University (FAU)
- FAU Academic Transcript

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 is requesting a change in the character of his service as well as the narrative reason for separation from misconduct to disability, due in part because of his service-connected post-traumatic stress disorder (PTSD). He realizes that after he returned from Operation Iraqi Freedom (OIF), he made many mistakes, which haunted him for quite some time. He received punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) and was chaptered out of the military roughly a year after his redeployment stateside, due to substance use.

a. He was diagnosed in 2014 with combat-related PTSD during one of his stays at the VA hospital. He did not realize that part of his substance use problem was possibly connected to other conditions. He just thought alcohol and drugs made him feel better, even though they were having such a negative impact on his life. He feels that the service-connected PTSD is only one factor that contributed to him abusing substances after his redeployment from OIF. Partly wanting to numb all the feelings from inside out.

b. Looking back, he realizes how irresponsible this choice was. He could have been more open and asked for help through his chain of command. Honestly, he did not have the mental foresight back then to put all the complicated pieces together. He is beyond grateful for his commander at the time, Captain H, who never gave up on him. As well as the Soldiers who continuously tried to help him when he was in such a disturbed state of mind.

c. He takes full responsibility for his negative conduct and has done his best to try to right the wrongs of his past through positive action and choices today. He is happy to report to that he has been clean and sober from all mood and mind-altering substances since 24 May 2015. He regularly sees his primary care provider, psychologist, and psychiatrist at the local VA. He is an active participating member of a twelve-step fellowship, which has brought much relief to his life and an opportunity to be of service to others. He is preparing to graduate Magna Cum Laude from FAU with a bachelor's degree in social work. He has been accepted into the Advanced Standing Master of Social Work program at FAU. He has also been enrolled in the VA's Vocational rehabilitation program since September of 2015.

d. He only included the second half of what he is doing now to show the Board the contrast between the boy he was and the man he is now. He was finally able to ask for help. The VA was willing to help him with his PTSD. A twelve-step program was ready to show him how to live without substances in his life. His life is not without challenges, for PTSD and substance use disorder are complicated and subtle foes. But his life is much different today. He appreciates the Board taking the time to review his case.

3. The applicant enlisted in the Regular Army on 8 May 2008. He served in Iraq from 4 May 2009 to 1 May 2010.

4. On 21 September 2010, he was formally counseled for drinking and driving under the influence of alcohol and an unknown substance on 20 September 2010. He was further advised that continued behavior of this kind could result disciplinary action under the provisions of the UCMJ and/or initiation of his involuntary separation from the service and the potential consequences of such a separation.

5. On 7 October 2010, an administrative flag was imposed on the applicant to prevent him from receiving favorable actions because he was pending field initiated elimination.

6. The applicant's duty status was changed from Present for Duty (PDY) to Absent Without Leave (AWOL) on 12 October 2010; and from AWOL to PDY on 25 October 2010.

7. On 10 November 2010, the applicant accepted field grade nonjudicial punishment under the provisions of Article 15, UCMJ for being AWOL from his unit from on or about 12 October 2010 to on or about 26 October 2010; violating a lawful general regulation by wrongfully consuming a "cocaine-like" substance for the purpose of intoxication on or about 20 September 2010; and operating a motor vehicle in a state of evident intoxication from a combination of alcohol and a "cocaine-like" substance. His punishment consisted of reduction from E-4 to private/E-1; forfeiture of \$993.00 pay per month for 2 months; extra duty for 45 days; and restriction for 45 days.

8. The applicant underwent a behavioral health evaluation on an unknown date and was determined, in part, to have the mental capacity to understand and participate in administrative proceedings. He was mentally responsible for the events that led to the evaluation. He met medical retention requirements and did not qualify for a Medical Evaluation Board.

9. The applicant underwent a separation medical examination in November and December 2010, he was found to be qualified for service. It was noted that he had diagnoses of anxiety disorder (not otherwise specified) and insomnia and that both conditions were followed by mental health.

10. On 2 March 2011, the applicant's immediate commander notified the applicant of his intent to initiate action to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, paragraph 14-12c, for commission of a serious offense. The specific reasons for this action were the applicant's wrongful consumption of a "cocaine-like" substance, his AWOL, and his operation of a vehicle in a state of evident intoxication. 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 the same day.

11. On 2 March 2011, the applicant was notified of his immediate commander's intent to recommend him for separation under the provisions of Army Regulation 635-200, Chapter 14, by reason of commission of a serious offense. He acknowledged receipt on the same date.

12. The applicant's immediate commander formally recommended his separation from service prior to the expiration of his term of service, under the provisions of Army Regulation 635-200, Chapter 14, by reason of commission of a serious offense.

13. On 4 March 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 not to submit statements in his own behalf.

14. On 23 March 2011, the separation authority approved the recommendation for separation, and directed the applicant be issued a general, under honorable conditions discharge.

15. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 4 April 2011, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of Misconduct (Serious Offense), with separation code "JKQ" and reentry code "3." His service was characterized as under honorable conditions (General). He was credited with completion of 2 years, 10 months, and 14 days of active service. He had time lost due to AWOL from 12 October to 24 October 2010.

16. The applicant provides the following documents which are available in their entirety for the Board's consideration:

a. His entire AMHRR.

b. Two Department of Veterans Affairs (VA) Disability Rating Decisions rendered on the following dates show, in part:

(1) On 8 January 2015, the applicant was informed of the amount of disability payments he would receive based upon his combined disability rating of 80 percent for diagnoses that included, in part, PTSD which was increased from 50 to 70 percent disabling.

(2) On 24 March 2015, the applicant was advised that his current benefit would remain unchanged, and he retained a 70 percent disability rating for PTSD.

c. A VA Summary of Benefits, dated 18 May 2019, shows the applicant received benefits for one or more service-connected disabilities with a combined rating of 80 percent.

d. Letters from two doctors at the VA Outpatient Clinic in Broward County, FL, show the applicant was receiving treatment for a diagnosis of PTSD and Alcohol and Cocaine Use Disorder and had made significant progress.

e. A letter from North Campus President and Vice President of Academic Affairs of Broward College, wherein he congratulated the applicant on his academic achievement during the Spring 2018 semester that resulted in him being named to the Dean's List.

f. A letter from the President of FAU, wherein he congratulated the applicant for achieving a perfect grade average of 4.0 that resulted in him being named to the President's Honor List for the Spring 2019 semester.

g. His FAU Academic Transcript.

17. 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.

18. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge and a change to his narrative reason for his separation to medical disability rather than misconduct. He contends he was experiencing mental health conditions including PTSD that mitigates 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 8 May 2008; 2) The applicant served in Iraq from 4 May 2009-1 May 2010; 3) On 10 November 2010, the applicant accepted field grade nonjudicial punishment (NJP) for being AWOL from 12-26 October 2010 and for consuming a "cocaine-like" substance for the purpose of intoxication on or about 20 September 2010 and operating a motor vehicle in a state of evident intoxication from a combination of alcohol and a "cocaine-like" substance; 4) The applicant was discharged from the Regular Army on 4 April 2011, Chapter 14-12c, by reason of Misconduct (Serious Offense), with separation code "JKQ" and reentry code "3." 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 records. The Armed Forces Health Longitudinal Technology Application (AHLTA) and the VA's Joint Legacy Viewer (JLV) were also examined.

d. The applicant asserts he was experiencing mental health conditions including PTSD as a result of his combat deployment to Iraq while on active service, which mitigates his misconduct. There was evidence the applicant was abusing substances prior to his deployment to Iraq and prior to his enlistment. He was seen for a Chapter 14-12c mental health evaluation in December 2008 due to him testing positive for cocaine. The applicant was not diagnosed with psychiatric condition and was cleared for

any administrative action deemed appropriate by Command. In addition, he was seen by behavioral health services shortly afterward. He reported a history of anxiety and illegal substance abuse prior to his enlistment. On 04 January 2009, he reported to the Emergency Room stating he wanted to admit himself to inpatient psychiatric treatment, but he denied any suicidal or homicidal ideation or behavior. He declined any further outpatient therapy or psychiatric medication and attended educational substance abuse classes at the Army Substance Abuse Program (ASAP). Later in April 2009, the applicant returned to behavioral health therapy for one session. He was found to be experiencing obsessive anxiety and again reported a long history of substance abuse prior to and during his enlistment.

e. After his deployment, he returned substance abuse treatment on 20 May 2010. He reported a long history of excessive binge drinking alcohol and withdraw symptoms. He also reported increased tolerance to cocaine and marijuana use. He was diagnosed with Alcohol Disorders, Cocaine-Related Disorders, and Cannabis-Related Disorders. The applicant intermittently and inconsistently attended individual therapy, medication management, and substance abuse appointments. He was found to be non-compliant with his prescribed treatment plans despite repeated attempts to develop a treatment plan for the applicant. He was also diagnosed with Anxiety Not Otherwise Specified (NOS) and Obsessive-Compulsive Personality Disorder at times. The applicant was seen for his second Mental Status Exam as part of his Chapter 14 separation proceedings on 08 December 2010. The applicant was evaluated for PTSD, but he was not found to fit criteria, but he was again diagnosed with Anxiety NOS. He was psychiatrically cleared for any administrative action deemed appropriate by Command, and he was found to meet medical retention standards from a psychiatric perspective.

f. A review of JLV provided evidence the applicant has been diagnosed and treated for service-connected PTSD and poly-substance dependence by the VA. The applicant receives service-connected disability for PTSD (70%) since 2015.

g. 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 partially mitigated his misconduct. However, there is insufficient evidence the applicant warrants a referral to IDES from a behavioral health perspective at this time.

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 mental health conditions including PTSD while on active service. He has been diagnosed with service-connected PTSD by the VA and was diagnosed with Anxiety Disorder NOS while on active service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing mental health conditions including PTSD while on active service. He has been diagnosed with service-connected PTSD by the VA and was diagnosed with Anxiety Disorder NOS 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 experiencing PTSD and Anxiety NOS while on active service. The applicant had a history of misconduct associated with substance abuse and avoidant behavior such as going AWOL during his military service after returning from his combat deployment. PTSD and Anxiety NOS can be associated with avoidant behavior. The applicant's substance abuse could be an attempt to self-medicate or to avoid his negative emotional state. However, the applicant had a history of misconduct associated with substance use prior to his enlistment and deployment. It is possible the applicant's deployment exacerbated his substance abuse and anxiety symptoms, but he demonstrated a pattern of this type of misconduct early in her career. Therefore, there is only sufficient evidence for partial mitigation of this misconduct due to mental health condition or experience. In addition, there is sufficient evidence the applicant was adequately evaluated by behavioral health providers. He was found repeatedly to meet retention standards, never placed on a permanent psychiatric profile, require inpatient psychiatric treatment, or attend consistent six months of treatment. Therefore, there is insufficient evidence the applicant warrants a referral to IDES from a behavioral health perspective at this time.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The applicant's contentions, the military record, and Department of Defense guidance for liberal and clemency determination requests for discharge upgrades were carefully considered. A majority of the Board reviewed and concurred with the medical reviewer's opinion and determined an upgrade of his characterization of service to honorable was appropriate; however, recommended no change to his narrative reason for separation. A minority of the Board did not believe sufficient evidence existed to grant relief.

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:

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 amending the DD Form 214 to show his characterization of service as honorable.

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 amending the narrative reason for separation.



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 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. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by 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 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. The ABCMR may, in its discretion, hold a hearing.

4. 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.

5. Army Regulation 635-5 (Personnel Separations – Separation Documents), in effect at the time, prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It establishes the standardized policy for preparing and distributing the DD Form 214. It states the DD Form 214 provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge.

a. Paragraph 1-4b(5) of the regulation in effect at the time stated that a DD Form 214 would not be prepared for enlisted Soldiers discharged for immediate reenlistment in the Regular Army.

b. Paragraph 2-4h(18) of the regulation currently in effect states that item 18 documents the remarks that are pertinent to the proper accounting of the separating Soldier's period of service. Subparagraph (c) states that for enlisted Soldiers with more than one enlistment period during the time covered by the DD Form 214, enter "IMMEDIATE REENLISTMENTS THIS PERIOD" and specify the appropriate dates. For Soldiers who have previously reenlisted without being issued a DD Form 214 and who are later separated with any characterization of service except "honorable," enter "CONTINUOUS HONORABLE ACTIVE SERVICE FROM" (first day of service which DD Form 214 was not issued) UNTIL (date before commencement of current enlistment)." Then, enter the specific periods of reenlistments as prescribed above.

6. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions (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.

7. 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; 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.

8. 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, 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//