

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 March 2024

DOCKET NUMBER: AR20230005663

APPLICANT REQUESTS:

- upgrade of his character of service from under honorable conditions (general) to honorable
- change of the narrative reason for his separation

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States) in lieu of DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) benefits decision letter and certification of receipt of service-connected disability compensation

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 his behavior was as a result of an undiagnosed mental disorder. He was diagnosed with post-traumatic stress disorder (PTSD) in 2017 and he was granted service-connected disability compensation by the VA for PTSD with a disability rating of 80%.
3. The applicant enlisted in the Regular Army on 2 August 2007 for a period of 6 years and 12 weeks. He served in Iraq from 5 December 2008 to 15 November 2009. The applicant was promoted to sergeant (SGT)/E-5 effective 1 February 2010.
4. The applicant arrived in Afghanistan on 14 June 2012 and on 9 August 2012, he extended his enlistment period for an additional 20 months to meet service remaining requirement for assignment to Hawaii. He departed Afghanistan on 28 September 2009.

5. On 20 May 2013, the applicant received nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice, for wrongful use of marijuana during the period between on or about 22 March 2013 and on or about 22 April 2013. Part of the punishment consisted of reduction to the rank and grade of specialist (SPC)/E-4.

6. The applicant's separation proceedings are not available. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 29 August 2013, in the rank and grade of SPC/E-4, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c(2), by reason of misconduct (drug abuse) with his service characterized as under honorable conditions (general). The DD Form 214 further shows:

a. He was credited with 6 year and 28 days of active service. He was assigned a separation code of JKK and a reentry (RE) code of 4 (not eligible for further military service).

b. He was awarded or authorized the:

- Iraq Campaign Medal with two campaign stars
- Army Commendation Medal (2nd Award)
- Army Achievement Medal
- Army Good Conduct Medal
- National Defense Service Medal
- Afghanistan Campaign Medal with two campaign stars
- Global War on Terrorism Service Medal
- Noncommissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon
- North Atlantic Treaty Organization (NATO) Medal
- Combat Infantryman Badge
- Parachutist Badge

7. The applicant provided VA documents showing he was granted service-connected disability compensation for PTSD and residuals right shoulder girdle injury with a combined disability rating of 80%.

8. On or around August 2016, the applicant submitted an application to the Army Discharge Review Board (ADRB) requesting an upgrade of his general discharge to honorable. The ADRB's Case Report and Directive shows he provided the following argument (in part):

a. He enlisted at 17 years old; made himself available to the Army's needs by attending any training he could possibly sign up for; advanced in leadership quickly by

attending an E-5 promotion board at age 20; and he was the youngest E-5/SGT in his battalion. He had a perfect safety record in training and brought all his men back from a six-month deployment to Afghanistan. After returning from a strenuous deployment, he moved his family to Hawaii. He attended and passed the E-6 promotion board two months after arriving at the 25th Infantry Division, Schofield Barracks. He received an Article 15 for an isolated incident, which led to his discharge.

b. Having over six years of military service, he waived his administrative separation board so that he may receive an honorable discharge; however, he was later informed he would be discharged with an under other than honorable conditions (UOTHC) characterization. He was then informed he would have to waive his administrative board to receive a general (under honorable conditions) discharge. He found that if he requested a board and still received anything lower than a general discharge, he would lose his moving expense benefits, causing him to remain on an unaffordable island with his family. All other Soldiers he was out-processing with received a general discharge default. He was the only one recommended for a UOTHC discharge. He never had any interaction with the brigade advocate who recommended him for the UOTHC discharge. He came into work every day with the intent to do his absolute best. His record and most importantly, his sacrifices show that his service was honorable.

9. On 9 November 2017, the ADRB denied his request indicating his separation was both, proper and equitable.

10. The applicant provided argument or evidence that the Board should consider in accordance with the published liberal consideration and equity, injustice, or clemency determination guidance.

11. 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. He contends he was experiencing 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 2 August 2007; 2) The applicant served in Iraq from served in Iraq from 5 December 2008-15 November 2009 and then deployed to Afghanistan from 14 June 2012-28 September 2012; 3) On 20 May 2013, the applicant received nonjudicial punishment (NJP) for wrongful use of marijuana; 4) The applicant's separation proceedings are not available. His DD Form 214 shows he was discharged on 29 August 2013, in the rank and grade of SPC/E-4, Chapter 14-12c(2), by reason of misconduct (drug abuse) with his service 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 PTSD as a result of his combat deployment to Iraq while on active service, which mitigates his misconduct. There was insufficient evidence the applicant reported symptoms of PTSD while on active service. The applicant was Command referred to the Army Substance Abuse Program (ASAP) after he tested positive for marijuana, and he was evaluated on 08 May 2013. The applicant was not diagnosed with a mental health condition, but he admitted to marijuana use. He was recommended for substance abuse counseling, and the applicant engaged in regular substance abuse treatment till his discharge. The applicant was seen on 13 May 2013 for a Mental Status Exam as part of his Chapter 14 separation proceedings. The applicant again denied any history or current mental health symptoms, and he was not diagnosed with a mental health condition beyond Cannabis Abuse. He was found to meet retention standards, able to participate in the administrative proceedings, able to determine right from wrong, and psychiatrically cleared for any administrative action deemed appropriate by Command.

e. A review of JLV provided evidence the applicant has been diagnosed and treated for service-connected PTSD and Cannabis Dependence. The applicant receives service-connected disability for PTSD (70%) since 2016.

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 condition or experience that mitigated his misconduct associated with drug use.

#### 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 PTSD while on active service, and he has been diagnosed with 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 while on active service, and he has been diagnosed with service-connected PTSD by the VA.

(3) 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 abuse during his military service after returning from his combat deployments. PTSD 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. Avoidant behaviors

are often a natural sequelae to PTSD. It is likely the applicant abused illegal substances to cope with his negative emotions while on active service. While his full separation proceedings are not available, the narrative reason for his separation was drug abuse. Therefore, there is evidence to support a change to the narrative reason for his separation.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant's separation packet is not available. However, the applicant's DD Form 214 reveals he was separated for misconduct – commission of a serious offense. He completed 6 year and 28 days of active service and received a characterization of service as general under honorable conditions. The Board found no error or injustice in his separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical advisory official's finding sufficient evidence to support the applicant had condition or experience that mitigated his misconduct, and thus determined an honorable characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board also noted determined his reason for separation (and corresponding codes) should change to Secretarial Authority

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant a DD Form 214 for the period ending 29 August 2013 to show:

- Character of Service: Honorable
- Separation Authority: AR 635-200
- Separation Code: JFF
- Reentry Code: 1
- Narrative Reason for Separation: Secretarial Authority

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

a. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense (including abuse of illegal drugs), or discreditable involvement with civil or military authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or 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 such is merited by the Soldier's overall record. Only a general court-martial convening authority may approve an honorable discharge or delegate approval authority for an honorable discharge under this provision of regulation.

b. Paragraph 14-12c(2), of the regulation in effect at the time, states abuse of illegal drugs is serious misconduct. However, relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation under paragraph 14-12a (minor disciplinary infractions) or 14-12b (a pattern of misconduct), as appropriate.

c. 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.

d. 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.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKK" as the appropriate code to assign enlisted Soldiers who are discharged under the

provisions of Army Regulation 635-200, paragraph 14-12c(2), for misconduct (drug abuse).

4. The SPD Code/RE Code Cross Reference Table shows that a Soldier assigned an SPD Code of "JKK" will be assigned an RE code of 4.

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 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.

6. 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 ABCMR (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//