

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 August 2024

DOCKET NUMBER: AR20230006214

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (General) discharge
- amendment of his name from [REDACTED] to [REDACTED]
- a personal appearance before the Board

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- Landstuhl regional Medical Center Narrative Summary
- East Bay High School Military Training Certificate Junior Reserve Officer Training Corps, 23 May 2000
- Permanent Orders 310-363 Parachutist Badge, 5 November 2000
- DA Form 4856 (Developmental Counseling Form), 4 January 2002
- Permanent Orders 231-160 Air Assault Badge, 19 August 2002
- DA Form 638 (Recommendation for Award), 3 December 2002
- DA Form 1059 (Service School Academic Evaluation Report), 6 May 2003
- DA Form 4856, 27 June 2003
- Memorandum for Separation under Army Regulation, Chapter 14-12c  
Commission of a Serious Offense
- Letter from Sergeant (SGT) [REDACTED]
- DA Form 4856 (Performance Counseling for JRTC), 26 August 2003
- DA Form 4856 (Monthly Counseling), 26 August 2003
- DD Form 214 (Certificate of Release of Discharge from Active Duty)
- Scuba Instructor Resume
- Court Document from the [REDACTED] Judgement Approved Name  
Change dated 5 January 2009
- Department of Veterans Affairs (VA) Decision Rating, 5 December 2017

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 is submitting a request to upgrade his discharge from under honorable conditions (General) to honorable based on Liberal Consideration for service-related Post Traumatic Stress Disorder (PTSD) that was undiagnosed and untreated at the time. He is also requesting a name change based on post-service court documents. In addition to any medals and badges he should have been awarded.
3. The applicant provides:
  - a. A self-authored letter which goes into great details of the things he endured prior to his discharge.
  - b. His [REDACTED] High certificate which shows he completed JROTC training on 23 May 2000.
  - c. Permanent Orders 310-363, issued by Headquarters (HQ), United States Army Infantry Center Fort Benning Georgia, awarding his Parachutist Badge, dated 5 November 2000.
  - d. A medical narrative summary when he was evacuated from Kosovo to Landstuhl Medical Center, where he was admitted from 16 August 2001 through 21 August 2001. It details his concerns of pursuing a complaint against his team lead who pulled a weapon on him along with other pertinent events.
  - e. DA Form 4856, dated 4 January 2002, showing a change of rater and his new MOS. The Rater states how responsible the applicant has been in taking care of mission essential tasking. He further states, that he will submit a recommendation for early promotion.
  - f. Permanent Orders 231-160, issued by HQ 101<sup>st</sup> Airborne Division (Air Assault) Fort Campbell, Kentucky, awarding his Air Assault Badge, dated 19 August 2002.
  - g. DA Form 638, for an Army Achievement Medal that was recommend however, the final decision was not attached but the award is listed on his DA Form 2-1.
  - h. DA Form 1059, dated 6 May 2003, which shows that he received three Superior and two Satisfactory ratings under demonstrated abilities.

i. DA Form 4856, dated 27 June 2003, received by 1SG [REDACTED] for lying to his chain of command and wearing an unauthorized badge.

j. A written statement by SGT [REDACTED] stating that although the applicant had problems in the unit, he believed that he could police himself up and correct his deficiencies with a lot of hard work and dedication. He goes on to say that he expected good things to come his way.

k. DA Form 4856, dated 26 August 2003, issued by Chief Warrant Officer [REDACTED] covering 29 July 2003 through 16 August 2003, for his performance during JRTC rotation. He received all high markings during this counseling.

l. DA Form 4856, dated 26 August 2003, issued by SGT [REDACTED] covering his monthly performance which he received accolades for the many things he has done and received encouragement that with the right guidance, he can make it through his current dilemma.

m. Separation memorandum approving his separation under Chapter 14-12c, Commission of a Serious Offense.

n. DD Form 214, for the period of 29 June 2000 through 9 October 2003.

o. Judgment from the State [REDACTED] for an official name change, dated 5 January 2009.

p. VA rating decision, dated 5 December 2017, for service connection PTSD also claimed as insomnia and depression awarding him 70 percent disability effective 29 July 2016.

q. A resume which highlights his experience as a Scuba instructor in addition to him winning a \$5,000 award as the Dive Diversity Advocate Sea Hero of the Year for 2021.

4. A review of the applicant's service records show:

a. He enlisted in the Regular Army (RA) on 29 June 2000.

b. His Enlisted Record Brief (ERB), dated 27 June 2003, shows he was awarded the Air Assault Badge.

c. His DA Form 2-1 dated 20 February 2001, Section II, Item 9 (Awards, Decorations, and Campaigns) shows he was awarded the Parachute Badge, Air Assault Badge, Kosovo Campaign Medal, NATO Medal and AAM.

d. He accepted nonjudicial punishment on or about 2 July 2003 for unknown offenses as the record is void of the continuation page. He was reduced to E-1, forfeiture of pay \$200.00 for one month, and 45 days extra duty.

e. On 21 August 2003, the applicant's immediate commander notified the applicant he was initiating a separation action against him under the provisions (UP) of Army Regulation (AR) 635-200, paragraph 14-12c (Commission of a Serious Offense). The reasons for the proposed action are on 2 July 2003, he received punishment under Field Grade Article 15 proceedings for three counts of false official statements. The applicant acknowledged receipt and elected to consult with defense counsel and to submit statements on his behalf.

f. On 3 September 2003, the applicant consulted with counsel. Following consultation with legal counsel, he understood his rights and acknowledged the following:

- he understood that he may be given an honorable or general discharge, if eliminated from service
- he understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued
- he understood that he may, up until the date the separation authority orders, directs, or approves his separation, submit statements on his behalf
- he understood that he will be ineligible to apply for enlistment in the United States Army for a period of 2 years
- he requested a copy of the documents that would be sent to the separation authority supporting the proposed separation

g. On an unspecified date, consistent with the chain of command recommendations, the separation authority approved the discharge and directed he be issued a General Discharge Under Honorable Conditions.

h. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows on 9 October 2003, he was discharged, under the provisions of AR 635-200, Chapter 14 – 12C, with separation code JKQ (misconduct- serious offense). He completed 3 years, 3 months, and 11 days of active service this period with no lost time. He was awarded or authorized the:

- National Defense Service Medal
- Army Service Ribbon
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)

## 5. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) characterization of service to honorable. The applicant indicates PTSD and TBI mitigate his discharge.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- Applicant enlisted in the RA on 29 June 2000.
- DA Form 4856, dated 27 June 2003, received by 1SG [REDACTED], for lying to his chain of command and wearing an unauthorized badge.
- On 21 August 2003, the applicant's immediate commander notified the applicant he was initiating a separation action against him under the provisions (UP) of Army Regulation (AR) 635-200, paragraph 14-12c (Commission of a Serious Offense). The reasons for the proposed action are for: on 2 July 2003, he received punishment under Field Grade Article 15 proceedings for 3 counts of False Official Statements. The applicant acknowledged receipt and elected to consult with defense counsel and to submit statements on his behalf.
- Applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows on 9 October 2003, he was discharged, under the provisions of AR 635-200, Chapter 14 – 12C, with separation code JKQ (misconduct- serious offense) and reentry code 3.

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, ABCMR Record of Proceedings (ROP), DD Form 214, self-authored statement, and documents from his service record and separation packet. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant states he is submitting a request to upgrade his discharge from General (Under Honorable Conditions) to Honorable based on Liberal Consideration for service-related Post Traumatic Stress Disorder (PTSD) that was undiagnosed and untreated at the time. He is also requesting a name change based on post-service court documents. In addition to any medals and badges he should have been awarded.

e. Due to the time of service no active-duty electronic medical records are available for review. The applicant provides hardcopy documentation of a medical narrative summary when he was evacuated from Kosovo to Landstuhl Medical Center, it indicates he was admitted from 16 August 2001 through 21 August 2001 for a psychiatric assessment since he had threatened an NCO. The summary indicates the

applicant had a history of Duane's syndrome (a congenital eye movement disorder) and had eye surgery at age 14. The document is not provided in its entirety, so it is not possible to determine the diagnosis or disposition. However, this document conflicts with the applicant's statements during a TBI DBQ dated 15 February 2024, where he states: "in 2002 while in Afghanistan his Humvee was hit by an RPG. He was a driver's side rear occupant in a Humvee that after the RPG incident flipped on its side. He reports that he sustained shrapnel to the left eye which left him with a problem looking laterally, he denied a loss of consciousness and complained of headaches."

f. VA electronic medical records available for review indicate the applicant is 90% service connected, including 70% for PTSD. The applicant is not service connected for TBI. The applicant has intermittently participated in mental health services via the VA. A C and P evaluation date 25 January 2017 diagnosed him with PTSD based on his assertion of the following traumatic stressors:

- "While deployed in Kosovo was tasked to deliver chow to various outposts during fighting and was not allowed to have any ammunition for his weapon and was left defenseless and vulnerable to attacks for 3 months. Was expecting that he would be killed at any moment."
- "In May 2003 while on active duty driving from Arizona to Florida was subjected to a serious MVA where he rolled his truck 3x and truck was destroyed. Felt as if he was going to die."

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is evidence the applicant had a BH condition during military service. However, his diagnosis of PTSD would not mitigate the misconduct that resulted in his discharge.

#### 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 asserts the mitigating conditions of PTSD and TBI.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 70% service connected for PTSD. However, he is not service connected for TBI.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was discharge from military service due to three counts of false official statements. There is no nexus or natural sequela between PTSD and making false statements. PTSD does not impair an individual's ability to know right from wrong, understand consequences, and make purposeful, conscious decisions.

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 Department of Defense 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 was separated for misconduct with the commander citing nonjudicial punishment. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board reviewed and concurred with the medical advisor's review finding evidence a behavioral health condition existed at the time of his service; however, that no nexus existed to mitigate the type of misconduct. The Board concluded that the characterization of service the applicant received upon separation was appropriate.
2. The evidence presented does not demonstrate the existence of a probable error or injustice to amend the applicant's name. The applicant used the contested name during his entire period of service. The Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned. Based on the service record and a preponderance of the evidence, the Board denied relief.
3. The Army has an interest in maintaining the integrity of its records for historical purposes. The information in those records must reflect the conditions and circumstances that existed at the time the records were created. In the absence of evidence that shows a material error or injustice, there is a reluctance to recommend that those records be changed.
4. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 for correction of the records of the individual concerned.

10/28/2024

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's service records shows his DD Form 214 name as the contested name. As a result of a court order, amend his DD Form 214 ending on 9 October 2003 to show his name as it appears on the court documents. The applicant's name will be administratively corrected as it reflects on document from the State of Louisiana, 24th Judicial District Court for the Parish of Jefferson, dated 5 January 2009, and will not be discussed further in this record of proceedings.

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 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for 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 soldier'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 (General Discharge) 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. Paragraph 14-12c states members are subject to separation for commission of a serious offense if the specific circumstance of the offense warrants separation and a punitive discharge would be authorized for the same or a closely related offense under MCM.

3. PTSD can occur after someone goes through a traumatic event like combat, assault, or disaster. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is published by the American Psychiatric Association (APA) and provides standard criteria and common language for the classification of mental disorders. In 1980, the APA added PTSD to the third edition of its DSM nosologic classification scheme. Although controversial when first introduced, the PTSD diagnosis has filled an important gap in psychiatric theory and practice. From a historical perspective, the significant change ushered in by the PTSD concept was the stipulation that the etiological agent was outside the individual (i.e., a traumatic event) rather than an inherent individual weakness (i.e., a traumatic neurosis). The key to understanding the scientific basis and clinical expression of PTSD is the concept of "trauma."

4. PTSD is unique among psychiatric diagnoses because of the great importance placed upon the etiological agent, the traumatic stressor. In fact, one cannot make a PTSD diagnosis unless the patient has actually met the "stressor criterion," which means that he or she has been exposed to an event that is considered traumatic.

Clinical experience with the PTSD diagnosis has shown, however, that there are individual differences regarding the capacity to cope with catastrophic stress. Therefore, while most people exposed to traumatic events do not develop PTSD, others go on to develop the full-blown syndrome. Such observations have prompted the recognition that trauma, like pain, is not an external phenomenon that can be completely objectified. Like pain, the traumatic experience is filtered through cognitive and emotional processes before it can be appraised as an extreme threat. Because of individual differences in this appraisal process, different people appear to have different trauma thresholds, some more protected from and some more vulnerable to developing clinical symptoms after exposure to extremely stressful situations.

5. The fifth edition of the DSM was released in May 2013. This revision includes changes to the diagnostic criteria for PTSD and acute stress disorder. The PTSD diagnostic criteria were revised to take into account things that have been learned from scientific research and clinical experience. The revised diagnostic criteria for PTSD include a history of exposure to a traumatic event that meets specific stipulations and symptoms from each of four symptom clusters: intrusion, avoidance, negative alterations in cognitions and mood, and alterations in arousal and reactivity. The sixth criterion concerns duration of symptoms, the seventh criterion assesses functioning, and the eighth criterion clarifies symptoms as not attributable to a substance or co-occurring medical condition.

6. As a result of the extensive research conducted by the medical community and the relatively recent issuance of revised criteria regarding the causes, diagnosis, and treatment of PTSD, the Department of Defense (DOD) acknowledges that some Soldiers who were administratively discharged under other than honorable conditions may have had an undiagnosed condition of PTSD at the time of their discharge. It is also acknowledged that in some cases this undiagnosed condition of PTSD may have been a mitigating factor in the Soldiers' misconduct which served as a catalyst for their discharge. Research has also shown that misconduct stemming from PTSD is typically based upon a spur of the moment decision resulting from a temporary lapse in judgment; therefore, PTSD is not a likely cause for either premeditated misconduct or misconduct that continues for an extended period of time.

7. On 3 September 2014 in view of the foregoing information, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors when taking action on applications from former service members administratively discharged 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 applicants' service.

8. BCM/NRs are not courts, nor are they investigative agencies. Therefore, the determinations will be based upon a thorough review of the available military records and the evidence provided by each applicant on a case-by-case basis. When determining if PTSD was the causative factor for an applicant's misconduct and whether an upgrade is warranted, the following factors must be carefully considered:

- Is it reasonable to determine that PTSD or PTSD-related conditions existed at the time of discharge?
- Does the applicant's record contain documentation of the occurrence of a traumatic event during the period of service?
- Does the applicant's military record contain documentation of a diagnosis of PTSD or PTSD-related symptoms?
- Did the applicant provide documentation of a diagnosis of PTSD or PTSD-related symptoms rendered by a competent mental health professional representing a civilian healthcare provider?
- Was the applicant's condition determined to have existed prior to military service?
- Was the applicant's condition determined to be incurred during or aggravated by military service?
- Do mitigating factors exist in the applicant's case?
- Did the applicant have a history of misconduct prior to the occurrence of the traumatic event?
- Was the applicant's misconduct premeditated?
- How serious was the misconduct?

9. Although DOD acknowledges that some Soldiers who were administratively discharged UOTHC may have had an undiagnosed condition of PTSD at the time of their discharge, it is presumed that they were properly discharged based upon the evidence that was available at the time. Conditions documented in the records that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which PTSD or PTSD-related conditions may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the UOTHC characterization of service. BCM/NRs will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a characterization of service of UOTHC. Potentially mitigating evidence of the existence of undiagnosed combat-related PTSD or PTSD-related conditions as a causative factor in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. BCM/NRs will also exercise caution in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

10. 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, traumatic brain injury (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, on 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.

//NOTHING FOLLOWS//