

IN THE CASE OF: ██████████

BOARD DATE: 24 January 2024

DOCKET NUMBER: AR20230006823

APPLICANT REQUESTS: reconsideration of his earlier request for upgrade of his general, under honorable conditions discharge, and:

- a change to the narrative reason for separation to a more favorable designation
- a change to the separation code to a more favorable designation

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

- DD Form 293 in lieu of DD Form 149 (Application for Correction of Military Record), 20 March 2023
- Self-authored Statement, undated
- DA Form 2627 (Record of Proceedings Under Article 15) (redacted), 27 October 2010
- DA Form 4833 (Commander's Report of Disciplinary or Administrative Action), 29 November 2010
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 19 September 2011
- Department of Veterans Affairs (VA) Rating Decision, 14 February 2020
- College transcript, 20 July 2015
- College Diploma, Associate of Applied Science, 2015
- Letter, National Archives and Records Administration (NARA), 9 July 2019
- Letter, U.S. Army Criminal Investigation Command (CID), (Freedom of Information Act ((FOIA) Request), 9 July 2019 (previously considered by the Board)
- Two letters, U.S. Army Installation Management Command, Fort Bliss, 17 July 2019 (previously considered by the Board)
- Veterans Administration Rating Decision, 14 February 2020
- Letter, (Healthcare provider), 26 December 2022
- Itemized bill, (Healthcare provider), 2022

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 AR20190010601, on 17 August 2021.
2. The applicant has provided new evidence and new arguments that warrant Board consideration at this time.
3. The applicant marked post-traumatic stress disorder (PTSD) on his application as an issue/condition related to his request for an upgrade. He states, in effect:
 - a. At the time of his separation from the Army, he was dealing with unknowns and untreated mental health issues which was later diagnosed as PTSD. His PTSD stems from his deployment when he was ostracized by his squad leader. Dealing with untreated mental health issues led him to fail a urinalysis.
 - b. He received nonjudicial punishment and attended Army Substance Abuse Program (ASAP) classes as required. He was not an ASAP failure. He was not given a rehab transfer to another unit as is mandatory especially for those being in leadership positions.
 - c. It is clear his rights were violated by the chain of command.
 - d. If he were truly a troubled Soldier, his folder would be filled with negative counseling statements prior to and after that incident. A year is a long time to wait for something that usually happens in less than 3 months if there are patterns of misconduct.
 - e. That one instance does not define who he was as a Soldier. Since then, he has identified his PTSD and has been receiving treatment as well as therapy to help him manage. He was able to obtain his associates degree in Information Technology and receive a Real Estate license.
4. The applicant provided copies of:
 - c. A commander's report of disciplinary action, 28 November 2010, showing he received NJP as the result of use of hallucinogens (5L4D1), a controlled substance.
 - d. College transcripts showing he earned an associate degree and was issued a Diploma in 2015.

e. Letters from NARA, CID, and US Army Installation Command, Fort Bliss, showing his requests for FOIA releases.

f. A Real Estate License issued to him on 8 November 2019.

g. A VA Rating Decision, dated 14 February 2020, showing he was receiving 70% disability compensation for PTSD.

h. A letter from TriWest Healthcare Alliance, dated December 2022, which shows an itemized bill for mental health treatment for PTSD.

5. A review of the applicant's available records shows:

a. His DD Form 214 shows he enlisted in the Regular Army on 3 November 2004.

b. A DD Form 4 shows his reenlistment on 10 June 2008, after completing 3 years, 7 months, and 7 days of active service.

c. His records contain a redacted DA Form 2627, dated 27 October 2010, shows he accepted NJP under provisions of Article 15 of the Uniform Code of Military Justice for wrongful use of Ecstasy, a schedule I controlled substance at Fort Bliss on 24 September 2010. The punishment imposed was not shown. He did not appeal this NJP.

c. The discharge package containing the unit commander's notification memorandum of intent to recommend a separation, his acknowledgement and election of rights response memorandum, and the intermediate commanders and approval authority memorandum are not contained in the available records.

d. His records contain separation Orders 257-0017, issued by Headquarters, 1st Armored Division and Fort Bliss, reassigning him to the U.S. Army Transition Point at Fort Bliss, with a discharge date of 19 September 2011. His rank was shown as private first class/E-3.

e. On 19 September 2011, he was discharged. His DD form 214 shows he was discharged under the provisions of Army Regulation 635-200, chapter 14-12c(2) by reason of misconduct (drug abuse) with a general, under honorable conditions characterization of service, a separation code of JKK, and a reentry code 4. He completed 6 years, 10 months, and 17 days of net active service this period. He completed service in Iraq from 21 February 2009 to 11 February 2010. He completed honorable service from 3 November 2004 to 9 June 2008. He was awarded or authorized:

- Army Commendation Medal
- Meritorious Unit Commendation
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal with one bronze service star
- Noncommissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon (Second Award)

6. On 25 June 2021, U.S. Army Criminal Investigation Command (CID), U.S. Army Crime Records Center, responded to a request from the Chief, Case Management Division, ARBA for redacted CID/MP report of investigation (ROI) pertaining to the applicant. The redacted ROI shows, in part:

a. A DA Form 4833, dated 15 October 2010 with a finding the applicant wrongfully used hallucinogens on 16 September 2010 and accepted NJP.

b. A DA Form 4833, dated 12 September 2011 with a finding the applicant was the principle subject in an off-post arrest for deadly conduct discharge of a firearm (handgun). This report contains a MP Report Number [REDACTED], dated 11 September 2011, showing the applicant was apprehended on 11 September 2011 and subsequently released to his unit.

7. In ABCMR Docket Number AR20190010601, on 17 August 2021, the Board determined relief was not warranted. The Board considered the applicant's statement, his record of service, the nature of the misconduct, NJP, and the reason for his separation. Based on a preponderance of evidence, the Board concluded there was insufficient evidence of an error or injustice, which would warrant a change to the applicant's characterization of service. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his request for an upgrade of his general, under honorable conditions discharge. In addition, he is requesting his narrative reason for separation and the separation code be changed to more favorable designations. He contends he experienced 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 3 November 2004; 2) The applicant served in

Iraq from 21 February 2009 -11 February 2010; 3) His records contain a redacted DA Form 2627, dated 27 October 2010, shows the applicant accepted an Article 15 for wrongful use of Ecstasy on 24 September 2010. The punishment imposed was not shown; 4) On 19 September 2011, the applicant was discharged-Chapter 14-12c(2) by reason of misconduct (drug abuse) with a general, under honorable conditions characterization of service, a separation code of JKK, and a reentry code 4; 5) On 17 August 2021, the ABCMR reviewed and denied his requests for and upgrade in his discharge or changes to his DD214.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and medical records. The Armed Forces Health Longitudinal Technology Application (AHLTA) and 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. There is clear evidence the applicant was enrolled military substance abuse treatment in October 2010 after testing positive for Ecstasy. He was diagnosed with Alcohol Disorder and Amphetamine-Related Disorders. He continued in substance abuse treatment till his discharge in August 2011. On 29 December 2010, the applicant was seen for a mental status exam to assess his suitability for continued service. The applicant denied a history of substance abuse, but the night prior to testing positive for Ecstasy, he was out drinking with friends and was unaware how he ingested the illegal drug. The applicant was noted by his command to be demonstrating a change in behavior since his Article 15. He was reported to be isolating from his peers and appeared depressed. The applicant endorsed symptoms of anxiety and depression during the evaluation related to current stressor of possible military separation, but he also reported a history of depression prior to his military service. He was diagnosed with an Adjustment Disorder with Prolonged Depressed Mood and was encouraged to engage in behavioral health treatment beyond substance abuse treatment. He was found fit for fully duty, had he mental capacity to understand and participate in administrative proceedings, and recommended for a 5-17 administrative separation for an Adjustment Disorder. On 25 February 2011, the applicant was seen for an initial appointment at behavioral health for symptoms of depression. Again, the applicant denied a history of substance abuse, and he reported not engaging in substance or alcohol abuse since his positive urinalysis. He did report current depressive symptoms and was diagnosed with Depression and recommended for regular individual behavioral health treatment along with substance abuse treatment. In addition, on the same day, the applicant was evaluated for the appropriateness of psychiatric medication for his symptoms, and he was diagnosed with an Adjustment Disorder with Depressed Mood and prescribed psychiatric medication. The applicant was seen for only a few sessions of individual therapy and medication management before his discharge.

e. A review of JLV provided evidence the applicant has been diagnosed and treated for service-connected PTSD since his discharge starting in 2011. The applicant receives service-connected disability for PTSD (100%).

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.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with symptoms of depression and substance abuse while on active service, and he has been diagnosed with service-connected PTSD as a result of his combat deployment by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with symptoms of depression and substance abuse while on active service, and he has been diagnosed with service-connected PTSD as a result of his combat deployment 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 of symptoms of depression and PTSD while on active service. The applicant had one incident of reported substance use during his military service after returning from his deployment. PTSD can be associated with avoidant behavior. The applicant's alcohol and substance use could be an attempt to self-medicate or to avoid his negative emotional state. Avoidant behaviors are often a natural sequelae to PTSD. In addition, the applicant was evaluated and recommended for an administrative separation for an Adjustment Disorder, which would have resulted in a different narrative reason for separation. Therefore, there is sufficient evidence at this time that the applicant warrants a discharge upgrade with a narrative reason for separation to changed to "Secretarial Authority."

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and the medical review, the Board considered the advising official opine finding sufficient evidence to support the applicant had condition or experience that mitigated his misconduct. Further, the opine noted there is sufficient evidence that the applicant was

experiencing of symptoms of depression and PTSD while on active service that warrants a discharge upgrade with a narrative reason for separation to be changed to Secretarial Authority. The applicant had one incident of reported substance use during his military service after returning from his deployment.

2. The Board determined based on the preponderance of evidence, notwithstanding the medical opine, there is insufficient evidence of in-service mitigation to overcome the misconduct of discharging a firearm and being apprehended by the [REDACTED] police, and continuous use of illegal controlled substances. The Board found the applicant's behavior health concerns did not outweigh putting innocent bystander in harms way with the discharging his weapon out in the open. The Board noted the applicant was discharged for reason of misconduct (drug abuse) and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is appropriate as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Furthermore, the Board determined that the narrative reason for separation and his separation code was not in error or unjust. However, during deliberation the Board determined the applicant had a prior period of honorable service which is not currently reflected on his DD Form 214 and recommended that change be completed to more accurately show his period of honorable service by granting a partial upgrade.

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 applicant's DD Form 214 for the period ending 19 September 2011 by adding the following entries in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 20040003 UNTIL 20080629

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 upgrade of his general, under honorable conditions discharge, a change to the narrative reason for separation and a change to his separation code to a more favorable designation.

1/29/2024

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. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets policies, standards, and procedures to ensure the readiness and-competency of the force while providing for the orderly administrative separation of soldiers for a variety of reasons.

a. Paragraph 3-7a provides 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 provides 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, commission of a serious offense, and convictions by civil authorities. 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.

d. Paragraph 14-12c provides guidance for Soldiers subject to action for commission of a serious offense. Commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts Martial.

e. Paragraph 14-12c(2) provides abuse of illegal drugs is serious misconduct.

3. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full-time training duty. The separation program designator "JKK" corresponded to "Misconduct (Drug Abuse)," and the authority, Army Regulation 635-200, Chapter 14-12c(2).

4. On 3 September 2014 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 under other than honorable conditions 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.

5. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

6. 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. 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 based on 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. 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.

7. Section 1556 of Title 10, United States 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//