

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 January 2024

DOCKET NUMBER: AR20230007099

APPLICANT REQUESTS: Correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to change:

- Item 24 (Character of Service) from Under Honorable Conditions to Honorable
- Item 26 (Separation Code) from JKK
- Item 28 (Narrative Reason for Separation) from Misconduct (Drug Abuse)

2. A personal appearance before the Board.

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) and Self-authored letter
- DD Form 214, ending on 28 December 2012
- Veterans Affairs (VA) Letter, 7 February 2023

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, during 2012 he failed a urinalysis for opiates. This was his first drug offense and was not offered the opportunity to attend the Army substance abuse program. He knew of other Soldiers who were offered and went on to have successful military careers. He was also dealing with Post Traumatic Stress Disorder (PTSD) with medication. He just wanted a chance to get better. He wanted to be a career Soldier. He also received a letter from the Army telling him reapply due to a class action lawsuit. He adds in a self-authored letter:

a. He is not contesting his DD Form 214. He would just like to see if the narrative can be changed or say something different or maybe if possible change the separation

code as well. He understands why he received the code he did, but when trying to apply for a job, 90 percent of the time he gets passed by because of the separation code and the narrative. He is sure the Board may know this, but when trying to explain to civilians anything military related, they have a hard time following. When he starts to explain that it is an honorable discharge it is just under a general status all they hear is that it is not honorable, and he must be a bad person because the Army did not give him an honorable discharge. It is really frustrating also dealing with the underlying causes of service connected disabilities. Searching exhaustively, he could not find work at all. Luckily, he found the out the VA has solutions for this. However, he still would like to find a rewarding career and he does not believe he ever will if his DD Form 214 remains unchanged. He just wants the opportunity that his leadership did not offer him when he made his mistake 11 years ago.

b. He really wanted to be a career Soldier. He never got to explain why he had taken the medicine he did, but he would like to take this opportunity to do so. He went to sniper school spring of 2012, but did not receive a certificate, but he finished the course and when he made it back to his troop they were three days out from trying to earn the Expert Infantryman Badge. He soaked up all he could in three days, and he actually succeeded in getting his Expert Infantryman Badge. During the night land navigation course he sprained his ankle really bad. In four days, he ran all three lanes and did a 12 mile road march in an hour and eleven minutes on a really bad sprained ankle. He actually was leaving for Airborne school in November and that Friday is when the nightmare began. He was preparing for Airborne school and leaving for it that very evening when he received the bad news. He also had a Ranger packet in and as soon as he got his jump wings he was supposed to go to Ranger school.

c. He is telling the Board this because he wants everyone to understand how serious he was about his military career. He was born to be a Soldier, but things did not work out and it is on him, and he understands. He just wants a chance to succeed in civilian life. I feel like my leadership didn't give me the chance to do so while in the Army. He did not even get offered the Army Substance Abuse Program they just chaptered him out. He is sure the Board can look up all this information. All the events he has mentioned has to be somewhere in his old unit's files.

3. A review of the applicant's official record shows the following:

a. On 29 July 2009, the applicant enlisted in the Regular Army in military occupational specialty 11B (Infantryman).

b. The applicant's service record is void of the specific facts and circumstances concerning the events which led to the discharge from the Army. Likewise, it is void of any Uniform Code of Military Justice Non-Judicial Punishment. Additionally, it is void of any mental health evaluations.

c. On 13 December 2012, Orders Number 348-0159 issued by Headquarters, U.S. Army Garrison Command, Fort Knox, KY, reassigned the applicant to the U.S. Army transition point for discharge from active duty under the authority of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations).

d. On 28 December 2012, the applicant was discharged from active duty by reason of misconduct (drug abuse) under the provisions of AR 635-200, paragraph 14-12c (2). DD Form 214 shows he completed 3 years and 5 months of active service. It also shows in items:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Commendation Medal, Army Achievement Medal, National Defense Service Medal, Afghanistan Campaign Medal with two campaign stars, Global War on Terrorism Service Medal, Army Service Ribbon, Overseas Service Ribbon, NATO Medal, Combat Infantryman Badge, Expert Infantryman Badge
- 18 (Remarks): service in Afghanistan from 30 December 2010 through 21 December 2011
- 24; Under Honorable Conditions (General)
- 26; JKK
- 27; Reentry Code: 4
- 28; Misconduct (Drug Abuse)

e. On 24 November 2014, Army Discharge Review Board (ADRB) Docket Number AR20140000433, the ADRB decided after carefully examining the applicant's record of service during the period of enlistment under review, and considering the discussion and recommendation which follows, the ADRB determined the discharge was both proper and equitable and denied relief for an upgrade from under honorable conditions (general) to an honorable discharge.

4. The applicant provides:

a. ARBA Letter wherein the applicant was informed that he was receiving the letter because ARBA has agreed to accept reapplications from a group of former Soldiers who previously requested the ADRB upgrade their discharges. He received the letter because he was eligible to submit a new application. Specifically, the Board would consider PTSD, Traumatic Brain Injury, and/or other behavioral health issues related to his service which may have contributed to the reason he was discharged.

b. VA Letter showing the applicant had a rated condition which was 70 percent service-connected and he was considered totally and permanently disabled due to those disabilities. The letter does not state what the rated disabilities are.

5. MEDICAL REVIEW:

a. Background: The applicant is requesting that his Under Honorable Conditions (General) discharge be upgraded to Honorable due to experiencing PTSD during his time in service. He is also requesting that the narrative reason and separation code be changed from “misconduct (drug abuse)” to something less pejorative in light of his assertion of PTSD during his time in service. 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 Regular Army on 29 Jul 2009. His military occupational specialty was Infantry. His awards included the Army Commendation Medal, Army Achievement Medal, National Defense Service Medal, Afghanistan Campaign Medal with two campaign stars, Global War on Terrorism Service Medal, Army Service Ribbon, NATO Medal and Combat Infantry Badge.
- Applicant claimed he “failed a urinalysis for opiates” in 2012 (per ROP). “This was his first drug offense and was not offered the opportunity to attend the Army substance abuse program. He knew of other Soldiers who were offered and went on to have successful military careers.”
- On 13 December 2012, “U.S. Army Garrison Command, Fort Knox, KY, reassigned the applicant to the U.S. Army transition point for discharge from active duty...(AR) 635-200 (Active Duty Enlisted Administrative Separations).”
- The applicant’s separation packet is unavailable for review. However, the applicant’s service record includes his DD Form 214 (Report of Separation from Active Duty), which shows that the Army discharged the applicant Under Honorable Conditions (General) on 28 Dec 2012 with narrative reason for separation, Misconduct (drug abuse).

b. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant’s completed DD Form 149, his ABCMR Record of Proceedings (ROP), Personal Statement, his DD Form 214, as well as documents from his service record. However, his service packet is incomplete for review. The VA electronic medical record and DOD health record were reviewed through Joint Longitudinal View (JLV).

c. This applicant asserted that PTSD was a mitigating factor in his discharge. He also contends his substance abuse was due to the impact of his behavioral health condition (PTSD). His service record and supporting documents did contain a personal letter he wrote. He noted, “I really wanted to be a career soldier. I never got to explain why I had taken the medicine I did, but I would like to take this opportunity to do so. I went to sniper school spring of 2012, but didn't receive a certificate, but I finished the course and when I made it back to my troop they were three days out from trying to

earn the Expert Infantry Badge. I soaked up all I could in three days and I actually succeeded in getting my EIB. During the night land navigation course I sprained my ankle really bad. In 4 days, I ran all three lanes and did a 12-mile road march in an hour and eleven minutes on a really bad sprained ankle. I actually was leaving for Airborne School in November and that Friday is when the nightmare began. I was preparing for Airborne School and leaving for it that very evening when I received the bad news. I also had a Ranger Packet in and as soon as I got my jump wings I was supposed to go to Ranger School." Based on this documentation, there is a lack of evidence the applicant was diagnosed or treated for any mitigating conditions that occurred during his time in service.

d. Per the applicant's VA EHR, he is service connected 70% for PTSD and 10% for anxiety. An Ireland ACH Psychology Clinic note (08 Nov 2012) indicated, "at present he's being chaptered by his command for drug/alcohol involvement. This is not the first time that he has aroused suspicion from his command with regard to his alcohol consumption. Due to this they have decided to have him processed out of the military on a Chapter 14 separation. Subject presents with no clinical mental health difficulties. Head injury and PTSD are not a concern. Although he answered the screener in such a way as to trigger these devices the actual description of the events are not commensurate with either of these conditions and he has been made aware of this." A VA Mental Health Consult (15 Sep 2016) noted, veteran with dx PTSD, MDD, Opioid Dependence in Remission (currently on methadone trt), intermittent bzd abuse he bought off the street (reports it's the only med which helped with his mood), hx of Alcohol Abuse, presented to BHIP... input on multifactorial aspects affecting treatment: patient in methadone treatment at McCloud Center, has been demonstrating progressive sx's of depression and SI with attempt April 2016, recent use of bzd's, 4-5 mo progressive increase in PTSD sx's with nightmares, intrusive memories, social anxiety, irritability, frequent passive SI." A Suicide Prevention note (29 Mar 2019) indicated, "Spoke with Veteran, diagnosed with PTSD, for 30 minute session...He had to take some time off last week as his anger had escalated to the point he felt he might do something or say something impulsive which he would later regret. He was and is also having dreams/nightmares about women in Afghanistan and some of the experiences that happened during his deployment...He also was able to get through the week without relapsing on drugs/alcohol and he is proud of this."

e. In summary, applicant is service connected for behavioral health conditions (PTSD and "anxiety"). There is considerable documentation he has been treated for PTSD by VA which had been initially experienced during applicant's time in service. Consequently, after reviewing the application and all supporting documents, it is the opinion of this Agency Medical Advisor that there is sufficient evidence of a mitigating condition (PTSD) that significantly contributed to the noted misconduct of substance abuse. Adequate documentation was provided in the VA encounter notes (JLV) to support the contention that the applicant had experienced PTSD during his time in

service. Despite a lack of service documentation pertaining to the specific misconduct which served as the basis for his separation from the service, the stated reason on his DD-214 and the psychology clinic note at Ireland ACH (08 Nov 2012) both indicate it was as a result of substance abuse.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge. Yes, he experienced PTSD symptoms contributing to his substance abuse while still on active duty that was subsequently identified by VA behavioral health providers (JLV notes) along with a 70% disability rating for PTSD.

(2) Did the condition exist or experience(s) occur during military service? Yes, there is considerable evidence (JLV) he initially encountered PTSD while on active duty as a result of his deployment to Afghanistan.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes, it mitigates for his misconduct of substance abuse as PTSD is often associated with the emergence or escalation of substance abuse and dependence.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance hearing was carefully considered. The Board determined 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.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The applicant's separation packet is not available for review. However, his DD Form 214 clearly show she was discharged from active duty for misconduct with a general discharge, Separation Code JKK, and Reentry Code 3. He completed 3 years and 5 months of active service, including a deployment to Afghanistan from December 2010 to December 2011. 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.

b. The Board also reviewed and agreed with the medical advisor's finding considerable documentation he has been treated for PTSD by the VA, which had been initially experienced during applicant's time in service, strongly indicating that there is

sufficient evidence of a mitigating condition (PTSD) that significantly contributed to the noted misconduct of substance abuse. Despite a lack of separation packet and the specific misconduct which served as the basis for his separation from the service, the DD Form 214 and his clinical notes indicate it was as a result of substance abuse.

c. The Board determined an honorable characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board further determined a change to the reason for separation and/or associated Separation/RE codes is not appropriate or warranted since the underlying reason for separation (drugs) did not change.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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 reissuing the applicant a DD Form 214 for the period ending 28 December 2012 showing his Character of Service: 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 changing his Separation Code) and 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 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 (AR) 635-200 (Active Duty Enlisted Administrative Separations) in effect at the time states:

a. Honorable discharge: 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.

(1) Only the honorable characterization may be awarded a Soldier upon completion of his/her period of enlistment or period for which called or ordered to AD or ADT or where required under specific reasons for separation, unless an entry-level status separation (uncharacterized) is warranted.

(2) When a Soldier is discharged before ETS for a reason for which an honorable discharge is discretionary, the following considerations apply:

- Where there have been infractions of discipline, the extent thereof should be considered, as well as the seriousness of the offense(s)
- A Soldier will not necessarily be denied an honorable discharge solely by reason of the number of convictions by court-martial or actions under the Uniform Code of Military Justice Article 15, conviction by a general court-martial or by more than one special court-martial does not automatically rule out the possibility of awarding an honorable discharge
- An honorable discharge may be furnished when disqualifying entries in the Soldier's military record are outweighed by subsequent honest and faithful service over a greater period of time during the current term of service
- It is a pattern of behavior and not the isolated incident that should be considered the governing factor in determination of character of service
- Unless otherwise ineligible, a Soldier may receive an honorable discharge if he/she has, during his/her current enlistment, period of obligated service, or any extensions thereof, received a personal decoration

b. General discharge: (1) 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. (2) A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to AD.

c. Paragraph 1-16 (Counseling and rehabilitative requirements) commanders will ensure that adequate counseling and rehabilitative measures are taken before initiating separation proceedings for the following reasons:

- Involuntary separation due to parenthood. (See paragraph 5–8.)
- Personality disorder. (See paragraph 5–13.)
- Other designated physical or mental conditions. (See paragraph 5–17)
- Entry-level performance and conduct. (See chapter 11.)
- Unsatisfactory performance. (See chapter 13.)
- Minor disciplinary infractions or a pattern of misconduct. (See paragraph 14–12a and b.)

d. Chapter 5-3 (Secretarial plenary authority) states Separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army.

e. Chapter 14 (separation for Misconduct) states:

(1) Action will be taken to separate a Soldier for misconduct when it is clearly established that— (1) Despite attempts to rehabilitate or develop him/her as a satisfactory Soldier, further effort is unlikely to succeed. (2) Rehabilitation is impracticable or the Soldier is not amenable to rehabilitation (as indicated by the medical or personal history record). Before taking action against a Soldier under section III of this chapter because of minor disciplinary infractions or a pattern of misconduct, commanders will ensure that the Soldier has received adequate counseling and rehabilitation.

(2) 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 of Court Martial. Abuse of illegal drugs is serious misconduct.

(3) 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.

3. AR 635-5 (Separation Documents) in effect at the time states:

a. The DD Form 214 is a summary of a soldier's most recent period of continuous active duty. It provides a brief, clearcut record of active duty service at the time of release from active duty, retirement, or discharge. The DD Form 214 is not intended to have any legal effect on termination of a soldier's service.

(1) Item 24; Correct entry is vital since it affects a soldiers' eligibility for post-service benefits. Characterization or description of service is determined by directives authorizing separation. The entry must be one of the following:

- Honorable
- Under Honorable Conditions (General)
- Under Other than Honorable Conditions
- Bad Conduct
- Dishonorable
- Uncharacterized

(2) Item 26; Obtain correct entry from AR 635-5-1 (Separation Program Designator) , which provides the corresponding separation program designator code for the regulatory authority and reason for separation.

(3) Item 28; This is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1

4. AR 635-5-1 (Separation Program Designator Codes) prescribes the specific authorities (statutory or other directives), reasons for separating Soldiers from active duty, and the separation program designator (SPD) codes to be entered on DD Form 214 (Certificate of Release or Discharge from Active Duty). The SPD Code JKK corresponds to (Misconduct (Drug Abuse), AR 635-200, paragraph 14-12c(2).

5. AR 601-210 (Active and Reserve Components Enlistment Program) states reentry eligibility codes:

- RE-1: Applies to: Person completing their term of active Service who is considered qualified to reenter the U.S. Army
- RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous Service at time of separation, but disqualification is waivable
- RE-4: Applies to: Person separated from last period of Service with a nonwaivable disqualification

6. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

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; traumatic brain injury; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge. The veteran's testimony alone, oral or written, may establish the existence of a condition or experience, that the condition or experience existed during or was aggravated by military service, and that the condition or experience excuses or mitigates the discharge.

8. 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-

marital; 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 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. 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//