

IN THE CASE OF: ██████████

BOARD DATE: 31 January 2024

DOCKET NUMBER: AR20230007102

APPLICANT REQUESTS:

- Correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) by upgrading his under honorable conditions (general) discharge to an honorable discharge
- Reinstating his eligibility for the Army College Fund and GI Bill benefits.
- Appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Report of Mental Status Evaluation (MSE)
- DD Form 2807 (Medical History)
- Unit Commander's formal recommendation for a chapter separation

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 was discharged for a condition, not a disability, due to behavior that was associated with his diagnosis of post-traumatic stress disorder (PTSD). He was being considered for a Medical Board, but his commander opted for the chapter instead. The Department of Veterans Affairs has granted him a PTSD disability rating.
3. On the applicant's DD Form 149, he indicates PTSD as a contributing and mitigating factor in the circumstances that resulted in his separation.
4. A review of the applicant's service record shows he enlisted in the Regular Army on 20 September 2002 for 4 years, completed training and was awarded military

occupational specialty 25L (Cable Systems Installer/Maintainer). He served in Iraq from 20051115-20061114 and reenlisted on 25 March 2006. The highest grade he held was E-4.

5. The applicant tested positive for marijuana of 31 May 2007 and received a counseling on 19 June 2007.

6. The applicant accepted nonjudicial punishment (NJP) on 11 July 2007, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) between 1 May 2007 and 31 May 2007 for wrongful use of marijuana. His punishment was reduction to E-1, forfeiture of \$650 pay per month for 2 months, and 45-day extra duty and restriction for 30 days.

7. A DA Form 3822-R (Report of Mental Status Evaluation), dated 26 July 2007 shows he was found to be mentally responsible, able to distinguish right from wrong and to adhere to the right, and had the mental capacity to understand and participate in board proceedings. The attending physician included the following remarks:

a. The applicant had been seen at Behavioral Health Services since April 2007 and had been diagnosed with Depression Not Otherwise Specified and PTSD.

b. Additionally, he recently has had problems with abuse of drugs and was in treatment at the [REDACTED] VA.

c. He was being considered for a Medical Evaluation Board; however, due to recent circumstances and administrative reason this is not an option.

d. It was strongly recommended the applicant receive an expeditious separation.

8. A medical examination found a cyst at his right temporal and reduced range of motion in the lumbar spine. A 12-page medical assessment, dated 27 July 2007 was completed with the applicant outlining his service history and medical problems.

9. On 10 August 2007, the applicant's immediate commander-initiated separation actions for "Other Designated Mental conditions" (depression and PTSD) and his wrongful use of marijuana.

10. The applicant consulted with legal counsel on 16 August 2007 and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of an under other than honorable conditions discharge; and the procedures and rights that were available to him. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation 635-200 (Active Duty Enlisted

Administrative Separations), Chapter 5, paragraph 5-17. The applicant waived his administrative rights and elected not to submit a statement on his on behalf.

11. On 10 August 2007, the applicant's immediate commander formally recommended his separation from service under the provisions of Army Regulation 635-200, Chapter 5, paragraph 5-17 with the recommendation he receive a general discharge.

12. The appropriate authority approved the discharge recommendation on 17 August 2007, under the provisions of Army Regulation 635-200, paragraph 5-17, for Other Designated Physical or Mental Conditions and directed the applicant receive a general discharge.

13. The applicant was discharged on 6 September 2007. The DD Form 214 he was issued shows he was discharged under the provisions of Army Regulation 635-200, paragraph 5-17. His DD Form 214 also shows:

- he was discharged in the grade of E-1
- his service characterization was under honorable conditions (general)
- he was credited with 5 years and 7 days of net active service with no lost time
- his awards are listed as the:
 - Army Commendation Medal
 - Army Achievement Medal (2nd Award)
 - National Defense Service Medal
 - Global War on Terrorism Service Medal
 - Iraq Campaign Medal
 - Army Service Ribbon
 - Overseas Service Ribbon (2nd Award)
 - Driver And Mechanic Badge with Driver - Wheeled Vehicle(S) Clasp

14. Regarding the applicant's request for entitlement to VA benefits and the Army College Fund, these programs are managed by the VA and require award of an honorable discharge.

15. The authority granted by Title 10, U.S. Code, Section 1552 (Correction of Military or Naval Records) is not unlimited. The ABCMR has the authority to correct only Army records. The Board has no authority to correct records created by the Department of Defense, other branches of the Services, VA, or any other governmental agency.

16. In determining whether to grant relief the Boards for Correction of Military/Navy Records (BCM/NR) can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

17. MEDICAL REVIEW:

a. The applicant requests and upgrade of his under honorable conditions, general, discharge to honorable. He contends his misconduct was related to PTSD.

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 into the Regular Army on 20 September 2002; 2) He served in Southwest Asia from 15 November 2005 to 14 November 2006; 3) He accepted nonjudicial punishment on 11 July 2007, under the provisions of Article 15 of the Uniform Code of Military Justice between 1 May 2007 and 31 May 2007 for wrongful use of marijuana; 4) On 10 August 2007, the applicant's immediate commander initiated separation actions for "Other Designated Mental conditions" and his wrongful use of marijuana; 5) The appropriate authority approved the discharge recommendation on 17 August 2007, under the provisions of Army Regulation 635-200, paragraph 5-17, for Other Designated Physical or Mental Conditions and directed the applicant receive a general discharge; 6) The applicant was discharged on 6 September 2007.

c. The military electronic medical record, AHLTA, VA electronic medical record (JLV), and ROP were reviewed. A review of AHLTA shows the applicant initial BH-related encounter documented in the EMR occurred on 2 April 2007, whereby he presented to ASAP as a walk-in. The applicant reported having returned from Iraq in November 2006 and began recreational drinking on the weekends, progressing to a few nights per week. He reported that the past Friday he learned that his son's mother intended to terminate his parental rights, and "things didn't go well". He disclosed that he subsequently drank an unknown amount of alcohol, blacked out, and carved "help me" on his inner left forearm. He denied a previous history of cutting but endorsed an instance of suicidal ideation during deployment, secondary to partner relational problems, but instead talked to the Chaplain and friends. He also endorsed losing a friend while deployed, who was struck and killed by a Humvee. The provider noted the applicant with a previous history of ASAP treatment. He was diagnosed with Alcohol Abuse and scheduled for intake.

d. On 4 April 2007 the applicant was seen in the BH Clinic after being referred from his PCM. The applicant was escorted by his CoC to his PCM after the applicant reportedly awoke to find the words "kill me" carved into his chest. The applicant reportedly had no recollection of how the carving happened and denied drinking the night of the incident. He reported having a difficult time at the range the day of the incident but was not overly concerned about it. He also denied feeling the issues with his mother's son was not affecting him to such a degree. The provider noted the applicant with an ASAP treatment history in 2004 for Cannabis and Cocaine use, but further noted the current toxically results came back negative. It was further noted that the CoC reported the applicant did not have a roommate, and that the unit was in the process of inspecting the applicant's room to identify the instrument used to do the carving. Diagnosis was deferred and the applicant was voluntarily psychiatrically

admitted for further evaluation. Inpatient records were not available for review. The applicant was seen for a post-hospital safety-check on 9 April 2007 and stated he did not undergo any diagnostic testing during the stay and felt it was a waste of time. He reported that during his stay he experienced an instance of parasomnia characterized by waking up in a corner of the room, and that on the night after his release from the hospital, he reportedly woke up outside of his barracks room yelling at someone. Diagnosis was deferred and he was scheduled for follow-up. Encounter note dated 10 April shows the applicant presented with the word "die" carved into his right forearm and a significant sized crucifix on his chest. He again denied any recollection of how it happened and denied alcohol or drug use. The provider noted that metabolic testing had been ordered and the applicant would report for additional metabolic testing.

e. On 12 April 2007 the applicant was escorted to the ED by his PLT SGT, who went to his room to find him after he missed formation and discovered him on the floor of his barracks room in the fetal position. He was diagnosed by the ED provider with Stress-related Physiological Response Affect Physical Condition and released to the BH Clinic, where his diagnosis continued to reflected Diagnosis Deferred, and the decision was made to psychiatrically hospitalize the applicant over the weekend due to safety concerns. On 16 April 2007 the applicant underwent psychological testing and reported the onset of blackout approximately two weeks prior secondary to drinking lemonade mixed with grain alcohol, but stated it was "not that much". He denied alcohol or drug use associated with the other blackouts but endorsed a history of drug use prior to military service, and successful drug, in 2004, while stationed in Germany. He endorsed possible current stressors to include being recently divorced and having a good friend killed by fellow soldier in Iraq. He reported that he contemplated suicide while deployed secondary to learning his wife wanted a divorce, for which he received counseling for one month to address the depressive symptoms. The provider noted the applicant's test scores showed elevations on scales that were indicative of individuals who were overreactive, impulsive, and untrust worthy. It was further noted that acting out as the primary defense mechanism, although rationalization plays an important role. He further noted the acting out episodes may be quite intense and violent. Additional elevations were also suggestive of possible Dissociative Disorder. On 19 April 2007 the applicant presented for a post-evaluation review, during which time the results were explained. After clarification of the applicant's responses, it was determined that the applicant did not have a dissociative disorder. The applicant shared difficulty with a specific assessment that triggered traumatic experiences from Iraq. The applicant's diagnosis was amended to include Depression and noted PTSD symptoms and he was scheduled for continued outpatient treatment.

f. Encounter note dated 16 May 2007 shows the applicant diagnostic problem list was amended to include Delayed Onset PTSD; a list of endorsed PTSD symptoms was not included in the encounter documentation. He reported sleeping through the night, with medication, but that his friends could hear him screaming at night during his sleep. He also denied any additional carving incidents but reported increased overall agitation

and feared he might act out in rage. He denied any SI/HI. He was scheduled for continued outpatient care. Encounter note date 8 June 2007 reflects the applicant, provider, and the Denver VA consulted and determined the applicant was a candidate for the Denver VA PTSD Program. The applicant was directed to continue engagement in outpatient treatment until Denver VA treatment request was approved by command. Encounter note dated 14 June 2007 shows the applicant presented with reports of continued depressed mood and reported a recent panic attack. He also reported being counted as AWOL for a few hours after going to a friend's house to escape the feeling of being trapped. On 25 June the applicant presented and reported that he provided a positive UA for "drugs". He denied use and stated the result was related to second hand smoke. Encounter note dated 5 July 2007 shows the applicant enrolled in the VA program but was disenrolled after providing a positive UA for Cocaine, Marijuana, and Amphetamines. After consultation with the applicant's command and other providers, it was determined the applicant would be returned to his unit and engage in outpatient care. On 10 July the applicant was seen for outpatient follow-up and contended he had no idea how cocaine or amphetamine could get into his system and that he was frustrated with the situation and not being able to get definitive answers. He reported wanting out of the Army and will continue follow-up at the VA. He also inquired if a medical action or chapter supersede his UCMJ actions. He was referred for continued outpatient treatment. Records show he remained in treatment through August 2007 with diagnoses of Alcohol Abuse, PTSD, Depression

g. A review of JLV shows the applicant 70 percent SC for PTSD. The Initial PTSD DBQ associated with the SC was not available for review, however, PTSD DBQ review dated 1 February 2008 shows the applicant continued to meet diagnostic criteria for combat-related PTSD, and Cannabis, Methamphetamine, and Cocaine Abuse, secondary to combat-related PTSD. Records suggests the applicant initial BH treatment engagement with the VA occurred on 25 January 2008 whereby he underwent a PTSD assessment and endorsed sufficient symptoms to meet diagnostic criteria. He reported engaging in small arms fire, being exposed to rocket and mortar bombardment, and encountering IEDs. Additionally, he reported the loss of multiple friends during deployment, as well as issues with short-term memory loss and blackouts. He further reported a history of drug use but reported having received treatment prior to deployment and remained clean and sober until approximately 6-months following deployment. He reported having been most recently sober for the past two weeks. He was diagnosed with PTSD and Polysubstance Abuse and referred for outpatient PTSD treatment; he declined substance use treatment. Records show the applicant with an extensive BH treatment history for PTSD and Polysubstance abuse between January 2008 through January 2024, to include residential, IOP, and outpatient treatment with fair results. Records also show the applicant was enrolled in VA Homelessness Program from 15 June to 2 July 2015.

h. The applicant is requesting an upgrade of his under honorable conditions, general, discharge to honorable and contends his misconduct was associated with PTSD. A

review of the records shows the applicant was diagnosed with PTSD during active service and is 70 percent SC for PTSD post-service. Although records also show the applicant with a history of ASAP treatment in 2004 for cannabis and cocaine use, the applicant appeared to have remained clean and sober following the 2004 treatment and remained so until 6 months after returning from deployment. Given the applicant's reported history of sobriety from 2004 until after deployment, it is reasonable to grant his renewed substance abuse was related to traumatic exposure during combat. As there is a nexus between PTSD and comorbid substance abuse to self-medicate, there is a nexus between the applicant misconduct characterized by wrongful use of marijuana and his SC diagnosis such that his misconduct is mitigated by the diagnosis.

i. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence that the applicant had an experience or condition during his time in service that would mitigate his misconduct.

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 is 70 percent SC for PTSD.

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. A review of the records shows the applicant was diagnosed with PTSD during active service and is 70 percent SC for PTSD post-service. Although records also show the applicant with a history of ASAP treatment in 2004 for cannabis and cocaine, the applicant appeared to have remained clean and sober following the 2004 treatment and remained so until 6 months after returning from deployment. Given the applicant's reported history of sobriety from 2004 until after deployment, it is reasonable to grant his renewed substance abuse was related to traumatic exposure during combat. As there is a nexus between PTSD and comorbid substance abuse to self-medicate, there is a nexus between the applicant misconduct characterized by wrongful use of marijuana and his SC diagnosis such that his misconduct is mitigated by the diagnosis.

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board

concluded with the advising official finding sufficient evidence that the applicant had an experience or condition during his time in service that would mitigate his misconduct. The Board noted, based on the opine there is a nexus between the applicant misconduct characterized by wrongful use of marijuana and his SC diagnosis such that his misconduct is mitigated by the diagnosis.

2. The Board noted, the applicant's request for reinstating his eligibility for the Army College Fund and GI Bill benefits is managed by the Department of Veterans Affairs and requires the applicant to apply through the VA for consideration and re-instatement. The applicant's request is outside the purview of the Army Board of Corrections for Military Records. Furthermore, the Board found based on the preponderance of evidence and the applicant's conditions referral to DES is warranted to properly assess the condition of the applicant during his period of active duty. Based on this, the Board granted relief to upgrade the applicant's characterization of service to honorable with a narrative reason of separation to reflect Secretarial Authority and direct that his case be referred to DES.

3. 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 result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by re-issuing the applicant a DD Form 214 for the period ending 6 September 2007 to show his characterization of service as honorable with a narrative reason for separation as Secretarial Authority. In addition, by directing the applicant be entered into the Disability Evaluation System (DES) and a Medical Evaluation Board concerned to determine whether the applicant's conditions(s), met medical retention standard at the time-of-service separation.

a. In the event that a formal physical evaluation board (PEB) becomes necessary, the individual concerned may be issued invitational travel orders to prepare for and participate in consideration of his case by a formal PEB if requested by or agreed to by the PEB president. All required reviews and approvals will be made subsequent to completion of the formal PEB.

b. Should a determination be made that the applicant should have been separated under the DES, these proceedings will serve as the authority to void his administrative separation and to issue him the appropriate separation retroactive to his original separation date, with entitlement to all back pay and allowances and/or retired pay, less any entitlements already received.

2/6/2024

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): N/AREFERENCES:

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 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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, 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.
3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, 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.
4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at that time provided that:
 - a. 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. A general discharge is a separation from the Army under honorable conditions.
 - c. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.
 - d. Chapter 5 (Separation for Convenience of the Government) states unless the

reason for separation requires a specific characterization, a Soldier being separated for the convenience of the Government will be awarded a character of service of honorable, under honorable conditions, or an uncharacterized description of service if in entry-level status.

5. 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 Discharge Review Boards (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; or sexual harassment. Boards are to give a liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. 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.

6. The Under Secretary of Defense for Personnel and Readiness issued guidance to DRBs and BCM/NR on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//