

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 November 2023

DOCKET NUMBER: AR20230007123

APPLICANT REQUESTS: an upgrade of his characterization of service from under honorable conditions (general) to honorable.

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)
- Applicant's Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 17 January 2019
- Lamar Institute of Technology, Course Completion Certificate, 12 August 2019
- Department of Veterans Affairs (VA), Rating Decision, 31 December 2019
- Honor Society Certificate, 7 January 2021
- Lamar University, Bachelor of Science Degree, 10 May 2022
- Character Letters (4)

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:

a. His discharge was inequitable because it was based on one isolated incident in 41 months of service, with no other adverse actions. During the time of the incident, he was suffering from undiagnosed post-traumatic stress disorder (PTSD). He had just suffered from a traumatic brain injury (TBI) and made reckless decisions in a concussive state of mind. To make matters worse, he was drinking heavily because he did not fully understand the extent of his injury.

b. In February 2015 he switched from the Army Reserve to Active Duty. He switched because he wanted to serve his country and better his life. Not long after he transitioned to active duty, he applied for Task Force 160th Special Operations Aviation Regiment (SOAR). He wanted to challenge himself and serve his country in a greater capacity by being a part of special operations. When he made it into the special operation forces community, he was very proud of himself. However, his decision to pursue a more challenging career brought hardships to his family. His wife decided that she did not like the extra danger he was putting himself in and the lifestyle was not for her, so she decided to leave him and took their son with her. He states, he came home from lunch one day and she was gone. Despite this adversity, he did not seek help; he just focused more on his career.

c. He excelled in the schools that he attended and gained the trust and confidence of his leadership. His divorce was finalized in May 2017. He did not realize at the time, but he was self-medicating with alcohol. In June 2018, he suffered a TBI while training for a combat deployment. He was having constant migraines and was in a lot of pain. While waiting for the clinician's help, and under the influence of alcohol, he made the mistake of smoking marijuana. PTSD, depression, and TBI mixed with copious amounts of alcohol, led him to make some very bad choices that ultimately led to his administrative discharge. He states that he is confident that if he was not in a concussive state of mind and if he would have been in proper mental health care, he would not have been in the situation that he found himself in.

d. Losing the career that he fought so hard to get was the worst thing that has ever happened to him. However, despite the setback, he focused on getting his life together and being a good father and role model to his son. He first attended an Emergency Medical Technician (EMT) course, which he excelled and was offered a job because of the way he handled himself on the clinical rotations. Then he enrolled in a 4-year university where he pursued a bachelor's degree in Exercise Science with a concentration in Pre-Physician and maintained a 3.4 grade point average. All while dealing with COVID-19 restrictions and two hurricanes during the spring semesters of 2019 and 2020. On top of school and being a father, he worked a part-time job and an internship with the university's athletic department as a strength and conditioning coach. This required a lot of his time as he had to be at the university for early football workouts and different varsity teams throughout the day. He had a positive influence on the young athletes and got to see many of them grow mentally and physically throughout his time there. In his part-time job, he worked about 20 hours a week as a physical therapist technician. He also worked with elderly. The work environments required him to pass a drug test, remain drug-free, and be of service to other people.

e. Overall, he is a much healthier and stronger person after his military career. He has developed a strong relationship with his son, who at the time of his discharge he barely knew. He did not let his mistakes hold him down. He is now in pursuit of a

second degree in an accelerated Bachelor of Science in Nursing program. He still wants to serve others and find a way to better his community. He states that he still deals with the residuals from the TBI and still has migraines and some short-term memory loss. He is still proud of his service to this country and remain drug and alcohol free. He hopes that the board understands the circumstances and grants him an honorable discharge, as he feels he deserves.

3. The applicant provides the following:

a. A certificate of course completion, which shows he completed EMT on 12 August 2019.

b. A copy of his VA rating decision, dated 31 December 2019, which shows his service-connected disabilities for the following:

- PTSD
- Obstructive Sleep Apnea
- Migraine, including migraine variants
- Left shoulder tendinitis
- Left shoulder separation of the acromioclavicular joint
- Lumbosacral strain with degenerative arthritis of the spine
- Right knee strain
- Tinnitus
- Residuals of TBI
- Left lower extremity radiculopathy associated with lumbosacral strain with degenerative arthritis of the spine
- Sinusitis associated with traumatic deviated nasal septum to include allergic rhinitis
- Traumatic deviated nasal septum to include allergic rhinitis

c. A certificate which certifies that the applicant became a member of the Honor Society on 7 January 2021.

d. A certificate from Lamar University, dated 10 May 2022, which shows he received a Bachelor of Science degree in Exercise Science Fitness Management.

e. Four-character letters from Soldiers and veterans who served with the applicant in the 160th SOAR. All state the applicant was an exemplary non-commissioned officer (NCO) and Soldier who exuded professionalism, sound character, technical and tactical expertise, and an unwavering commitment to mission accomplishment. Despite the applicant's lingering regret, he has dedicated his life to growth, striving daily to be the best version of himself in everything he pursues.

4. A review of the applicant's service record shows:

a. A DD Form 4 (Enlistment/Reenlistment Document) shows he enlisted in the U.S. Army Reserve (USAR) on 16 July 2010, for the purpose of being placed on active duty to attend the U.S. Military Academy Preparatory School.

b. He was honorably discharged on 23 November 2010. His DD Form 214 shows he completed 4 months and 8 days of active service. He was assigned separation code KND and the narrative reason for separation listed as "Miscellaneous (General Reasons)," with reentry code 1. Block 18 (Remarks) also noted, "Candidate failed to complete the USMAPS Course."

c. On 3 April 2013, he enlisted in the USAR for a period of 6 years.

d. He was honorably released from active-duty training on 25 October 2013. He completed the 92F (Petroleum Supply Specialist) course. His DD Form 214 shows he completed 4 months and 28 days of active service. He was assigned separation code MBK and the narrative reason for separation listed as "Completion of Required Active Service," with reentry code 1.

e. A DD Form 368 (Request for Conditional Release), dated 1 August 2014, shows the applicant requested a conditional release from the USAR to enlist into the Regular Army.

f. Orders Number D-02-502480, issued by the U.S. Army Human Resources Command, Fort Knox, KY, dated 10 February 2015, shows the applicant was honorably discharged from the USAR on 1 February 2015.

g. The applicant enlisted in the Regular Army on 2 February 2015 for a period of 3 years and 2 weeks.

h. A DA Form 1695 (Oath of Extension of Enlistment) dated 9 March 2016, which shows the applicant voluntarily extended his enlistment for 21 months to meet service remaining requirement (SRR) for assignment to the Special Operations Command.

i. DA Form 2823 (Sworn Statement) dated 10 July 2018, shows sergeant first class (SFC) M made the following statement: On 10 July 2018, around 0725, he volunteered to be an observer during a company urinalysis test. The applicant grabbed the cup as SFC M stood over to the back right side as he waited for the cup to begin to be filled. He heard a noise that sounded like a water balloon busting, which made him curious, so he stepped forward and asked the applicant what he was doing. The applicant stated he was trying to go to the bathroom. SFC M moved over to the side of the urinal wall so he could fully see the toilet and try to identify what the applicant was doing. At that point

SFC M could see that the urinalysis cup was wet on the outsides, and nothing was inside the cup. The third time he asked the applicant what he was doing, the applicant opened his left hand to show a busted condom. SFC M told the applicant to bring his stuff and follow him. The applicant tried to throw the condom in the trash, but SFC M told him to grab it and bring it with him. SFC M escorted the applicant to the acting first sergeant's (1SG) office and told the 1SG and company commander what he had observed. SFC M proceeded to get the UPL and returned to the conference room to be an observer.

j. Drug Testing Results, dated 30 July 2018, shows the applicant's urine specimen, collected on 10 July 2018, tested positive for Tetrahydrocannabinol (THC).

k. A DA Form 3822 (Report of Mental Status Evaluation) dated 16 August 2018, shows the behavioral health provider noted the applicant was interviewed, his record was reviewed, and he did not meet diagnostic criteria for a behavioral health diagnosis. Further comments showed the applicant was screened for PTSD, depression, anxiety, and TBI and in accordance with AR 40-501 (Standards of Medical Fitness) he met retention standards and was cleared for administrative action as deemed necessary.

l. A Report of Medical Examination, dated 23 August 2018, shows the applicant was qualified for separation.

m. On 10 September 2018, he accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for one specification of dereliction of duties and one specification of wrongfully using marijuana, a schedule I controlled substance between on or about 10 June 2018 and or about 10 July 2018. His punishment included reduction to the rank/grade of (SPC/E-4), forfeiture of \$1,245.00 pay per month for two months (suspended, to be automatically remitted if not vacated on or before 9 March 2019), extra duty for 45 days, 45 days restriction to the limits of the company area, and an oral reprimand.

n. On 20 September 2018, the applicant's immediate commander notified the applicant of his intent to initiate separation actions against him under the provisions of AR 635-200, chapter 14, paragraph 14-12c (2), misconduct-abuse of illegal drugs. The reasons for his proposed action were for wrongfully attempting to utilize a condom filled with urine as his sample and for wrongfully using marijuana. He recommended a general, under honorable conditions discharge. He acknowledged receipt of the notification of separation on the same day.

o. After consulting with counsel of the basis for the contemplated action to separate him for misconduct-abuse of illegal drugs, under AR 635-200, chapter 14, paragraph 14-12c, and its effects; of the rights available to him; and the effect of any action he took in waiving his rights, he further acknowledged:

- he was not entitled to have his case heard by an administrative separation board
- he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him
- he may make application to the Army Discharge Review Board (ARBA) or the ABCMR for upgrading
- he would be ineligible to apply for enlistment for a period of two years after discharge
- he elected not to submit statements in his own behalf
- he did not believe that he suffered from PTSD or TBI as a result of deployment overseas in support of a contingency operation in the past 24 months

p. On 9 October 2018, the applicant's immediate commander-initiated separation under the provisions of AR 635-200, chapter 14, paragraph 14-12c, for misconduct-abuse of illegal drugs. The intermediate commander recommended approval.

q. On 18 October 2018, the separation authority approved the discharge and directed the applicant be issued an under honorable conditions (general) discharge and not be transferred to the Individual Ready Reserve.

r. The applicant was discharged on 17 January 2019. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 14-12c (2), in the rank/grade of specialist/E-4, and his service was characterized as under honorable conditions (general). He completed 3 years, 11 months, and 16 days of net active service this period. Additionally, his DD Form 214 shows in:

- Item 12f (Foreign Service): 2 months and 7 days
- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Commendation Medal, Army Achievement Medal (2<sup>nd</sup> Award), Army Good Conduct Medal, National Defense Service Medal, Global War on Terrorism Service Medal, Iraq Campaign Medal with campaign star, NCO Professional Development Ribbon, Army Service Ribbon, Parachutist Badge, and the Air Assault Badge
- Item 18 (Remarks):
  - Continuous honorable active service: 20150202 – 20160308
  - Service in Iraq: 20180105 – 20180311
  - Member has completed first full term of service

5. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge processing within that Board's 15-year statute of limitations.

6. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

7. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, the Army Aeromedical Resource Office (AERO), and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 17 January 2019 under honorable conditions (general) discharge. On his DD 293, he notes that PTSD and TBI are issues related to his request. He states:

“My discharge was inequitable because it was based on one isolated incident in 41 months of service with no other adverse actions. During the time of the incident, I was suffering from undiagnosed PTSD. I had just suffered from a traumatic brain injury and made reckless decisions in a concussive state of mind. To make matters worse, I was drinking heavily because I did not fully understand the conditions of my injury.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows he entered the regular Army on 2 February 2015 and was discharged under honorable conditions (general) on 17 January 2019 under provisions provided in paragraph 14-12c(2) of AR 635-200 Active Duty Enlisted Administrative Separations (19 December 2016): Serious misconduct – Abuse of illegal drugs. It shows a period of Service in Iraq from 5 January 2018 thru 11 March 2018.

d. On 10 September 2018, the applicant received his Article 15 for willfully failing to provide a urine sample during a random company urinalysis and for wrongful use of marijuana.

e. On 20 September 2018, his company commander informed him that he was initiating separation action under paragraph 14-12c(2) of AR 635-200:

“The reasons for my proposed action are: On or about 10 July 2018, during a urinalysis, you wrongfully attempted to utilize a condom filled with urine as your

sample; Between on or about to 10 June 2018 and 10 July 2018, you wrongfully used marijuana.”

f. The applicant underwent his pre-separation medical examination on 23 August 2018. The provider documented no defects or diagnoses and determined the applicant was qualified for separation.

g. On 18 October 2018, the brigade commander approved the requested separation with the directive the applicant receive a general under honorable conditions characterization of service.

h. Review of AHLTA indicates that that the applicant was diagnosed with a mild TBI on 26 Dec 2018. He reported that a Pelican tool box hit him in the head during a helicopter landing, causing epistaxis (nosebleed) and post traumatic amnesia. This occurred in July 2018. Shortly afterward, he reported he went to Nashville, met a girl, and made a “bad bad choice.” He was currently in the chapter process for positive UDS for THC.

i. JLV shows the applicant has been awarded several VA service-connected disability ratings, including one for PTSD (50% SC) effective 18 January 2019, the day after his discharge from the Army. Applicant is also service connected for Traumatic Brain Disease (10%SC).

#### Kurta Questions:

(2) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: PTSD and TBI.

(2) Did the condition exist or experience occur during military service? YES. Both conditions occurred during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially: As both PTSD and TBI are associated with self-medication with alcohol and/or illicit drugs, these conditions fully mitigate the use of marijuana. However, neither condition interferes with one’s ability to differentiate right from wrong and adhere to the right. Thus, neither PTSD nor TBI mitigate the applicant’s attempt to submit a sham urine sample during a unit urinalysis. Regarding his mild TBI, the applicant asserts in his DD 293 that he had been drinking heavily and “had just suffered from a traumatic brain injury and made reckless decisions in a concussive state of mind.” While TBI and/or concussion may, in some instances, result in frontal lobe dysfunction leading to poor decision making, this does not appear to be the case with regards to the applicant’s TBI/concussion. The applicant’s act of attempting to utilize a condom filled with urine as his urine sample during a UA indicates that his frontal lobe function was intact as



evidenced by his ability to anticipate, assess, organize, and plan his actions with regards to submitting the sham urine sample

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records and published DoD guidance for liberal consideration and clemency in determining discharge upgrade requests. The Board considered the misconduct and whether there was sufficient evidence of mitigating circumstances to weigh in favor of a clemency determination. The Board agreed that the applicant exhibited willful intent to deceive which is not a natural history or sequelae of PTSD. However, after due consideration of the request, his post-service accomplishments and letters attesting to his character, the Board determined that an upgrade to his character of service was warranted

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

█	█	█	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 the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 17 January 2019 showing:

- Characterization of Service: Honorable
- Separation Authority:
- Separation Code: No change
- Reentry (RE) Code: No change
- Narrative Reason for Separation: No change

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) set forth the basic authority for the separation of enlisted personnel.
  - a. 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for 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, conviction by civil authorities, desertion, or absences without leave. 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 considered appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.
3. 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 post-traumatic stress disorder (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.
4. 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; TBI;

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 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 that misconduct which led to the discharge.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

6. 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.

7. 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 is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//