

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 February 2024

DOCKET NUMBER: AR20230007164

APPLICANT REQUESTS: an upgrade of his character 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)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 8 December 2014
- VA Form 21-0781 (VA Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD)), 21 August 2021
- Department of Veterans Affairs (VA) Rating Decision, 30 September 2022
- Letter from his Veterans Service Officer (VSO), 11 April 2023
- Privacy Release Form, 11 April, 2023
- Letter from his Congressional Representative (Veterans and Military Affairs), 18 April 2023

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 AR20210007599 on 8 July 2021.

2. The applicant states he served in Afghanistan for 9 months as a .50 caliber gunner. After deployment, he returned home and struggled with his mental health. During this time, his command was in transition, and many other Soldiers took leave or separated. He felt alone, isolated, and began a pattern of inappropriate behavior, including marijuana use. He received nonjudicial punishment and was reduced from specialist (SPC)/E-4 to private/E-2.

a. The applicant's lieutenant, who was in the promotion process for captain, called the applicant a "hood rat" during the nonjudicial and separation process.

b. He is service connected disabled by the VA for PTSD due to his service in Afghanistan. He is a husband, father, and citizen. He would like a discharge upgrade

from general to honorable so he may have access to Post 9/11 education benefits, which he deserves based on his service overseas.

3. The applicant enlisted in the Regular Army on 2 February 2011.
4. He served in Afghanistan from 12 December 2012 to 22 August 2013.
5. He accepted nonjudicial punishment on 30 June 2014 for wrongfully using marijuana, a schedule I controlled substance between 27 April 2014 and 27 May 2014. His punishment included reduction from SPC/E-4 to private/E-2.
6. On 19 August 2014, the applicant was released from the Alcohol and Drug Rehabilitation Program due to failure.
7. On 27 October 2014, the applicant's immediate commander initiated action to separate the applicant for misconduct-abuse of illegal drugs under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c(2). The commander's proposed action was based on the applicant wrongfully using marijuana, a schedule I controlled substance between 27 April 2014 and 27 May 2014.
8. The applicant acknowledged receipt of the contemplated action to separate him under the provisions of AR 635-200, paragraph 14-12c(2). He also acknowledged the rights available to him and had been advised of his right to consult with counsel prior to submitting his election of rights.
9. On 27 October 2014, the applicant waived consultation with counsel and indicated he understood:
  - he was not entitled to have his case considered by an administrative separation board because he did not have 6 years of total active and reserve military service at the time of separation
  - he was not entitled to a personal appearance before an administrative separation board
  - he elected not to submit statement in his own behalf
  - he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him
  - he may be ineligible for many or all benefits as a veteran under both Federal and State laws
10. On 24 November 2014, consistent with the chain of command recommendations, the separation authority approved the applicant's discharge and directed the service be characterized as general under honorable conditions.

11. In connection with the applicant's separation processing procedures, a mental status evaluation was conducted. The applicant was deemed to be fit for full duty, including deployment. He had no obvious impairments, indicated cooperative behavior, normal perceptions, was unlikely to be impulsive, and was not dangerous.

12. On 8 December 2014, he was discharged accordingly. His DD Form 214 shows he completed 3 years, 9 months, and 7 days of active service. It also shows in:

- item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized):
  - Afghanistan Campaign Medal with two campaign stars
  - Army Commendation Medal
  - Army Achievement Medal
  - Army Good Conduct Medal
  - National Defense Service Medal
  - Global War on Terrorism Service Medal
  - Army Service Ribbon
  - NATO Medal
- item 24: Under Honorable Conditions (General)
- item 25 (Separation Authority): AR 635-200, paragraph 14-12c(2)
- item 26 (Separation Code): JKK
- item 27 (Reentry Code): 4
- item 28 (Narrative Reason for Separation): Misconduct (Drug Abuse)

13. A letter from the Veterans and Military Affairs Constituent Service Representative, shows the applicant is applying to appeal the decision to the Army Review Boards Agency, which includes a privacy release form signed by the applicant.

14. A letter from his VSO shows the applicant would like to appeal his discharge due to the combat stress he was seeking relief from that was the catalyst to self-medicating with marijuana. He states that a Soldier does not simply come home and choose the wrong path. He endured combat trauma and was isolated and felt unsupported by his command.

15. His VA rating decision shows, in pertinent part, the applicant received VA compensation for the evaluation of PTSD with alcohol and cocaine disorder based on anxiety, sleep impairment, depressed mood, difficulty in adapting to stressful circumstances and maintaining relationships as well as disturbances of motivation and mood, social impairment, and suspiciousness.

16. A VA statement in support of his claim in which he outlines the constant bombing and working closely with Afghanistan civilians who ended up mapping out the forward operating base he was on.

17. The applicant applied to the Army Discharge Review Board (ADRB) and requested a review of his administrative discharge. On 23 February 2017, the ADRB denied the applicant's request upon finding the separation was both proper and equitable.

18. The applicant applied to the ABCMR and requested a review of his administrative discharge. On 8 July 2021, the ABCMR denied the applicant's request. The ABCMR determined the overall merits of the case were insufficient as a basis for correction of the records.

19. 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.

#### MEDICAL REVIEW:

1. Background: The applicant is requesting an upgrade of his general (Under Honorable Conditions) discharge to honorable. The applicant asserts PTSD and other mental health are related to his request for discharge upgrade.

2. 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 2 February 2011.
- He served in Afghanistan from 12 December 2012 to 22 August 2013.
- He accepted nonjudicial punishment on 30 June 2014 for wrongfully using marijuana, a schedule I controlled substance between 27 April 2014 and 27 May 2014.
- He received a counseling on 4 August 2014 for failure to comply with restrictions imposed by the Battalion Commander as Specified in his Article 15.
- On 19 August 2014, the applicant was released from the Alcohol and Drug Rehabilitation Program due to failure.
- On 27 October 2014, the applicant's immediate commander initiated action to separate the applicant for misconduct-abuse of illegal drugs under AR 635-200, paragraph 14-12c(2). The commander's proposed action was based on the applicant wrongfully using marijuana, a schedule I controlled substance between 27 April 2014 and 27 May 2014.

- On 8 December 2014, he was discharged with a general, under honorable conditions discharge.
- On 23 February 2017, ADRB denied his request for upgrade. On 8 July 2021, ABCMR denied his request.

3. Review of Available Records Including Medical: The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 293, his ABCMR Record of Proceedings (ROP), his DD Form 214, documents from his service record and separation, as well as a letter from his congressional representative, a letter from his VSO, a Department of VA Rating Decision, a VA Statement of Support of Claim, and a privacy release form. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

4. The applicant asserts that he was struggling with mental health after returning home from his deployment. In addition, his command and fellow soldiers were in transition or separating and he felt alone and isolated and began "inappropriate behavior," to include marijuana use. In addition, he alludes to problematic or toxic leadership that processed his article 15, making note that his LT called him a "hood rat" during proceedings.

5. The applicant's engagement with health care, to include mental health, can be found in his electronic health record (EHR) as well as included service treatment records (STRs). He was seen for a behavioral health screening upon arrival to FT Stewart on 8 September 2011, where he denied any mental health concerns nor previous mental health treatment. He first engaged in mental health care on 18 January 2012, when he was seen as a walk-in. He presented with concern with pushing away his fiancé. He noted difficulty with family, coworkers, finances, anger/temper, headaches, depression, sleep, nightmares and fears. He noted his suspiciousness and paranoia leads to him acting on his emotions in maladaptive ways. He was diagnosed with an adjustment disorder, and childhood PTSD, as well as cluster B traits were noted. He was seen for another session before being referred off post for more consistent/regular care. Applicant also had several mental health engagements while down range. He was seen at the 3CAB aid station in Kandahar on 11 January 2013 after a call was received from stateside voicing concerns that the applicant may have suicidal ideation. The diagnosis of adjustment disorder remained (also there was further note of significant childhood trauma). He was seen numerous times throughout his deployment though denied desire to re-engage in care during his post-deployment health assessment (PDHA). His ERH and supporting documents reflect that the applicant was counseled, and command directed to Army Substance Abuse Program (ASAP) on 5 Jun 2014, during his counseling for his positive UA. He was recommended to be enrolled into outpatient treatment. He appears to have attended regular appointments with ASAP providers and

a case manager. While enrolled, he continued to consume alcohol. It was noted that "Further rehabilitation efforts in a military environment are not practical in light of the Soldier's lack of progress. Such Soldiers generally do not have potential for continued military service and should not be retained." He was released for failure, 19 August 2014. It also appeared evident throughout his medical record that he was interested in getting out of the Army so that he could return to playing football (with plans to play in college).

6. The applicant was seen for a separation mental status exam (MSE) on 27 August 2014. The applicant's presentation and overall assessment was unremarkable. The applicant was found to have the mental capacity to understand and participate in the proceedings and was able to distinguish right from wrong and adhere to the right. He was diagnosed with alcohol abuse/cannabis related disorders and occupational problems. It was noted that his commander stated the "SM is without remorse and displays a poor attitude at this time. With the SM declining rehabilitation efforts despite having admitted to cannabis use and continued alcohol abuse, these indicators significantly impair his capacity to adapt to and function in the military environment." He was found fit to proceed with any administrative action deemed necessary by command. He completed his separation medical examination on 19 September 2014. His Report of Medical Examination and Report of Medical History show that he reported he was in good health, and he denied frequent trouble sleeping, depression or excessive worry, loss of memory or amnesia, nervous trouble of any sort, or periods of unconsciousness. He did indicate use of illegal substances, but otherwise he personally denied any other mental health concerns. In addition, the applicant's periodic medical examinations marked normal for psychiatric and PULHES was 111111.

7. The applicant had numerous letters written on his behalf included, with one highlighting that he should have been given an Article 15 and treatment, not a discharge. Of note, the applicant was given an Article 15 and treatment. It appears that applicant failed treatment, and per his MSE this was due to continued drinking leading to rehabilitation failure. It appears that after he failed treatment, his unit moved forward with discharge.

8. The applicant has been engaged in care at the VA since 2021. He has been diagnosed with alcohol dependence, cocaine abuse, insomnia, depression – unspecified, PTSD, panic disorder, and unemployment. Per the applicant's VA EHR and the VA decision letter, he became service connected for PTSD (with alcohol and cocaine disorder) 30 September 2022 (90% total service connection, 70% for PTSD). The applicant appears to have engaged in individual therapy and medication management to address trauma secondary to deployment and childhood abuse. Through review of Joint Legacy Viewing, this applicant did have "Community Health Summaries and Documents" available, though there was no record of a mental health diagnoses, nor mental health records.

9. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is some conflicting information, though there is sufficient evidence to support the applicant had a condition or experience at the time of service that mitigated his discharge.

10. Kurta Questions:

a. Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes, the applicant asserts PTSD and substance abuse are related to his request for an upgrade to his discharge.

b. Did the condition exist, or experience occur during military service? Yes, the applicant contends the condition was present during his time in service.

c. Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant asserted that he had a substance use problem during his time in the service and that this was his way of self-medicating PTSD, which he states he has been diagnosed and service connected for. His records from his time in service do reflect substance use disorder diagnoses, as well as an adjustment disorder and childhood PTSD. Of note, there are other records that reflect him denying any mental health concerns (particularly near the time of discharge). While substance use disorders are not mitigating conditions, his history of adjustment disorder, childhood PTSD and later diagnosis of service-connected PTSD is. Avoidance and self-medicating behaviors, such as substance use, are consistent with the natural history and sequelae of PTSD. There is a nexus between trauma and the misconduct that led to his discharge. Hence, mitigation is supported.

#### BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests and for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service to include any deployments, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency and/or liberal consideration. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA Medical Advisor.

2. The Board found sufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct being mitigated by PTSD to warrant relief.

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 amendment of the ABCMR's decision in Docket Number AR20210007599, dated 8 July 2021. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- a. voiding his DD Form 214 for the period ending 8 December 2014, and
- b. issuing him a new DD Form 214 for the period ending 8 December 2014 to show he received an honorable characterization of service.

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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. Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) set forth the basic authority for the separation of enlisted personnel. Chapter 14 established policy and prescribed 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 would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally appropriate for a Soldier discharged under this chapter.

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. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

2. 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.

3. 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//