

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 February 2024

DOCKET NUMBER: AR20230007276

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 other Soldiers in his unit that failed the drug screening were not discharged. The amount of drugs in his system when tested was obscenely minute. It was excessive punishment for a good paratrooper who has been under a lot of combat stress.
3. A review of the applicant's service records show:
 - a. He enlisted in the Regular Army on 31 January 2002. He held military occupational specialty 14J (Early Warning System Operator) and served in Iraq from 2 September 2003 to 5 April 2004.
 - b. On 16 June 2004, he accepted nonjudicial punishment for wrongfully using cocaine between 2 May 2004 and 2 June 2004. His punishment included reduction to the grade of private/E-2.
 - c. The applicant's immediate commander notified the applicant that he was initiating action to separate him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), for the commission of a serious offense, The reason for his proposed action was the applicant wrongfully used cocaine, on or about 9 June 2004 to 10 June 2004.

d. On 28 June 2004, the applicant underwent a mental status evaluation by a licensed social worker. The evaluation shows the applicant's behavior was annotated as "Normal," he was "Fully Oriented," his mood was "Unremarkable," and he held the mental capacity to understand and participate in the proceedings. There was no evidence of an emotional or mental disorder of psychiatric significance to warrant disposition through medical channels.

e. On 21 July 2004, after consulting with counsel, the applicant requested a personal appearance before an administrative separation board and elected to submit statements on his own behalf. He understood that he may expect to encounter substantial prejudice in civilian life if a general discharge, under honorable conditions is issued.

(1) He was advised of the basis for the contemplated separation and its effects, the rights available to him, and the effect of a waiver of his rights.

(2) He submitted a statement for consideration, which states, he made a bad decision that affected his military career and wishes he could take it back. He felt he deserved a general, under honorable conditions discharge as he has served proudly and faithfully for 2 and a half years and has performed well above the standard.

(3) He submitted, through counsel, a conditional waiver of an administrative separation board. He understood that he would be separated in accordance with AR 635-200, Chapter 14-12c with the issuance of a General Discharge Certificate.

f. On 14 June 2004, the applicant's immediate commander forwarded the recommendation for separation against the applicant under the provisions of AR 635-200, Chapter 14, Section III, Paragraph 14-12c, through the chain of command. The immediate commander recommended a General Discharge, Under Honorable Conditions Discharge Certificate. The chain of command recommended approval.

g. The separation authority, consistent with the chain of command recommendations, approved the applicant's separation under the provisions of AR 635-200, Chapter 14, paragraph 14-12c, commission of a serious offense. He would receive a discharge characterization of general, under honorable conditions.

h. On 20 August 2004, the applicant was discharged accordingly. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 2 years, 6 months, and 20 days of active service. It also shows in:

- item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): National Defense Service Medal, Global War on

Terrorism Expeditionary Medal, Global War on Terrorism Service Medal, Army Service Ribbon, Parachutist Badge

- item 24 (Character of Service): Under Honorable Conditions (General)
- item 25 (Separation Authority): AR 635-200, paragraph 14-12c
- item 26 (Separation Code): JKQ
- item 27 (Reentry Code): 3
- item 28 (Narrative Reason for Separation): Misconduct

4. There is no indication he petitioned the Army Discharge Review Board for review of his discharge processing with that board's 15-year statute of limitations.

5. By regulation, action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him/her as a satisfactory Soldier, further effort is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

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

7. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) characterization of service to honorable. 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 RA on 31 January 2002
- He served in Iraq from 2 September 2003 to 5 April 2004.
- On 16 June 2004, he accepted nonjudicial punishment for wrongfully using cocaine between 2 May 2004 and 2 June 2004.
- Applicant's immediate commander initiated action to separate the applicant for commission of a serious offense, under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations). The reason for his proposed action was the applicant wrongfully used cocaine, on or about 9 June 2004 to 10 June 2004.
- Applicant was discharged on 20 August 2004 under the provisions of Army Regulation 635-200, paragraph 14-12c (2), commission of a serious offense. His DD form 214 (Certificate of Release or Discharge from Active Duty) confirms his discharge characterization of general, under honorable conditions.

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), DD Form 214, and documents from his service record and separation packet. 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.

c. The applicant states other soldiers in his unit failed drug screenings and were not discharged. The amount of drugs in his system when tested was obscenely minute. It was excessive punishment for a good paratrooper who has been under a lot of combat stress. Due to the period of service, active-duty electronic medical records were not available for review. However, on 28 June 2004, the applicant underwent a mental status evaluation. The evaluation indicated the applicant's behavior was normal and he had the mental capacity to understand and participate in the proceedings. There was no evidence of an emotional or mental disorder of psychiatric significance to warrant disposition through medical channels.

d. The applicant is 80% service connected including 50% for PTSD effective 3 May 2023. The VA electronic medical records (JLV) available for review evidences a mental health intake evaluation, dated 09 November 2015, where the applicant presented for services since he was going through a divorce and was attempting to obtain sole custody of his children. The applicant disclosed tremendous difficulty upon returning from his deployment from Iraq. He described self-medicating with drugs and alcohol. Upon inquiry, the applicant reported deploying to Kuwait and Iraq, and described incidents where his life was in danger. The evaluation indicates the applicant met criteria for Major Depressive Disorder, With anxious distress; Posttraumatic Stress Disorder; Alcohol Use Disorder, Moderate; and Stimulant Use Disorder, In sustained remission. The VA electronic medical record shows the applicant has participated in ongoing behavioral health services since 2015.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence the applicant had an experience and subsequent behavioral health condition during military service that mitigates his discharge.

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 asserts a mitigating condition.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 50% service-connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to wrongfully using cocaine. However, given the nexus between PTSD and the use of substances to alleviate/cope with the symptoms of his behavioral health condition, the reason for his discharge is fully mitigated by his diagnosis of PTSD.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, the applicant's record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was discharged from active duty due to Misconduct – commission of a serious offense. The Board found no error or injustice in his separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical advisory opinion finding evidence of in-service behavioral health condition during military service. However, his behavioral health condition would not mitigate his discharge. Additionally, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

█ █ █ DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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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), in effect at the time, prescribes the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a (Honorable Discharge) states 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. Paragraph 14-12c (Commission of a Serious Offense) states commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial. Abuse of illegal drugs is serious misconduct.

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, traumatic brain injury, sexual assault, or sexual harassment. Boards are 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 misconduct that 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 (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.

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 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.

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//