

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 February 2024

DOCKET NUMBER: AR20230007497

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

APPLICANT'S SUPPORTING DOCUMENT 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 (USC), Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states he has been diagnosed with post-traumatic stress disorder (PTSD), and the Department of Veterans Affairs has awarded him a 70 percent disability rating for this service-connected condition. This condition directly affected the outcome of his discharge due to the challenges he faced during his enlistment in the Army.
3. The applicant enlisted in the Regular Army on 10 June 2003 for a period of 5 years in the rank/pay grade of private (PV1)/E-1. Upon completion of initial entry training, he was awarded military occupational specialty 31B (Military Police) and assigned to a unit at White Sands Missile Range, NM. He was advanced to private (PV2)/E-2 on 10 December 2003.
4. The applicant's record is void of documentation showing the facts and circumstances regarding his administrative separation under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, paragraph 14-12a, for Misconduct. However:
 - a. His Enlisted Record Brief shows he was reduced from PV2/E-2 to PV1/E-1 on 30 September 2004.

b. Orders 342-0003, issued by Headquarters, U.S. Army Air Defense Artillery Center, Fort Bliss, TX, on 21 September 2005 show he was to be discharged from the Regular Army in the rank/grade of PV1/E-1, effective 15 December 2004.

c. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was involuntarily discharged from active duty on 15 December 2004 in the rank/grade of PV1/E-1, under the provisions of Army Regulation 635-200, Paragraph 14-12a, due to Misconduct. His service was characterized as Under Honorable Conditions (General). He was credited with completion of 1 year, 6 months, and 6 days of net active service. He did not complete his first full term of service.

d. His available record is void of any indication that he served in an overseas area or that he was awarded or authorized to wear any awards or decorations typically associated with an overseas deployment.

5. Army Regulation 635-200, Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. 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 appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

6. Army Regulation 15-185 (ABCMR) provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice has occurred by a preponderance of the evidence. It is not an investigative body.

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

8. MEDICAL REVIEW:

a. Background: The applicant is requesting that his Under Honorable Conditions (General) discharge be upgraded to Honorable due to experiencing PTSD during his time in service.

b. 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 10 Jun 2003. His assigned MOS was military police.

- On 30 Sep 2004, applicant's ERB indicates a reduction in rank from PV2 to PV1.
- Applicant was discharged from active duty at the rank/grade of PV1/E-1 due to "Misconduct with Separation Code 'JKN' and Reentry Eligibility Code '3.'"
- The applicant's separation packet is unavailable for review. However, the applicant's service record includes his DD Form 214 (Report of Separation from Active Duty), which shows that the Army discharged the applicant Under Honorable Conditions on 15 Dec 2004 due to misconduct.

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

d. Applicant asserted that PTSD was a mitigating factor in his discharge. His service record and supporting documents did not provide any indicators of behavioral health or medical issues or conditions. Based on the available documentation, there is a lack of evidence the applicant was diagnosed or treated for mitigating conditions that occurred during his time in service.

e. Per the applicant's VA EHR, he is 70% service connected for PTSD. A Mental Health Initial Evaluation note (21 Dec 2021) indicated, "met with veteran in the office on this date and effort to complete MHIA per request. The veteran stated he has PTSD, depression and anxiety...The veteran stated he does not like to go to Walmart, he stated he hates it because there are too many people. He gets irritated easily and normally he will sit in the car while his wife goes in. The veteran said he does not like to go to restaurants and will only go in for his wife on date nights. He said he must sit with his back against the wall or able to see the door. The veteran does not like fireworks, he does not like when they go off randomly and he does not like them off. The veteran stated at times he does not want to go to work and does not want to get out of the house or do anything." Besides PTSD, the other behavioral health condition noted on the VA problem list is "Dysthymic Disorder (depressive neurosis)." A C&P Examination note (18 Jul 2023) indicated, "Mr. ██████████ served in the Army from 2003-2004 and was in the military police. He achieved the rank of E2. He reported incurring an article 15 after a cat bit a higher-ranking sailor's child and he was also charged with a pattern of misconduct for letting his grass and yard become overgrown. He sustained an injury to his left ankle but denied other injuries regarding his military service. He denied any combat deployments and denied combat exposure, but talked about witnessing death while serving along with the ██████████. He reflects on his trauma related events from the military service twice a week."

f. In summary, applicant is 70% service connected for PTSD. There is clear evidence he has been treated for PTSD by VA which had been initially experienced during applicant's time in service. Consequently, after reviewing the application and all supporting documents, it is the opinion of this Agency Medical Advisor that there is sufficient evidence of a potentially mitigating condition (PTSD). Adequate documentation was provided in the VA encounter notes (JLV) to support the contention that the applicant had experienced PTSD during his time in service. However, the lack of service documents regarding the specifics of his misconduct prevents a determination whether PTSD can mitigate for his "unknown" misconduct.

Kurta Questions:

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

(2) Did the condition exist or experience(s) occur during military service? Yes, there is considerable evidence he initially encountered PTSD symptoms while on active duty that was more likely than not linked to the nature of his job as an MP.

(3) Does the condition or experience actually excuse or mitigate the discharge? No, PTSD cannot mitigate for his manner of misconduct, since there is a lack of service documentation clarifying what kind of behavior led to his separation. Additional service records identifying the basic details of his misconduct certainly would enhance applicant's potential for a discharge upgrade.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, and the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA BH Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding there being insufficient information in the service record to determine if his misconduct was mitigated by PTSD. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

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 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.

5/6/2024

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.

REFERENCES:

1. Title 10, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

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 regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body.

4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. Paragraph 3-7b states 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.

c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). 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 appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

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 (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; 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 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. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 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//