

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 November 2023

DOCKET NUMBER: AR20230008089

APPLICANT REQUESTS: in effect -

- an upgrade of his character of his service from under honorable conditions (general) to honorable
- award of the Combat Action Badge
- reinstatement of his Chapter 33 benefit; and
- a personal appearance hearing before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Summary of Benefits Letter, 20 June 2022

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. There is sufficient evidence of record in the form of official orders to justify administrative correction of the applicant's DD Form 214, without action by the Board, to Add the Combat Action Badge to his DD Form 214 (Certificate of Release or Discharge from Active Duty).
3. The applicant states, in effect, he was ultimately discharged for behavioral issues due to post-traumatic stress disorder (PTSD) symptoms. He had a great service record prior to his deployment to Iraq. While in Iraq, he earned the Combat Action Badge. His behavior changed upon his return from deployment, and he was ultimately discharged under honorable conditions. It has taken him years to recover to a somewhat normal degree and he feels an upgrade of his discharge and reinstatement of his benefits would allow him to improve further.

4. The applicant enlisted in the Regular Army on 13 May 2008. He completed training and was awarded military occupational specialty (MOS) 92G (Food Service Operations). His record shows he served in Iraq from 5 December 2008 to 17 November 2009
5. On 18 June 2011, two noncommissioned officers provided sworn statements, swearing to the fact that they witnessed the applicant tell the Company Commander he used "Bath Salts" to get high. His last use of "Bath Salts" was the evening on 17 June 2011. The same day, the applicant received counseling informing him he was placed on restriction in the company area.
6. On 15 July 2011, while stationed at Fort Bragg, NC, and serving in the rank/grade of sergeant/E-5, he accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice for violating a lawful general regulation by wrongfully using "Ivory Wave" [Bath Salts] on or about 18 June 2011. His punishment consisted of reduction to specialist/E-4; forfeiture of \$1,061.00 pay per month for two months, suspended, to be automatically remitted if not vacated before 11 January 2010; and extra duty for 30 days.
7. On 1 August 2011, the applicant underwent a mental status evaluation. The applicant met the retention standards prescribed in Army Regulation 40-501 (Standards of Medical Fitness), and there was no psychiatric disease or defect which warranted disposition through medical channels. The applicant was cleared for any administrative actions deemed appropriate by the command to include separation in accordance with Army Regulation 635-200 (Active Duty Enlisted Administrative Separations). The applicant was screened for PTSD and mild traumatic brain injury. The conditions were either not present or, if present, did not meet Army Regulation 40-501 criteria for a medical evaluation board.
8. On 10 August 2011, the applicant received a medical evaluation. The medical records note he reported having depression and anxiety issues and that he was enrolled in the Army Substance Abuse Program. The applicant was ultimately found fit for separation.
9. On 31 August 2011, his immediate commander notified him of his intent to initiate separation action against him in accordance with Army Regulation 635-200, chapter 14-12c, for misconduct-commission of a serious offense. His commander recommended he receive an under honorable conditions (general) characterization of service.
10. On 6 September 2011, he acknowledged receipt of the commander's notification and acknowledged he had been given the opportunity to confer with counsel. He

elected to submit a statement in his own behalf; however, there is no evidence in the available record which shows he did so.

11. On 19 September 2011, his intermediate commander recommended approval of the discharge action.

12. On 20 September 2011, the separation authority approved his discharge under the provisions of Army Regulation 635-200, chapter 14-12c, by reason of misconduct – commission of a serious offense and directed his service be characterized as under honorable conditions (general).

13. On 3 November 2011, he was discharged accordingly in the rank/grade of specialist/E-4. The DD Form 214 (Certificate of Release or Discharge from Active Duty) he was issued at the time confirms he was discharged under the provisions of Army Regulation 635-200, chapter 14-12c, by reason of misconduct – serious offense. He completed 3 years, 5 month, and 21 days of net active service this period with no time lost. The form further shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) -
 - Army Commendation Medal
 - National Defense Service Medal
 - Global War on Terrorism Service Medal
 - Iraq Campaign Medal with Campaign Star
 - Army Service Ribbon
 - Overseas Service Ribbon
 - Parachutist Badge
- Item 18 (Remarks), Service in Iraq from 5 December 2008 to 17 November 2009
- Item 24 (Character of Service), Under Honorable Conditions (General)
- Item 27 (Reentry Code), "3"
- Item 28 (Narrative Reason for Separation), Misconduct, (Serious Offense)

14. The applicant provides a letter from the VA dated 20 June 2022, which shows he is considered totally and permanently disabled due solely to his service-connected disabilities. His combined service-connected evaluation is set at 100 percent effective 4 November 2011. The document does not disclose what service-connected disabilities were considered.

15. There is no indication that he applied to the Army Discharge Review Board (ADRB) for an upgrade of his discharge within that board's 15-year statute of limitations.

16. On 14 July 2023, a staff member of the Army Review Board Agency (ARBA) requested the applicant provide a copy of the medical documents which supported his diagnosis of PTSD. To date, there is no evidence he responded to the agency's request.

17. On 14 July 2023, ARBA requested an advisory opinion from the U.S. Army Human Resources Command (AHRC) in reference to reinstating his Post 9/11 GI Bill (PGIB) benefits.

18. On 8 August 2023, an advisory opinion was provided by AHRC. The advisory opinion stated that they were unable to process the applicant's request for reinstatement of his PGIB education benefits. They stated the applicant was not eligible to use his benefits because he was discharged "Under Honorable Conditions (General)." This is per Public Law (PL) 110-252 (Section 3311(c) (1)), the Department of Defense Directive-Type Memorandum 09-003, and Army PGIB Policy Memorandum (dated July 10, 2009), which drives Department of Defense and Army policy and was in effect during the applicant's military service. The ADRB is responsible for assessing the applicant's request to have his discharge upgraded from "Under Honorable Conditions (General)" to "Honorable". There is precedence for granting this request because of his 100 percent PTSD rating and the indications that he did not have any disciplinary actions before his deployment; however, this determination must be made by the ADRB.

19. The Board should consider the applicant's statements in accordance with the Under Secretary of Defense for Personnel and Readiness guidance to Boards for Correction of Military Records regarding equity, injustice, or clemency determinations.

20. The pertinent regulatory provides that an under other than honorable conditions characterization of service is usually considered appropriate for separations under Army Regulation 635-200, paragraph 14-12c.

21. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his general, under honorable conditions discharge to an honorable discharge. The applicant contends that PTSD is a mitigating factor in his discharge.

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 RA on 13 May 2008.
- On 15 July 2011 he accepted nonjudicial punishment (NJP) for violating a lawful general regulation by wrongfully using "Ivory Wave" [Bath Salts] on or about 18 June 2011.
- On 31 August 2011, his immediate commander notified him of his intent to initiate separation action against him IAW AR 635-200, chapter 14-12c, for misconduct-commission of a serious offense. His commander recommended he receive an under honorable conditions (general) characterization of service.
- On 3 November 2011, he was discharged under AR 635-200, chapter 14-12c, by reason of misconduct – serious offense with a general, under honorable conditions discharge

c. 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 149, his ABCMR Record of Proceedings (ROP), his DD Form 214, documents from his service record and separation, as well as Department of VA Summary of Benefits Letter. 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.

d. The applicant asserts PTSD from his deployment to Iraq as a mitigating factor in the misconduct that led to his discharge. The applicant reports that his behaviors changed after his return home from deployment. Review of the applicant's electronic health record (EHR) shows he was engaged in substance abuse care while in the Army and had a few interactions with behavioral health as well. He presented as a walk-in to behavioral health 25 January 2011 to address marital concerns. He was diagnosed with partner relational problems and adjustment disorder with depressed mood. He presented again in February, with symptoms worsening and him still waiting for his off-post referrals to be activated. He was seen again in April with significant paranoia and was diagnosed with unspecified substance induced psychotic disorder during intoxication. In April of 2011 he also began to engage in the Army Substance Abuse Program. He was diagnosed with alcohol dependence, amphetamine-induced psychotic disorder with delusions, and amphetamine dependence. He was referred to inpatient substance abuse treatment, completed it and returned to outpatient substance abuse treatment. He was seen regularly until he was discharged. In addition, he was seen for his separation mental status exam (MSE) on 1 August 2011. The applicant was found fit

for duty and while his mental status was primarily unremarkable, occasional impulsivity was noted. He was found to have the mental capacity to understand and participate in the proceedings, was able to distinguish right from wrong and adhere to the right and met medical retention requirements per AR 40-501 chapter 3. He screened negative for PTSD and mTBI. He denied any safety concerns. He was diagnosed with polysubstance dependence but there was no evidence found of any mental disorder of psychiatric significance to warrant disposition through medical channels. Hence, he was cleared for separation. On 10 August 2011, the applicant completed his separation medical evaluation. His records reflect he self-disclosed depression and anxiety issues and that he was enrolled in the Army Substance Abuse Program. The applicant was ultimately found fit for separation.

e. Per the applicant's EHR, he is 100% service connected for PTSD, with his 100% service connection effective as of 4 November 2011. Per a VA letter dated 20 June 2022, he is totally and permanently disabled. The applicant has been engaged in care at the VA since 2011. He has been diagnosed with cocaine dependence, amphetamine dependence, other specified drug dependence, alcohol abuse, adjustment disorder with depressed mood, major depressive disorder – recurrent – mild, depressive disorder NOS, insomnia – unspecified, polysubstance dependence, opioid dependence, anxiolytic dependence, cannabis dependence, anxiety, and PTSD. He has also presented with psychosocial concerns such as inadequate housing, lack of housing, unspecified psychosocial circumstance, and legal circumstances. He has engaged in outpatient therapy, case management, substance abuse treatment, and medication management as well as residential programming.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had mental health concerns during his time in service and has since been diagnosed with a mitigating mental health condition, which is 100% service connected.

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 PTSD as a mitigating factor.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts the symptoms were present during his time in service. The applicant has also been service connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. There is evidence the applicant was having relationship issues and was diagnosed with

an adjust disorder with depressed mood after returning from Iraq. In addition, he began abusing substances and was actively involved in substance abuse treatment. While he was not diagnosed or treated for PTSD during his time in service, it is as likely as not that what was initially described as an adjustment disorder, further developed into PTSD. He has since been service connected at 100% for PTSD. Avoidance and self-medicating behaviors, such as substance use, are consistent with natural history and sequelae of PTSD. There is a nexus between PTSD and this misconduct which led to his discharge. This Agency Behavioral Health Advisor would recommend a full upgrade in his characterization of service.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board found that relief was partially 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 record of service, the frequency and nature of the applicant's misconduct and the reason for separation.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any other relief not stated above.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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|---|---|---|----------------------|
| ■ | ■ | ■ | GRANT FULL RELIEF |
| : | : | : | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| : | : | : | DENY APPLICATION |

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing him a DD Form 214 for the period ending 3 November 2011 showing:

- Character of Service: Honorable
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading the narrative reason for separation.



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): administratively correct the applicants DD Form 214 in block 13, without action by the Board, to add the Combat Action Badge.

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 sets forth the basic authority for the separation of enlisted personnel.

a. 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), commission of a serious offense, and convictions by civil authorities. 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.

b. 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.

c. Paragraph 3-7b provides that 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.

3. The Under Secretary of Defense for Personnel and Readiness issued guidance to Discharge Review Boards and BCM/NR on 25 July 2018 [Wilkie Memorandum], 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.

4. Army Regulation 600-8-22 (Military Awards) states award of the CAB is authorized from 18 September 2001 to a date to be determined. The requirements for award of the CAB are branch and MOS immaterial. Assignment to a combat arms unit or a unit organized to conduct close or offensive combat operations or performing offensive combat operations is not required to qualify for the CAB. However, it is not intended to award the CAB to all Soldiers who serve in a combat zone or imminent danger area. The Soldier must be performing assigned duties in an area where hostile fire pay, or imminent danger pay is authorized. The Soldier must be personally present and actively engaging or being engaged by the enemy and performing satisfactorily in accordance with the prescribed rules of engagement. The Soldier must [not] be assigned or attached to a unit that would qualify the Soldier for the Combat Infantryman Badge or the Combat Medical Badge.

5. Per PL 110-252 (Section 3311(c) (1)), the Department of Defense Directive-Type Memorandum 09-003, and Army PGIB Policy Memorandum (dated July 10, 2009, a Soldier establishes eligibility for the PGIB after attaining an aggregate of at least 90 cumulative qualifying active duty days in honorable periods of service on/after 11 September 2001 and receiving an Honorable Discharge.

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 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 ABCMR applicants (and/or their counsel) prior to adjudication.

7. Army Regulation 15-185 prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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.

//NOTHING FOLLOWS//