

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 February 2024

DOCKET NUMBER: AR20230008264

APPLICANT REQUESTS:

- Upgrade of his under honorable condition (general) discharge to honorable
- Add the Ranger Tab to his DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Personal appearance via video or telephone

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 PTSD (post-traumatic stress disorder) and TBI (traumatic brain injury) were not treated during his service. This caused/contributed to his under honorable conditions character of service. Because of this, he believes his character of service should be honorable.
3. Review of the applicant's service records shows:
  - a. He enlisted in the Regular Army on 11 January 2016. He completed training and was awarded military occupations specialty (MOS) 11B, Infantryman).
  - b. On 3 June 2016, Headquarters, U.S. Army Maneuver Center, Fort Benning, GA published orders awarding him the Parachutist Badge. He was awarded primary MOS (PMOS) 11B1P (the P is an additional skill identifier for Airborne).
  - c. He served in Afghanistan in support of Operation Enduring Freedom from 26 September 2017 to 13 March 2018. On completion of deployment, he returned to Fort Bragg, NC.

d. He was promoted to sergeant (SGT)/E-5 on 23 May 2019 and awarded PMOS 11B2V (the V is an additional skill identifier for Airborne-Ranger).

e. On 15 July 2019, he participated in a unit urinalysis and his urine sample tested positive for THC/Marijuana.

f. On 6 September 2019, he received nonjudicial punishment under Article 15 of the Uniform Code of Military Justice for wrongfully using marijuana. His punishment included reductant to specialist (SPC)/E-4.

g. His Enlisted Record Brief, dated 9 August 2019 shows in:

(1) Section VI (Military Education):

- Airborne, 2016
- Air Assault Course, 2018
- Basic Leader Course, 2019
- Combat Lifesaver, 2017
- Ranger Course, 2018

(2) Section X (Remarks) the entries:

- Under arrest, confinement, or pending military or criminal
- Suspension of favorable personnel action (Codes AA – Adverse Action and BA – Involuntary separation)

h. The separation packet and/or complete facts and circumstances surrounding his discharge processing are not available for review. However, his DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged from active duty on 21 January 2020, under the provisions of chapter 14-12c(2) of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), by reason of misconduct (Drug Abuse) (Separation Code JKK and Reentry Code 4) with a general, under honorable conditions discharge (Separation. His DD Form 214 also shows:

- his Primary Specialty is listed as 11B1V
- he completed 3 years, 11 months, and 14 days of active service; he also had lost time from 25 December 2019 to 21 January 2020
- he was awarded or authorized: Army Achievement Medal (4th Award), Army Good Conduct Medal, National Defense Service Medal, Global War on Terrorism Service Medal, Afghanistan Campaign Medal with campaign star, NCO Professional Development Ribbon, Army Service Ribbon, NATO Medal,
- Expert Infantryman Badge
- Parachutist Badge
- Air Assault Badge

4. By regulation (AR 6000-8-22), the Ranger Tab is announced via permanent orders. This badge may be revoked by the Commandant, U.S. Army Infantry School based on the recommendation of the field commander (COL/O-6 or above) of the individual in question if, in the opinion of that commander, the individual has exhibited a pattern of behavior, lack of expertise, or duty performance that is inconsistent with expectations of the Army. Ranger-qualified Soldiers are expected to continuously demonstrate enhanced degrees of confidence, commitment, competency, and discipline. Requests for revocation will be forwarded to Commandant, U.S. Army Infantry School, Fort Benning. Award of the Ranger Tab may be revoked under any of the following conditions:

- Dismissal, dishonorable discharge, or conviction by courts-martial for desertion in time of war
- Refusal to accept assignment to a Ranger coded position.
- Failure to maintain prescribed standards of personal fitness and readiness to accomplish missions commensurate with position and rank
- Upon relief or release for cause from a Ranger-coded position

5. By regulation, Soldiers are subject to separation under the provisions of paragraph 14-12c of AR 635-200 for a commission of a serious offense. 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 that his Under Honorable Conditions (General) discharge be upgraded to Honorable due to experiencing an PTSD and TBI during his time in service. He is also requesting that he be awarded the Ranger tab and an in-person appearance with the Board.

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 11 Jan 2016. His military occupational specialty was Infantryman. He was deployed to Afghanistan from 26 Sep 2017 - 13 Mar 2018. His awards included the Army Achievement Medal (4<sup>th</sup> award), Army Good Conduct Medal, National Defense Service Medal, Global War on

Terrorism Service Medal, Afghanistan Campaign Medal w/ Campaign Star, NCO Professional Development Medal, Army Service Ribbon, NATO Medal, Parachutist Badge and Air Assault Badge.

- On 6 September 2019, “he received nonjudicial punishment under Article 15 of the Uniform Code of Military Justice for wrongfully using marijuana.” He was reduced in rank from SGT to E-4.
- A Report to Suspend Favorable Personnel Actions (Flag) was initiated due to drug abuse (07 Aug 2019). Applicant may have had his Ranger tab revoked due to his Article 15 for marijuana usage.
- 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” with narrative reason for separation – “Misconduct (drug abuse)” on 21 Jan 2020

c. 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, as well as documents from his service record. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV).

d. This applicant asserted that PTSD and a TBI were mitigating factors in his discharge. He also contends his marijuana abuse was due to the impact of his behavioral health conditions. His service record and supporting documents did not provide any evidence of behavioral health treatment during his time in service other than a Command Referral for a Substance Use Disorder (SUD) Evaluation (03 Sep 2019). Based on this documentation in its entirety, 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 service connected at 90% overall and 70% for PTSD, A Psychology Note (10 Mar 2023) indicated, “Veteran endorsed exposure to traumatic events throughout his lifespan (childhood, civilian, and military). He described multiple events for which he has had difficulty processing, such as childhood abuse, exposure to military trauma during deployment, and past infidelity in his marital relationship. He endorsed the presence of anxiety and depression his...entire life, &... with worsening symptoms following deployment. Presentation may best be understood through the lens of complex, developmental trauma, with existing PTSD exacerbated by combat exposure.” A Physical Medicine Rehab Consult (12 Apr 2023) noted, “identifies many different episodes of head trauma when he was in the military. In 2017 he was near a rocket blast which caused a loss of consciousness for a couple of seconds. Then in 2018 he was the gunner in a vehicle which went into a trench and became airborne

and nose dived thus causing him to hit his head. This occurred in Afghanistan... Symptoms that he has noticed have included impaired short-term memory and concentration. He has noted that his timelines are off. He has missed paying bills which is very unlike him. He also has noted visual impairments including blurred vision when trying to read and also photophobia. He tends to wear sunglasses frequently." A Neuropsychology Consult (30 May 2023) noted, "the Veteran was in the Army from 2016 to 2020 during which he served as an infantryman. The Veteran reported one deployment to Afghanistan from 2017 to 2018, during which he was exposed to combat (e.g., firefights and motor vehicle accidents). The head traumas described by the Veteran occurred during training exercises prior to his deployment and then in late 2017 while deployed." The VA problem list included Alcohol Dependence in remission; Cannabis Dependence, uncomplicated; Major Depressive Disorder, recurrent, severe w/out psychotic features; Encounter for screening for traumatic brain injury; Posttraumatic Stress Disorder, chronic; Problems in relationship w/spouse or partner; Alcohol Dependence, uncomplicated; and Adjustment Disorder with mixed disturbance of emotions and conduct.

f. In summary, he is 70% service connected for PTSD. There is considerable documentation he has been treated for PTSD and TBI symptoms by VA which had been 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 mitigating conditions (PTSD/TBI) that significantly contributed to the specific misconduct of marijuana abuse. Adequate documentation was provided in the VA encounter notes (JLV) to support the contention that the applicant had experienced PTSD and TBI symptoms during his time in service.

#### 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 and TBI symptoms contributing to his marijuana abuse while still on active duty that was subsequently identified by VA behavioral health providers (JLV notes), as well as a 70% SC disability rating for PTSD.

(2) Did the condition exist or experience(s) occur during military service? Yes, there is considerable evidence he initially encountered PTSD and TBI related symptoms while on active duty.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes, it mitigates for his misconduct of drug abuse as PTSD and TBI symptoms are often associated with the emergence or escalation of illicit drug use.

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and the medical review, the Board considered the advising official finding sufficient evidence of mitigating conditions (PTSD/TBI) that significantly contributed to the specific misconduct of marijuana abuse. The Board noted the opine stating the applicant's misconduct of drug use is mitigated based PTSD and TBI symptoms are associated with escalation of illicit drug use.

2. However, the Board determined the applicant's service record and supporting documentation lacks any evidence of behavioral health treatment during his time on active duty. The Board found there is insufficient evidence of in-service mitigating factors to overcome the misconduct as a noncommissioned officer testing positive for THC. Furthermore, the Board notwithstanding the advising opine noting the provided evidence is sufficient as mitigating conditions (PTSD/TBI) that significantly contributed to the specific misconduct of marijuana abuse. The applicant provided no character letters of support or post service achievements for the Board to weigh a clemency determination.

3. The Board found in accordance with regulatory guidance the applicant did not meet the criteria based on his pattern of behavior, lack of expertise, or duty performance that is inconsistent with expectations of the Army. The applicant was discharged for misconduct (drug abuse) and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Therefore, the Board denied relief.

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.

3/29/2024

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, 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 600-8-22 (Military Awards) provides Department of the Army policy, criteria, and administrative instructions concerning individual military decorations, Army Good Conduct Medals, service medals and ribbons, combat and special skill badges and tabs, unit decorations, trophies, and similar devices awarded in recognition of

accomplishments. Paragraph 1-32 provides for Revocation of badges, Special Forces Tab, Ranger Tab, and Sapper Tab:

a. Only the command authorized to award combat and special skill badges is authorized to revoke such awards. An award, once revoked, will not be reinstated except by Commander, U.S. Army Human Resources Command (AHRC-PDP-A), 1600 Spearhead Division Avenue, Fort Knox, KY when fully justified, unless otherwise noted below. When the original awarding command is unable to act on the revocation action, the revocation request will be referred to Commander, U.S. Army Human Resources Command, Fort Knox, KY for appropriate action. Revocation of badges will be announced in permanent orders, except that revocations which are automatically affected, as prescribed in this regulation, need not be announced in orders. Award of badges may be revoked under any of the following conditions, however, once the parachute badge is revoked, all badges contingent upon airborne are also revoked.

b. Ranger Tab. The Ranger Tab may be revoked by the Commandant, U.S. Army Infantry School based on the recommendation of the field commander (COL/O-6 or above) of the individual in question if, in the opinion of that commander, the individual has exhibited a pattern of behavior, lack of expertise, or duty performance that is inconsistent with expectations of the Army. Ranger-qualified Soldiers are expected to continuously demonstrate enhanced degrees of confidence, commitment, competency, and discipline. Requests for revocation will be forwarded to Commandant, U.S. Army Infantry School (ATSH-IP), Fort Benning, GA. Award of the Ranger Tab may be revoked under any of the following conditions

- Dismissal, dishonorable discharge, or conviction by courts-martial for desertion in time of war.
- Refusal to accept assignment to a Ranger coded position.
- Failure to maintain prescribed standards of personal fitness and readiness to accomplish missions commensurate with position and rank.
- Upon relief or release for cause from a Ranger-coded position.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. 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.



b. 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. 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.

4. 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 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.

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 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.

6. 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.

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.

a. 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.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states 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.

8. 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//