

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 September 2024

DOCKET NUMBER: AR20230008291

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (general) discharge to honorable
- personal appearance before the Board

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, he would like an upgrade from general to honorable in order to use his GI Bill to further his education, be a better community member and contribute to society. He served honorably, but due to his service overseas, he was suffering from Post Traumatic Stress Disorder (PTSD) and major depression. He was a great Soldier; he just made a mistake towards the end of his service.
3. The applicant indicated in Section 4 (Evidence, Records, and Additional Remarks) of his DD Form 149 that in support of his claim, he is submitting his 60% disability from the Veterans Affairs (VA) and VA documents regarding his Post Traumatic Stress Disorder PTSD. However, his application did not include said documents. The applicant was also asked, via letter from Case Management Division, dated 1 November 2023, to provide a copy of the medical documents that support his claim. As of the date of this writing, medical documents were not submitted.
4. A review of the applicant's service record shows:
  - a. The applicant enlisted in the Regular Army on 11 May 2004. He held military occupational specialty 13B, Field Artillery. He served in Iraq from 28 November 2005 to 18 November 2006. He was promoted to specialist/E-4 in February 2007.

b. The applicant's duty status changed as follows: From present for duty (PDY) to absent without leave (AWOL), effective 11 April 2007; from AWOL to Dropped From Rolls (DFR) was not found in service record; and from DFR to PDY, effective 20 November 2007

c. On 3 December 2007, the Commander of B Battery, 4/320 Field Artillery was notified of a drug urine positive (THC) collected from a Soldier on 20 November 2007. The specimen had been confirmed by gas chromatograph / mass spectrometry. Further stating, prior to an action being taken or reading of the Soldiers rights, all Soldiers identified above must be referred to the CID office and to Community Counseling Services for evaluation.

d. DA Form 3822-R (Report of Mental Status Evaluation), dated 4 January 2008, reflects the applicant was evaluated and cleared for administrative action deemed appropriate by the command.

e. On 7 January 2008, the applicant's commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c(2), Commission of a Serious Offense. The reasons for the proposed actions was that the applicant wrongfully used marijuana and was AWOL from 11 April to 20 November 2007.

f. The applicant acknowledged receipt of the commander's intent to separate him on 7 January 2008. On 10 January 2008, he consulted with legal counsel who advised him of the basis for the contemplated separation action for Commission of a Serious Offense, the type of discharge he could receive and its effect on further enlistment or reenlistment, the possible effects of this discharge, and of the procedures/rights available to him. He elected not to submit a statement in his own behalf. He acknowledged he:

- understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him
- understood he could be ineligible for many or all benefits as a veteran under Federal and State laws as a result of the issuance of a discharge under other than honorable conditions
- understood if he received a discharge characterization of less than honorable, he could make an application to the Army Discharge Review Board (ADRB) or the ABCMR for an upgrade, but he understood that an act of consideration by either board did not imply his discharge would be upgraded

g. On 20 February 2008, the applicant was convicted by summary court-martial of one specification of without authority, absenting himself from his unit and did remain so absent until from on or about 11 April 2007 to on or about 20 November 2007; and one specification of wrongfully using marijuana between on or about 21 October 2007 and on or about 20 November 2007. The court sentenced him to reduction to the lowest enlisted grade of E-1 and forfeiture of \$898 pay per month for 1 month.

h. On 6 March 2008, the separation authority approved the applicant's discharge under the provisions of AR 635-200, paragraph 14-12c(2), with his service characterized as general under honorable conditions.

i. The applicant was discharged from active duty on 17 March 2008. His DD Form 214 reflects the applicant was discharged under the provisions of AR 635-200, paragraph 14-12c(2), misconduct (drug abuse), with a character of service of general under honorable conditions, separation code JKK, and reentry code 4. He had 3 years, 10 months, and 7 days of net service this period. It also shows the following:

- 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 // Army Service Ribbon // Overseas Service Medal // Air Assault Badge
- Item 18 (Remarks): He served in Iraq from 28 November 2005 to 18 November 2006.

5. There is no evidence that the applicant applied to the Army Discharge Review Board for review of his discharge within the board's 15 year statute of limitations.

6. AR 15-185 (Army Board for Correction of Military Records) states, an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

7. 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.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service. He contends he experienced Posttraumatic Stress Disorder (PTSD) and depression due to his service in Iraq that mitigates his misconduct. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) the applicant enlisted in the Regular Army on 11 May 2004, 2) the

applicant's duty status was changed from present for duty (PDY) to absent without leave (AWOL) on 11 April 2007 through 20 November 2007, 3) a memorandum dated 03 December 2007 documented the applicant tested positive for THC for a specimen collected on 20 November 2007, 4) on 28 February 2008 the applicant was found guilty of going AWOL from 11 April 2007-20 November 2007 and wrongfully using marijuana between 21 October 2007 and 20 November 2007, 6) the applicant was discharged on 17 March 2008 under the provisions of AR 635-200, paragraph 14-12c(s), misconduct (drug abuse), 7) the applicant earned several awards and badges during his service, most notably the Army Commendation Medal and Iraq Campaign Medal. The applicant served in Iraq from 28 November 2005 to 18 November 2006.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant's in-service medical records available for review in JLV from 09 February 2007 through 11 March 2008. The applicant was referred to BH on 16 March 2007 as a referral from SRP. It was documented that he was experiencing anger and hostility towards his unit, difficulty falling and staying asleep, and was drinking alcohol to the point of passing out on his days off. He was not diagnosed with a psychiatric condition and it was documented that he was given sleep hygiene, stress, and anger management classes (appeared to be in-session). He was evaluated by BH on 06 December 2007 due to stress, anger, irritability, and difficulty falling asleep since returning from Iraq. He denied experiencing suicidal and homicidal ideation at the time of the visit. The applicant reported he had a history of drug and alcohol abuse, recent financial changes and legal problems stemming from AWOL. It was also documented that the applicant reported some 'oppositional and defiant behavior prior to coming into the Army.' He endorsed experiencing military combat, near-death experiences, and violent traumatic events as an adult. It was documented the applicant had multiple encounters with police when he was AWOL. His mental status examination noted that his mood was depressed and irritable and that his thought processes were not impaired. He was diagnosed with Adjustment Disorder with Depressed Mood and referred for medication management and individual psychotherapy. On 11 December 2007, the applicant had a BH follow-up. It was documented that the applicant reported a history of two Article 15s, one of which was for marijuana use prior to deployment in fall 2005. It was also documented that he reported having some sleep problems since returning from deployment and periodic nightmares. The provider noted the applicant stated he had a "great time" while AWOL but still had problems with anger which were documented to be long-standing. He was prescribed Trazodone for sleep. On 04 January 2008, at the time of his Chapter 14 separation evaluation, it was documented that the applicant 'didn't get along with [his] unit and left,' in reference to his going AWOL. It was documented the applicant reported experiencing mortar attacks and

direct gun fire during his deployment. The provider noted that the applicant denied experiencing symptoms consistent with PTSD and TBI at the time of the evaluation. The provider documented that the applicant had the mental capacity to understand and participate in proceedings, was mentally responsible, and was cleared for administrative actions deemed appropriate by his command. The applicant had his final in-service BH appointment on 10 January 2008. It was documented that the applicant reported his anger increased during his time in Iraq and continued to escalate upon his return from deployment, stating he had gotten into more fights than he had in his whole life. The applicant was not diagnosed with a BH condition at the time of the appointment but was noted that the applicant was 'encouraged to follow-up with VA and PTSD group.'

d. Per review of JLV, the applicant is 50% service-connected through the VA for Major Depressive Disorder (MDD). The applicant underwent a Compensation & Pension (C&P) examination for PTSD on 21 February 2009 and was re-evaluated on 04 November 2014. At the time of his initial evaluation in 2009, It was documented that the applicant stated his sergeant suggested he engage in illegal behaviors in order to get out of the Army after expressing to him that he desired to get out. Furthermore, the applicant informed the VA provider he felt "hounded" by his superiors because of his desire to get out and felt disrespected by them. Due to those experiences, the applicant reported he "snapped and left." At the time of the C&P examination, the applicant endorsed experiencing nightmares, waking up anxious and agitated, and as having intrusive thoughts about Iraq as well as having flashbacks and episodes of dissociation. He also endorsed experiencing hyperarousal symptoms (e.g., difficulty in crowds, trouble falling and staying asleep, increased irritability, feeling easily overwhelmed and overstimulated, and hypervigilance). Regarding avoidance symptoms, he reported avoiding talking about Iraq and also noted symptoms of alterations in cognitions and mood as experienced emotional detachment from others. In addition to PTSD symptoms, the applicant reported depressive symptoms to include sadness, low energy and motivation, as well as feelings of hopelessness. At the time of the evaluation, he denied having problems with alcohol and substance use. He was diagnosed with PTSD and Major Depressive Disorder. His diagnosis of PTSD was documented to be 'as likely as not related to his combat military experiences' and diagnosis of MDD was documented to be 'as likely as not related to his PTSD.' The provider documented that the applicant was encouraged to obtain psychiatric treatment for his symptoms of PTSD and depression and that his diagnoses require continuous medication. At the time of his re-evaluation in 2014, the applicant's diagnoses of PTSD and MDD were re-affirmed, with MDD being in partial remission. He was also diagnosed with Alcohol Use Disorder which was documented to be 'less likely as not caused or the result of any event in military service and is less likely or not secondary to PTSD.'

e. Regarding post-military BH treatment, the applicant was initially referred for BH treatment through the VA on 28 May 2008 and was evaluated on 23 June 2008. On 23 June 2008, it was documented that the applicant endorsed having depressive and

PTSD symptoms that were fairly well-controlled through self-medicating with alcohol and marijuana. It was documented that the applicant got a DUI in 2008, did not have a driver's license and needed to complete a program in order to get his license back. He was made aware of VA substance abuse programs and encouraged to complete an intake. It was noted the applicant was hesitant to decrease his self-medicating. On 25 May 2010, the applicant underwent an intake for substance abuse treatment due to being involved in Veteran's Court. The applicant engaged in individual and group substance abuse treatment and discontinued on 09 February 2011 after completing the requirements of drug court, for a total of 48 groups. His diagnosis at the time of discharge was Cannabis Dependence, Early, Fully Remission. He was referred for BH treatment on 09 June 2015 for PTSD. He re-engaged in substance abuse treatment on 14 May 2018 after being fired from his job due to testing positive for cannabis and documented that he needed to face the issues he had been avoiding with substances due to the impact substance use has had on his life. The applicant appeared to engage in BH treatment through the VA, primarily focused on substance use, on-and-off since first initiating treatment in 2008. The applicant does not appear to be currently engaged in BH treatment through the VA.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence that the applicant had a condition or experience in-service that mitigates his misconduct. The applicant diagnosed with Adjustment Disorder with Depressed Mood in-service. Following his return from deployment and prior to going AWOL, the applicant reported experiencing anger and hostility towards his unit, difficulty falling and staying asleep, and was drinking alcohol to the point of passing out. Subsequent to his discharge from the military, the applicant has been diagnosed with PTSD and Major Depressive Disorder through the VA, documented as service-connected and related to his combat military experiences. The applicant is 50% service-connected for Major Depressive Disorder through the VA.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with Adjustment Disorder with Depressed Mood in-service. Post-discharge, the applicant was diagnosed with PTSD and Major Depressive Disorder through the VA, documented to be connected to his service. He is 50% service connected through the VA for Major Depressive Disorder.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with Adjustment Disorder with Depressed Mood in-service. Post-discharge, the applicant was diagnosed with PTSD and Major Depressive Disorder through the VA, documented to be connected to his service. He is 50% service connected through the VA for Major Depressive Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was diagnosed with Adjustment Disorder with Depressed Mood in-service. Following his deployment and prior to going AWOL, it was documented that the applicant was experiencing problems with irritability, sleep, and alcohol use to the point of passing out. Since being discharged from the military, he has been diagnosed with PTSD and Major Depressive Disorder through the VA which were documented to be related to his military service and is 50% service-connected for Major Depressive Disorder. There is evidence in the applicant's medical record that he endorsed experiencing symptoms consistent with depression and PTSD in-service. As there is an association between avoidance behaviors, going AWOL, and self-medicating with substances, there is a nexus between the applicant's diagnoses of PTSD and MDD and the circumstances that led to his misconduct. As such, BH mitigation is supported.

#### BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.
2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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 evidence of record shows the applicant committed a serious misconduct (AWOL and use of marijuana). As a result, his chain of command initiated separation action against him for misconduct and he was separated with a general, under honorable conditions discharge. The Board found no error or injustice in his separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's determination finding sufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. Based on this finding, the Board determined that an honorable characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board further determined that such upgrade did not change the underlying reason for his separation and thus the narrative reason for separation and corresponding codes should not change.

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 a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant DD Form 214 for the period ending 17 March 2008 as follows:

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

9/9/2024

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 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 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.

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

a. Chapter 14 of the regulation deals with separation for various types of misconduct, which includes drug abuse and provides that individuals identified as drug abusers may be separated prior to their normal expiration of term of service. First time drug offenders in the grade of sergeant and above, and all Soldiers with three years or more of total military service, active and reserve, will be processed for separation upon discovery of a drug offense. All Soldiers must be processed for separation after a second offense.

b. Paragraph 3-7a (Honorable Discharge) an honorable discharge is a separation with honor. 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 (General Discharge) 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. 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//