

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 February 2024

DOCKET NUMBER: AR20230008310

APPLICANT REQUESTS:

- an upgrade of his Under Honorable Conditions (general) discharge to an Honorable discharge
- the narrative reason for discharge be changed to an unspecified, presumably more favorable reason
- to be entered into the Army Wounded Warrior Program (WWP) and the opportunity to receive a rating from the Integrated Disability Evaluation System (IDES)
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his deployments and decorations received while in service
- to appear in person before the Board at his own expense

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Certificates of Achievement (6)
- Certificates of Appreciation (2)
- Documentation for award of the Army Achievement Medal (AAM) (2)
- Scrolls of Appreciation (2)
- Documentation for award of the North Atlantic Treaty Organization (NATO) Medal (2)
- Certificate of Service
- Orders for award of the Army Good Conduct Medal (AGCM)
- Documentation for award of the Army Commendation Medal (ARCOM) (2)
- Deployment orders (2)
- Temporary Duty (TDY) Orders
- Medical Evacuation orders
- Permanent Change of Station (PCS) Orders (2)
- Red Cross message
- Blue Bark reassignment guidance
- Promotion Orders

- Documents pertaining to duty status changes (4)
- DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ))
- Department of Veterans Affairs (VA) Certificate of Completion
- Award of Recognition
- Black Belt Certificate
- Letter from VA

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 believes his discharge was inequitable because it was based on an incident that happened while he was severely depressed and stressed from trauma. The trauma was a direct result of combat-related post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI), for which he did not receive the proper treatment; especially after completing multiple deployments prior to his discharge. He attributes the actions that caused his discharge from service to the lack of proper diagnoses and treatment of his condition at the time. It was indeed his first and only offense. He believes he should have been considered for the WWP while he was on active duty, as that was the standard at the time.
3. The applicant enlisted in the Regular Army on 30 August 1995 for a period of 4 years in the rank/pay grade of private/E-1.
4. Permanent Orders 275-14, issued by Headquarters, 94th Engineer Combat Battalion (Heavy) on 1 October 1996, show the applicant was awarded the AAM for exceptionally meritorious achievement during Operation Joint Endeavor.
5. A NATO Certificate shows the applicant was awarded the NATO Medal for service with NATO on operations in relation to the former Yugoslavia from 11 March 1996 to 27 November 1996.
6. Permanent Orders 279-015, issued by Detachment D, 38th Personnel Service Battalion on 6 October 1998, show he was awarded the AGCM (First Award) for exemplary behavior, efficiency, and fidelity from 30 August 1995 to 29 August 1998.
7. The applicant reenlisted for a period of 2 years on 4 October 1998.

8. A DA Form 638 (Recommendation for Award) shows the applicant was recommended for award of the ARCOM for exceptionally meritorious achievement from 22 July 1998 to 22 November 1998. However, this recommendation was downgraded by the approval authority, and he was awarded the AAM by Permanent Orders 312-04, issued by Headquarters, 20th Engineer Battalion on 8 November 1998.
9. A NATO Certificate shows the applicant was awarded the NATO Medal for service with NATO on operations in relation to Kosovo from 23 September 1999 to 6 November 1999.
10. The applicant reenlisted for a period of 4 years on 13 March 2000.
11. Permanent Orders 246-2, issued by Headquarters, 130th Engineer Brigade on 3 September 2002, show the applicant was awarded the ARCOM for exceptional meritorious service while assigned as Squad Leader from 14 February 1996 to 15 September 2002.
12. The applicant reenlisted for a period of 5 years on 31 December 2004.
13. Permanent Orders D322-053, issued by Headquarters, 25th Infantry Division (Light) and U.S. Army, HI, Schofield Barracks, HI on 13 November 2005, show the applicant was awarded the Combat Action Badge for service while deployed to Iraq for Operation Iraqi Freedom II from 1 January 2004 to 1 January 2005 for being subjected to enemy mortar fire on a daily basis at Logistic Support Activity Anaconda.
14. The applicant was promoted to the rank/pay grade of staff sergeant (SSG)/E-6 on 1 June 2005.
15. Permanent Order 242-05, issued by Headquarters, 84th Engineer Combat Battalion (Heavy), LSA Anaconda, Iraq on 30 August 2006, show the applicant was awarded the Drivers Badge with Wheeled Vehicle Clasp for the period of service from 1 July 2005 to 1 July 2006.
16. Permanent Orders 250-045, issued by Headquarters, 130th Engineer Brigade on 7 September 2006, show the applicant was awarded the ARCOM for distinguished and meritorious service in support of Operation Iraqi Freedom from 10 December 2005 to 29 November 2006.
17. The applicant's record is void of complete 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 14-12c(1), for Misconduct (Desertion). However:

- a. His duty status was changed from Present for Duty (PDY) to Absent Without Leave (AWOL) effective 1 August 2007.
- b. His duty status was changed from AWOL to Dropped from Rolls (DFR) effective 31 August 2007 and he was reported as a deserter.
- c. He surrendered to military authorities and was returned to military control effective 7 November 2007. As a result, his duty status was changed from DFR to PDY.
- d. The applicant accepted nonjudicial punishment under the provisions of Article 15, UCMJ on 20 February 2008, for on or about 0445 hours, 16 July 2007, without authority, absenting himself from his place of duty and remaining so absent until on or about 0800 hours, 16 July 2007; and on or about 1400 hours, 1 August 2007, without authority, absenting himself from his unit and remaining so absent until on or about 1316 hours, 7 November 2007. His punishment consisted of reduction from SSG/E-6 to sergeant (SGT)/E-5 and forfeiture of \$1,361.00 per month for two months.
- e. His DA Form 2166-8 (Noncommissioned Officer Evaluation Report) rendered for the period from 1 March 2007 through 29 February 2008 shows his rater indicated he failed to uphold all but one of the Army Values by failing to do what is right legally and morally by going AWOL, lacking personal courage, and not dealing with adversity appropriately. His rater also indicated he needed much improvement in the areas of physical fitness, responsibility, and accountability. His rater rated his overall potential for promotion and/or service in positions of greater responsibility as marginal. His senior rater recommended that he not be promoted, sent to schools, or retained for future service. His senior rater rated both his overall performance and potential as poor.

18. The applicant's DD Form 214 shows he was discharged on 18 April 2008 in the rank/grade of SGT/E-5, under the provisions of Army Regulation 635-200, Paragraph 14-12c(12), due to Misconduct (Desertion) with Separation Code "JKF" and Reentry Eligibility Code "3." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 12 years, 4 months, and 13 days of net active service. He was credited with continuous honorable service from 30 August 1995 to 30 December 2004. He completed his first full term of service.

- a. He was credited with the following deployments:
 - Bosnia from 11 March 1996 to 27 November 1996
 - Iraq from 21 January 2004 to 20 January 2005
 - Iraq from 8 December 2005 to 3 December 2006

b. He was awarded or authorized the:

- ARCOM (2nd Award)
- AAM (2nd Award)
- Army Superior Unit Award
- AGCM
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal
- NATO Medal
- Driver and Mechanic Badge with Wheeled Vehicle Clasp

19. Although Permanent Orders show the applicant was awarded the Combat Action Badge for service while deployed to Iraq for Operation Iraqi Freedom II, it is not reflected on his DD Form 214 [see Administrative Notes below].

20. 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.

21. In addition to the previously discussed evidence, the applicant provides the following:

a. Six Certificates of Achievement and two Certificates of Appreciation awarded to him for achievements in the performance of his duties.

b. Two Scrolls of Appreciation and a Certificate of Service presented to him for his service in support of Operation Joint Endeavor in the Former Republic of Yugoslavia (Bosnia-Herzegovina).

c. Two Permanent Orders showing he was deployed with his unit in support of Operation Iraqi Freedom to Iraq in a Temporary Change of Station status from on or about:

- 4 June 2004 for a period of 365 days or until mission completed
- 8 December 2005 for a period of 365 days or until mission completed

d. TDY Orders that show he was authorized to travel in support of Operation Provide Hope and that he was directed to wear civilian clothing for the duration of his travel.

e. Letter Order Number 233-02, issued by U.S. Army Medical Activity Wuerzburg, Germany on 21 August 2002, that show the applicant and his family were authorized to travel through the Air Evacuation system from Vilseck, Germany to Walter Reed Army Medical Center, Washington, DC on or about 23 August 2002, so one of his daughters could receive required medical care and/or consultation.

f. Permanent PCS orders showing he was reassigned from Germany to Schofield Barracks, HI, with a reporting dated of 20 November 2002.

g. A Red Cross message, memorandum, DA Form 31 (Request and Authority for Leave), and Blue Bark reassignment guidance that show the applicant was authorized emergency leave to travel from Iraq to Honolulu, HI, due to the unexpected death of his daughter on 1 July 2004.

h. A VA, Sacramento Medical Center certificate that shows the applicant successfully completed the Treatment Program.

i. An Award of Recognition presented to the applicant in recognition of his dedicated service with the Army and community by the Mayor of Honolulu, HI, on 3 November 2011.

j. A certificate showing the applicant is authorized to hold the rank of Black Belt according to the rules and regulations established by the International Brazilian Jiu-Jitsu Federation, dated 12 June 2021.

k. A VA letter, dated 5 September 2023, which shows the applicant is receiving service-connected disability compensation from the VA based upon a combined evaluation of 100 percent.

22. Army Regulation 635-5 (Separation Documents), in effect at the time, provided that only federally recognized awards and decorations are entered on the DD Form 214.

23. 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. An applicant is not entitled to a hearing before the Board. Hearings may be authorized by a panel of the Board or by the Director of the ABCMR.

24. 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.

25. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge and to be referred to the Integrated Disability Evaluation System (IDES). He contends he had mental health conditions including PTSD and a traumatic brain injury (TBI) that mitigated his misconduct.

b. 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 into the Regular Army on 30 August 1995; 2) The applicant deployed multiple times to include one deployment to Bosnia (March- November 1996) and two deployments to Iraq (2004-2005 and 2005-2006); 3) The applicant accepted nonjudicial punishment on 20 February 2008 for going AWOL from 16 July-1 August 2007; 4) The applicant was discharged on 18 April 2008 in the rank/grade of SGT/E-5, under the provisions of Army Regulation 635-200, Paragraph 14-12c(12), due to Misconduct (Desertion) with Separation Code "JKF" and Reentry Eligibility Code "3." His service was characterized as Under Honorable Conditions (General).

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed the supporting documents and the applicant's military service records. The Armed Forces Health Longitudinal Technology Application (AHLTA) and the VA's Joint Legacy Viewer (JLV) were also examined.

d. The applicant asserts he was experiencing mental health conditions including PTSD and a TBI as a result of his multiple deployments. There is sufficient evidence the applicant reported mental health symptoms related to grief to the loss of his daughter. She was only two years old, and she was diagnosed with a terminal condition. The applicant was deployed to Iraq a second time, despite her current condition. His daughter passed away only a few weeks after he left. After returning from that deployment, he was diagnosed with bereavement and grief. Also in July 2007, the applicant was diagnosed with PTSD as the result of his multiple combat deployments. The applicant was not admitted to inpatient psychiatric care or was placed on a psychiatric profile while on active service. The applicant was consistently reported to be deployable from a behavioral health perspective, and there was insufficient evidence that he did not meet medical retention standards from a behavioral health perspective. On 18 March 2008, the applicant underwent a mental status evaluation as part of his separation proceedings. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command. A review of JLV shows the applicant has been diagnosed and treated for service-connected PTSD since 2008 and

TBI since 2009. The applicant has been found to be 100% disabled for his combined physical and mental health conditions.

e. Based on the available information, it is the opinion of the Agency BH Advisor that the applicant had mitigating behavioral health conditions including PTSD and TBI. However, there is insufficient evidence the applicant warrants a referral to IDES from a behavioral health perspective at this time.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with bereavement/grief and PTSD while on active service. He later was diagnosed with service-connected PTSD and TBI by the VA due to his experiences during his deployments.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with bereavement and PTSD while on active service. He later was diagnosed with service-connected PTSD and TBI by the VA due to his experiences during his deployments.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes, there is a nexus between PTSD and avoidant behavior such as going AWOL. Therefore, in accordance with Liberal Consideration, the applicant's misconduct after his third combat deployment and the death of his daughter is mitigatable. It is also recommended the narrative reason for his separation be amended. However, at this time, there is insufficient evidence the applicant warrants a referral to IDES from a behavioral health perspective.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. The Board carefully considered the applicant's request, supporting documents, 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 to include deployment, the frequency and nature of his misconduct and the reason for his separation. The Board considered the applicant's PTSD and TBI claim and the review and conclusions of the ARBA BH Advisor.

3. The Board concurred with the conclusion of the ARBA BH Advisor that the evidence does not indicate the applicant had any conditions prior to his discharge that would have warranted his referral to the Disability Evaluation System. The Board found the evidence also does not indicate there was a basis for entering him into the WWP.

4. The Board further concurred with the conclusion of the ARBA BH Advisor that the applicant did have a condition that mitigated the misconduct that led to his discharge. Based on a preponderance of the evidence, the Board determined the applicant’s record should be corrected to show his character of service as honorable and the reason for his separation as Secretarial authority.

5. With the exception of the badge addressed in Administrative Note(s) below, the Board found the applicant’s awards were properly recorded on his DD Form 214. The Board also noted no additional combat deployments other than those already shown on his DD Form 214.

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:

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 his DD Form 214 to show the following entries and incorporate the correction described in Administrative Note(s) below:

- Block 24 – Honorable
- Block 25 – AR 635-200
- Block 26 – JFF
- Block 28 – Secretarial authority

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 relief in excess of that described above.

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.

ADMINISTRATIVE NOTES: The applicant's DD Form 214 is missing an badge he was awarded for his combat service. Please ensure the reissued DD Form 214 includes his award of the Combat Action Badge.

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 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. The ABCMR may, in its discretion, hold a hearing. 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.

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. Army Regulation 635-5 (Separation Documents), in effect at the time, stated to list federally recognized awards and decorations for all periods of service in the priority sequence specified in Army Regulation 600-8-22. Army Regulation 600-8-22 gives the order of precedence for awards and decorations. Only decorations, medals, and ribbons are listed. Certificates of achievement, letters of appreciation, and similar documents are not listed.

6. 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.

7. 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//