

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 April 2024

DOCKET NUMBER: AR20230008404

APPLICANT REQUESTS:

- a. reconsideration of the following previous requests:
 - an upgrade of his under honorable conditions (general) characterization of service to honorable
 - a change to his separation authority and reentry eligibility (RE) code to a less stigmatizing authority
 - his narrative reason for separation be changed to Secretarial Authority
 - issuance of an Honorable Discharge Certificate
- b. 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)
- Legal Brief (20 pages) with exhibits (51 pages), undated
- Exhibit 1 – DD Form 214 (Certificate of Release or Discharge from Active Duty), 10 June 2003
- Exhibit 2 – Enlistment contract (2 pages), 18 June 1997
- Exhibit 3 – Montgomery GI Bill Army college fund (2 pages), 12 September 1996
- Exhibit 4 – Service and promotions record, undated
- Exhibit 5 – Certificate of Completion, 30 June 1997 to 9 October 1997
- Exhibit 6 – Army Achievement Medal, 8 March 1998
- Exhibit 7 – Certificate of Completion, 16 October 1998
- Exhibit 8 – Certificate of Achievement, 26 January 1999
- Exhibit 9 – Army Achievement Medal, 29 January 1999
- Exhibit 10 – Special Forces Qualification Certificate, 15 April 1999
- Exhibit 11 – 1999 reenlistment, 30 June 1999
- Exhibit 12 – Qualified for reenlistment, 18 June 1999
- Exhibit 13 – 1999 reenlistment, 30 June 1999
- Exhibit 14 – Special Forces Sergeant Graduate Certificate, 19 May 2000

- Exhibit 15 – Special Forces Sergeant, 19 May 2000
- Exhibit 16 – Spanish competency course, 13 October 2000
- Exhibit 17 – Noncommissioned Officer (NCO) Graduate Certificate, 19 May 2000
- Exhibit 18 – Sergeant (SGT) promotion, 14 March 2000
- Exhibit 19 – Survival, Evasion, Resistance, and Escape (SERE) Graduate Certificate, 2 February 2001
- Exhibit 20 – Parachutist badge, 21 August 2001
- Exhibit 21 – Staff Sergeant Promotion, 28 November 2001
- Exhibit 22 – NCO evaluation (2 pages), 1 November 2001
- Exhibit 23 – NCO evaluation (2 pages), 1 July 2002
- Exhibit 24 – Non-judicial Punishment (NJP) statement and Article 15 record of proceedings (3 pages), 11 January 2003 and 17 January 2003 and 9 March 2003
- Exhibit 25 – M.C., friend, obituary, 2 March 2003
- Exhibit 26 – C.R., mother, obituary, 20 December 2003
- Exhibit 27 – statement – S.S. (E-7) (2 pages), 7 March 2003
- Exhibit 28 – statement – J.C. (E-7) (2 pages), 13 March 2003
- Exhibit 29 – statement – M.S. (E-5), 13 March 2003
- Exhibit 30 – Operation Report (OPREP) – Captain G., 7 March 2003
- Exhibit 31 – Article 15 Record of Proceedings (2 pages), 11 March 2003
- Exhibit 32 – statement – S.C. (O-3), 7 March 2003
- Exhibit 33 – statement – Applicant (2 pages), 23 March 2003
- Exhibit 34 – Department of Veterans Affairs (VA) post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI) diagnosis letter, Applicant, 24 July 2021
- Exhibit 35 – Attorney letter (2 pages), 12 March 2003
- Exhibit 36 – orders, Applicant, 31 March 2003
- Exhibit 37 – recommendation for administrative separation, undated
- Exhibit 38 – discharge order – Applicant, 9 June 2003
- Exhibit 39 – letter of recommendation for honorable discharge, not provided
- Exhibit 40 – letter of recommendation for honorable discharge, not provided

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Dockets Number AR20190008820 on 20 January 2022 and AR20220008616 on 17 April 2023.

2. Counsel states, in pertinent part:

a. The applicant was an outstanding, highly trained, Army Special Forces Soldier who served a three-year enlistment and then reenlisted for an additional three years

before being unjustly separated by an overzealous commander for alleged minor misconduct after nearly six years of service. He deployed overseas to the countries of El Salvador and Columbia before serving in combat in Afghanistan, in 2002-during which time he developed PTSD and TBI. In 2021, the VA concluded that the applicant's PTSD and TBI were service-connected, and he now receives benefits and healthcare from the VA as a result of his injuries.

b. The applicant was unjustly given a general discharge and separated for severe misconduct when the record clearly shows that the applicant deserves an honorable discharge and clean DD Form 214 as proof of his two enlistments and combat deployment to Afghanistan, which caused him to now suffer from PTSD and TBI.

c. After he was unjustly forced from the Army in his second enlistment, he continued proudly serving his nation as a contractor, deploying back to Iraq and Afghanistan for combat eighteen times. From 2004 through 2017, he put his country first and used the skills he acquired in the Army to train Iraq troops and implement Department of Defense contracts. His post-service conduct is commendable and concretely proves his dedication to America, the high quality of his character, and six years of service from 1997 until 2003.

d. The applicant suffers from service-connected PTSD & TBI, as diagnosed by the VA, which impacted, and thereby mitigates, his thought processes at the time of his alleged infractions and administrative separation; pursuant to the Hagel, Kurta, and Wilkie directives, special and liberal consideration applies to his PTSD/TBI diagnosis and petition. In Afghanistan, he was involved in numerous gun fights and explosion incidents which caused him to develop PTSD and TBI.

e. The applicant's petition sets forth the fundamental reasons why he is ultimately entitled to an honorable discharge for his service to his nation. It shows that the Army ignored key exculpatory evidence and Army regulations and that no consideration was ever given to the applicant's personal or mental health issues, for which the Army failed to screen him. The complete legal brief in its entirety is available for the Boards review with the supporting documents.

3. The applicant enlisted in the Regular Army on 18 June 1997, he reenlisted on 30 June 1999 for 4 years. The highest rank/grade he held was staff sergeant/E-6.

4. He served in Afghanistan from 20 September 2002 through 3 March 2003.

5. He accepted NJP under Article 15 of the Uniform Code of Military Justice on 17 January 2003 for:

a. Disobeying a lawful order from a senior noncommissioned officer, on or about 7 November 2002.

b. Violating a lawful general policy, on or between 7 November 2002 and 9 November 2002, by using his Government Travel Card for purchases not related to official travel.

c. Making a false a false official statement with intent to deceive, on or about 11 January 2003.

d. His punishment consisted of reduction to sergeant/E-5, forfeiture of \$951.00 pay per month for 2 months (both suspended, to automatically remitted if not vacated before 16 July 2003), and extra duty for 45 days. On 9 March 2003, the suspended punishment was vacated for violation of a lawful order from a superior commissioned officer on or about 7 March 2003.

6. On 8 April 2003, the applicant's immediate commander notified the applicant of his intent to initiate action to separate him from service under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), Chapter 14 (Separation for Misconduct), paragraph 14-12c for commission of a serious offense.

7. On the same date, the applicant acknowledged receipt of his commander's notification. He consulted with counsel and was advised of the reason for separation and the rights available to him. He understood if he was issued a general discharge, he may encounter substantial prejudice in civilian life. He elected to submit statements in his own behalf; however, statements if submitted are not available in the record.

8. The applicant's chain of command recommended the applicant's separation from the service, under the provisions of Army Regulation 635-200, paragraph 14-12c, and recommended the issuance of a general discharge.

9. The separation authority approved the recommended discharge and directed the issuance of a General Discharge Certificate.

10. The applicant was discharged accordingly on 10 June 2003, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of misconduct, with a under honorable conditions (general) characterization of service in the grade of E-5. He received a separation code of "JKQ" and reentry code "3." His DD Form 214 contains the following entries:

a. He completed 5 years, 11 months, and 19 days of net active service with 1 year and 22 days of foreign service during the period covered.

b. Block 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) the entries:

- Army Commendation Medal
- Army Achievement Medal (2nd Award)
- National Defense Service Medal
- Armed Forces Expeditionary Medal
- Noncommissioned Officers Professional Development Ribbon (2nd Award)
- Combat Infantryman Badge
- Parachutist Badge
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)

c. Block 18 (Remarks) the entries:

- continuous honorable active service from 18 June 1997 thru 29 June 1999
- immediate reenlistment this period from 18 June 1997 thru 29 June 1999

d. Block 29 (Dates of Time Lost During This Period), the entry 6 March 2003 thru 9 March 2003.

11. As new evidence, counsel provides one photo of a man in his service dress uniform and one photo of a group of men in ghillie suits and camouflage utility uniforms. Additionally, Counsel lists two letters of recommendation for honorable discharge (Exhibits 39 and 40) as new evidence submitted in support of the applicant's request. However, the two letters of recommendation were not provided.

12. The ABCMR considered the applicant's request for an upgrade of his under honorable conditions (general) discharge on 20 January 2022 and 17 April 2023. After reviewing the applications and all supporting documents, the Board determined relief was not warranted. The Board found the evidence presented did not demonstrate the existence of a probable error or injustice as a basis for correction of the applicant's records.

13. On 30 March 2022, the applicant was issued a DD Form 215 (Correction of DD Form 214) reflecting the addition of the Afghanistan Campaign Medal with one bronze service star and the Global War on Terrorism Service Medal to block 13 of his DD Form 214.

14. Regulatory guidance in effect at the time provided a discharge under other than honorable conditions was normally considered appropriate for Soldier's discharged under the provisions of Army Regulation 635-200, Chapter 14. However, the separation authority could direct a general discharge if such were merited by the Soldier's overall

record. Additionally, the established RE code for Soldiers separated under this authority and for this reason is RE code 3.

15. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

MEDICAL REVIEW:

1. The applicant is applying to the ABCMR for reconsideration of his previous request to change his discharge status and update his DD214. He asserts he was experiencing PTSD and a traumatic brain injury (TBI) that mitigates his misconduct.

2. 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 18 June 1997; 2) The applicant was deployed to Afghanistan in 2003 to an active combat zone; 3) On 17 January 2003, the applicant accepted nonjudicial punishment for disobeying a lawful order from a senior NCO by using his government travel card for purchases not related to official travel, and with intent to deceive, made a false official statement; 4) The applicant was discharged on 10 June 2003, Chapter 14-12c-commission of a serious offense. He received a general under honorable discharge.

3. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service records. The VA's Joint Legacy Viewer (JLV) was also examined. Please refer to the earlier behavioral health opine in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20220008616 on 17 April 2023. The additional evidence presented in this application was reviewed, and there is insufficient evidence presented which alters the previous opine, which is provided to the Board below:

a. The applicant is applying to the ABCMR for reconsideration of his previous request to change his discharge status and update his DD214. He asserts he was experiencing PTSD and a traumatic brain injury (TBI) that mitigates 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 in the Regular Army on 18 June 1997; 2) The applicant was deployed to Afghanistan in 2003 to an active combat zone; 3) On 17 January 2003, the applicant accepted nonjudicial punishment for disobeying a lawful order from a senior NCO by using his government travel card for

purchases not related to official travel, and with intent to deceive, made a false official statement; 4) The applicant was discharged on 10 June 2003, Chapter 14-12c-commission of a serious offense. He received a general under honorable discharge; 5) The ABCMR denied the applicant's request for an upgrade of his discharge on 6 April 2022.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service records. The VA's Joint Legacy Viewer (JLV) was also examined.

d. The applicant asserts PTSD and TBI were contributing and mitigating factors to his misconduct. There is insufficient evidence the applicant was diagnosed or treated for a mental health condition or a traumatic brain injury while on active service. The applicant reports being exposed to active combat and incurred a traumatic brain injury. This is highly probable due to his deployment to a kinetic combat environment, and there was likely a lack of robust medical documentation available at that time. A review of JLV provided evidence that applicant has been diagnosed with migraines, anxiety disorder, and PTSD. He also 40% receives service-connected disability for a traumatic brain injury with post-traumatic stress disorder (claimed as depression and sleep disorder). In addition, he receives 50% service-connected disability for migraine headaches.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had condition or experience that mitigates his discharge.

Kurta Questions

A. Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he was experiencing PTSD and a TBI that contributed to his misconduct, and he provided sufficient evidence he was exposed to a significant active combat environment and was diagnosed with resultant PTSD and a TBI.

B. Did the condition exist, or experience occur during military service? Yes, the applicant contends he experienced PTSD and a TBI while on active service. In addition, the applicant has been awarded service-connect disability from the VA for injuries related to PTSD and a TBI for his actions during combat while on active service.

C. Does the condition or experience actually excuse or mitigate the discharge? No, the applicant has clear and sufficient evidence that he has been

diagnosed with PTSD and TBI related to his experiences in combat. Per the Liberal Consideration Policy, his contention alone of a mental health condition is sufficient for consideration. However, there is no nexus between PTSD and TBI and the applicant's misconduct of wrongful use of a government credit card and making a false official statement. The applicant's mental health conditions do not mitigate this misconduct, because these 1) types of misconduct are not part of the natural history or sequelae of PTSD and TBI; 2) they do not affect one's ability to distinguish right from wrong and act in accordance with the right.

BOARD DISCUSSION:

1. The applicant and counsel's contentions, the military record, and the regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, and the Board's previous considerations as promulgated in ABCMR set forth in Dockets Number AR20190008820, dated 20 January 2022, and AR20220008616, dated 17 April 2023; the Board found relief was not warranted.
2. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant and his counsel 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.
3. The ARBA Medical Advisor previously reviewed this case during the applicant's consideration in AR20220008616, dated 17 April 2023. The medical opinion from this consideration states, in part, "Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had condition or experience that mitigates his discharge... there is no nexus between PTSD and TBI and the applicant's misconduct of wrongful use of a government credit card and making a false official statement. The applicant's mental health conditions do not mitigate this misconduct, because these 1) types of misconduct are not part of the natural history or sequelae of PTSD and TBI; 2) they do not affect one's ability to distinguish right from wrong and act in accordance with the right."
4. The ARBA Medical Advisor conducted a new review of the applicant's medical records and the previous consideration. The medical advisor determined the additional evidence presented in this application was reviewed, and there is insufficient evidence presented which alters the previous opinion. The Board concurs with the ARBA Medical Advisor.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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 to amend decision of the ABCMR set forth in Dockets Number AR20190008820, dated 20 January 2022, and AR20220008616, dated 17 April 2023.

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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 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by 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.
2. Army Regulation 15-185 (ABCMR) states 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 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.
 - RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
 - RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
 - RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable – they are ineligible unless a waiver is granted
 - RE code "4" applies to Soldiers separated from their last period of service with a non-waivable disqualification
4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. It states that the separation code "JKQ" is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c, misconduct.
5. Army Regulation 635-200, sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - a. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. 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 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.

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.

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 PTSD; TBI; 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, 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.

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//