

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 October 2024

DOCKET NUMBER: AR20230008497

APPLICANT REQUESTS: in effect,

- an upgrade of his under honorable conditions (general) discharge to an honorable discharge
- that the narrative reason and corresponding Separation Program Designator (SPD) code for his separation be changed to show he was medically retired
- to be compensated based upon a disability rating of 100 percent
- to appear before the Board in person.

APPLICANT'S SUPPORTING DOCUMENT CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Self-authored statements (2)
- Character reference statements (10)

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 provides two self-authored statements that are available in their entirety for the Board's consideration. The applicant states, in part, he was forced to leave the military because he let his yet to be diagnosed post-traumatic stress disorder (PTSD) get the best of him and result in him being charged with driving while intoxicated (DWI).

a. He had struggled since his first combat deployment in 2009. He reached out to military doctors multiple times for all of his injuries including, ankle, knee, back, and PTSD, and was basically given Ibuprofen told to suck it up and walk it off.

b. He was called derogatory names by his team and noncommissioned officers (NCOs). This ultimately led him to not getting the help that he needed when he returned from his second combat deployment. He went out, drank himself silly and crashed his car. He was arrested for DWI which led him down a path of vengeance from his leaders. He was told on multiple occasions that it was not what he did, but when he did it; because he was the first to get into trouble after redeploying and he was going to be made an example of. This led to him being separated from the Army with a discharge UOTHC.

c. After receiving his DWI, he continued trying to get the help that he wanted. They could not get rid of him while he was to get the help he had sought for years, and this frustrated his chain of command. He was threatened, criticized, mocked in front of big groups, and embarrassed by making him stand in front of multiple Soldiers as an example of "a failure." At one point, his NCOs started telling him that if he continued to seek medical attention, he would most likely receive a dishonorable discharge and could lose everything. His NCOs told him to just sign the separation documents and get on with his life. He was encouraged to accept the UOTHC discharge and deal with the Department of Veterans Affairs (VA) to be medically retired and receive compensation.

d. Following his discharge, he learned that civilian life was just as hard as Army life. Working these past 8 years has been a struggle. He has been both a successful manager and a failure. Ultimately, his brain always gets the best of him and causes him anger, depression, and anxiety. He is always on the defensive and frequently needs to call in sick because he got no sleep the night before.

e. He is physically and mentally exhausted and wants this wrong to be right. He is seeking an honorable discharge and to be medically retired with 100 percent disability compensation like he should have originally been. This has almost cost him his marriage, many friendships, and several jobs.

f. He indicated on his application that PTSD and other mental health conditions are related to his request.

3. The applicant enlisted in the Regular Army on 6 May 2008 for a period of 3 years and 16 weeks in the rank/pay grade of private first class (PFC)/E-3. Upon completion of initial entry training, he was awarded military occupational specialty 11B (Infantryman) and assigned to a unit at Fort Hood, TX.

4. The applicant's Enlisted Record Brief shows he was advance to the rank/pay grade of specialist (SPC)/E-4 on 6 May 2010, and that was the highest rank he attained while serving.

5. On 24 February 2011, the applicant reenlisted for a period of 5 years.

6. The applicant's record is void of documentation showing the facts and circumstances regarding his administrative separation. However, a Headquarters, 3rd Brigade Combat Team, 1st Cavalry Division, Fort Hood, TX memorandum shows the applicant's brigade-level commander approved the recommendation for his discharge under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, paragraph 14-12c, for Misconduct, Commission of a Serious Offense, with the issuance of a General, Under Honorable Conditions, Discharge certificate.

7. Orders and the applicant's DD Form 214 show he was involuntarily discharged from active duty on 19 June 2012 in the rank/grade of SPC/E-4, under the provisions of Army Regulation 635-200, Paragraph 14-12c, due to Misconduct (Serious Offense) with Separation Code "JKQ" and Reentry Eligibility Code "3." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 4 years, 1 month, and 14 days of net active service. He had no time lost. He had continuous honorable active service from 6 May 2008 until 23 February 2011. He completed his first full term of service. His decorations, medals, badges, citations and campaign ribbons include the:

- Iraq Campaign Medal with three campaign stars
- Army Commendation Medal (2nd Award)
- Army Achievement Medal
- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon
- Overseas Service Ribbon (2nd Award)
- Combat Infantryman Badge
- Driver and Mechanic Badge with Driver-Wheeled Vehicle(s) Clasp

8. The applicant provides 10 character reference statements that are available in their entirety for the Board's consideration. The authors of these statements rendered favorable comments pertaining to the applicant's intelligence, ambition, love of family, honesty and work ethic. Those who knew him prior to his deployments commented on how his personality changed following his discharge.

9. 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.

10. 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.

11. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition. By regulation, 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.

12. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service to honorable and is seeking disability compensation. He contends he experienced PTSD and Other Mental Health Issues that mitigates his misconduct. Specifically, the applicant contends that he was self-medicating with alcohol due to PTSD that led to the 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 06 May 2008, completed two combat tours in Iraq, and completed his first full-term of service earning several awards, medals, badges, citations and campaign ribbons, 2) The applicant's record is void of documentation showing the facts and circumstances regarding his administrative separation, 3) his DD 214 shows he was involuntarily discharged on 19 June 2012 under the provisions of Army Regulation (AR) 635-200, Chapter 14, paragraph 14-12c for Misconduct, Commission of Serious offense, 4) asserts he had difficulties since 2009 after his first combat deployment and despite seeking assistance from doctors for his injuries and mental health concerns was not provided adequate treatment, and 5) has continued to struggle with his mental health since being discharged from the military which has impacted his occupational functioning.

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 examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. While in-service, the applicant appears to have first self-referred for behavioral health (BH) treatment in September 2010 due to problems with anger, difficulty sleeping, increased irritability and increased arousal. It was documented at that time that the applicant did not drink alcohol often but when he did it was often in excess. His PTSD Checklist (PCL) at the time was 48 (a positive score for military populations is 50 for this measure). The applicant was diagnosed with Adjustment Disorder with Disturbance of Emotions and was referred for psychotherapy off-post. It was later

documented that the applicant reported he attended treatment for 8 weeks and was only slightly helpful. He discontinued treatment.

d. The applicant was medically treated following a motor vehicle accident that occurred on 24 November 2011. The applicant was subsequently referred to the Army Substance Abuse Program (ASAP) and completed the two-day ADAPT program. It was noted that the applicant's 1SG reported there were no other incidents of this nature with the applicant and that this incident was 'a surprise to the unit.'

e. In January 2012, the applicant presented to BH for a Chapter 14-12 evaluation due to the DUI that occurred on 24 November 2011. It was noted that the applicant reported experiencing irritability, emotional lability, hypervigilance, difficulty sleeping, unwanted memories of his deployment, loss of interest in activities, socially withdrawn and decreased libido. He was diagnosed with Alcohol Abuse and Adjustment Disorder with Disturbance of Emotions and Conduct, was not cleared due to a need to rule out PTSD and mTBI and was referred for treatment. In February 2012, the applicant was diagnosed with Anxiety Disorder Not Otherwise Specified (NOS) and later changed to PTSD. He was prescribed Sertraline (Zoloft) in March 2012. He appeared to undergo treatment for PTSD from February through May 2012. On May 11, 2012, the applicant underwent a mental status examination as part of his Chapter 14-12 separation. The applicant was diagnosed with Anxiety Disorder NOS, documented that he no longer met criteria for PTSD, and was cleared for administrative separation.

f. Per review of JLV, the applicant is 100% service-connected (SC) through the VA for Posttraumatic Stress Disorder (PTSD). The compensation and pension (C&P) examination noted an index stressor that would meet Criterion A that occurred during basic training. It also noted that he served two combat tours.

g. Character letters provided by the applicant note continued episodes of irritability that have impacted him in the workplace. The applicant's self-statement also indicates continued occupational impairment due to unresolved issues with irritability and sleep.

h. 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 BH condition while in-service that mitigated his conduct. The applicant was diagnosed with PTSD while in-service and is 100% SC through the VA for PTSD. There is documentation that the applicant experienced symptoms associated with PTSD in 2010 (e.g., increased irritability, alcohol overuse, sleep problems, increased arousal) prior to his misconduct in 2011 and following his second deployment. As such, it is likely he was experiencing PTSD prior to his diagnosis in 2012. Following return from his second deployment, it appears the applicant's symptoms were exacerbated. Given the nexus between PTSD, impulsivity and self-medicating with alcohol, there was likely an association between the

applicant's diagnosis of PTSD and DUI that led to his separation. After applying liberal consideration, medical mitigation is supported.

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with PTSD in-service and is 100% SC for PTSD through the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with PTSD in-service and is 100% SC for PTSD through the VA.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes. The applicant asserts mitigation due to PTSD and Other Mental Health Issues at the time of his discharge. This assertion alone merits consideration by the Board. The applicant was diagnosed with PTSD while in-service and is 100% SC for PTSD. Given the nexus between PTSD, impulsivity, and self-medicating with alcohol, there was likely a nexus between the applicant's diagnosis of PTSD and DUI that led to his separation. As such, medical mitigation is supported.

j. The applicant also cites his VA disability rating as evidence of error in discharge and requests records amendment to show he was discharged due to disability. However, VA examinations are based on different standards and parameters; they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating does not imply failure to meet Army retention standards at the time of service or that a different diagnosis rendered on active duty is inaccurate. Specific to this applicant, there is no documentation in available that indicates the applicant's condition fell below retention standards in accordance with (IAW) AR 40-501 while in-service. More specifically, there is no evidence available that he was placed on temporary profile related to his behavioral health condition, no history of suicidal or homicidal ideation, and did not require psychiatric hospitalization while in-service. However, given the severity of his symptoms necessitating treatment, it is unlikely that the applicant would have been cleared for deployment due to ongoing symptoms of PTSD and would not have met Combatant Command (COCOM) Theater standards for deployment. Treatment records demonstrate that although he did not meet full criteria for PTSD due to his symptoms improving with treatment at the time of discharge, he still met criteria for Anxiety Disorder NOS while in-service thus indicating he was still experiencing symptoms of PTSD. Post-discharge, it is apparent through the applicant's 100% SC through the VA for PTSD and continued occupational impairment that he continues to meet criteria for PTSD. In accordance with AR 40-501, diagnoses of Anxiety Disorder NOS and/or PTSD would necessitate disposition through medical channels. Therefore, it is recommended that this applicant be referred to IDES for further processing.

**BOARD DISCUSSION:**

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial 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.

a. Discharge upgrade: Grant. Although the applicant's separation packet is not available for review, other evidence of record shows the applicant committed a serious offense. As a result, his chain of command initiated separation action against him for serious misconduct, and he was separated with a general, under honorable conditions discharge. The Board found no error or injustice in his available 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, as well as a change to the narrative reason for separation and corresponding codes.

b. Disability Separation: Partial Grant. Although the applicant is receiving service-connected disability and he cites his VA disability rating as evidence of error in his military discharge and requests records amendment to show he was discharged due to disability; VA examinations are based on different standards and rules; they do not address whether a medical condition met or failed Army retention criteria or if as condition was a ratable condition during the period of service. Therefore, a VA disability rating does not imply the condition failed to meet Army retention standards at the time of service or that a different diagnosis rendered on active duty is inaccurate. Additionally, there is no documentation that indicates the applicant's medical condition(s) fell below retention standards in accordance with AR 40-501 while in-service. There is no evidence available that he was placed on temporary profile related to his behavioral health condition, there is no history of suicidal or homicidal ideation, and he did not require psychiatric hospitalization while in-service. However, given the severity of his symptoms necessitating treatment, it is unlikely that the applicant would have been cleared for deployment due to ongoing symptoms of PTSD and would not have met standards for deployment. Although he did not meet full criteria for PTSD due to his symptoms improving with treatment at the time of discharge, he still met criteria for Anxiety Disorder, Not Otherwise Specified (NOS) while in-service and thus indicating he

was still experiencing symptoms of PTSD. The Board reviewed and agreed with the medical reviewer's determination that in accordance with AR 40-501, diagnoses of Anxiety Disorder NOS and/or PTSD would necessitate disposition through medical channels. While a disability separation is premature, the Board determined the applicant's referral to the disability evaluation system for further processing is appropriate.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

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. Regarding the discharge upgrade, 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 19 June 2012 as follows:
  - Character of Service: Honorable
  - Separation Authority: AR 635-200
  - Separation Code: JFF
  - Reentry Code: 1
  - Narrative Reason for Separation: Secretarial Authority
3. Regarding the disability separation, the Board determined that the evidence presented was 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 directing the applicant be entered into the Disability Evaluation System



(DES) and a medical evaluation board (MEB) convened to determine whether the applicant's condition(s), [Anxiety Disorder, NOS condition], met medical retention standards at the time of service separation.

a. In the event that a formal physical evaluation board (PEB) becomes necessary, the individual concerned will be issued invitational travel orders to prepare for and participate in consideration of their case by a formal PEB. All required reviews and approvals will be made subsequent to completion of the formal PEB.

b. Should a determination be made that the applicant should have been separated or retired under the DES, these proceedings will serve as the authority to void their administrative separation and to issue them the appropriate separation retroactive to their original separation date, with entitlement to all back pay and allowances and/or retired pay, less any entitlements already received

c. 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.



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, 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.

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. 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 (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

6. 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.

7. On 4 April 2024, 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 eligibility for medical retirement or separation benefits. This guidance is being promulgated in light of *Doyon v. United States* and is consistent with that decision. Accordingly, the BCM/NR will apply

liberal consideration to the eligible applicant's assertion that combat- or military sexual trauma -related PTSD or TBI potentially contributed to the circumstances resulting in their discharge or dismissal to determine whether any discharge relief is appropriate. After making that determination, the BCM/NR will then separately assess the individual's claim of medical unfitness for continued service due to that PTSD or TBI condition as a discreet issue, without applying liberal consideration to the unfitness claim or carryover of any of the findings made when applying liberal consideration.

//NOTHING FOLLOWS//