

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 August 2024

DOCKET NUMBER: AR20230008524

APPLICANT REQUESTS:

- upgrade of his under honorable conditions (general) discharge to an honorable discharge
- to change the narrative reason for his separation to medical disability rather than misconduct
- to appear before the Board via video/telephone

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) Form 21-4138 (Statement in Support of Claim)

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 was a good Soldier who had excellent results on Army Physical Fitness Tests and evaluations. The attorney who represented him during his court-martial could attest to his character and how good of a Soldier he was. The applicant indicates on his DD Form 149, that other mental health conditions are related to his request. He provides a VA Form 21-4138, dated 22 February 2023, which explains the facts and circumstances surrounding his separation.

a. In 2011, he was a private first class (PFC)/E-3 serving as a combat medic in Iraq when his mother became ill. His routine operations included checking that his unit was hydrated, nobody was sick, basic combat life skills, patrolling the city in Kirkuk, Iraq and Hawija, with the Iraqi police looking for high value targets. They had day and night missions. They would catch people at night setting night bombs, and had to detain

them. The stress was high. They were not in any firefights, but they were shot at by a sniper, and their truck was almost blown up.

b. Following his redeployment to Fort Riley, KS, he went home on Christmas leave and his mother's health was better. His mother raised him after his father left when he was a kid. While at Fort Riley he was in a car crash, his identity was stolen, his bank account was negative \$6,000.00 because his ex-fiancé cheated on him while he was in Iraq and spent his money. He began having sleep issues, wasn't eating, and was just thinking crazy thoughts. He went to his chain of command, and they sent him to sick call, which led to him talking to a doctor months after he had returned from Overseas. He was told he did not have post-traumatic stress disorder (PTSD).

c. While he was on leave, his sister reported him as suicidal, so he was sent to the St. DePaul Health Center in St. Louis, Missouri, for 24 hours. They conducted a sleep study and opined he was suffering from stress and just needed sleep; but he was afraid to sleep. He was told he had Paranoia and a Personality Disorder.

d. When his mother passed away, he went home for the funeral. When he returned to Fort Riley, he started being late and missing work. He went absent without leave (AWOL) to Junction City to drink for a week. He was arrested and spent 2 weeks in jail. When he returned to his unit, he was put on extra duty for a month. He would then go to the United Services Organizations to play video games and record music. He began missing work again and his unit reduced his rank, put him on extra duties, and had him sleep at the Battalion Duty Station as he was considered a flight risk while being processed for discharge.

e. In the meantime, he was sent to Fort Leavenworth, KS for confinement for approximately 6 months. He was put on medication which made things worse. He was released from confinement and was processed for discharge. He was sleep deprived, his mom had died, and he was not eating. People thought he was on drugs, but he was not. This was all due to sleep deprivation. When he got out of service, he lived in Ohio with his sister and her husband. With time away from the military and not having additional stresses he started sleeping better, started to have a relationship with his father, and his overall mental health began to improve.

3. The applicant enlisted in the Regular Army on 14 September 2010, for a period of 4 years. He served in Iraq from 2 June 2011 to 6 December 2011. The highest rank he held was PFC.

4. The applicant's duty status was changed from Present for Duty (PDY) to Absent Without Leave (AWOL) on 5 March 2012; and from AWOL to PDY on 9 March 2012.

5. On 9 March 2012, he was counseled regarding his period of AWOL. He was advised that continued conduct of this nature could result in punishment under the provision of the Uniform Code of Military Justice (UCMJ) and/or the initiation of action to bar him from reenlistment or for him to be administratively separated, and the consequences of such a separation.

6. On 4 April 2012, the applicant accepted field grade nonjudicial punishment under the provisions of Article 15, UCMJ for being AWOL from his unit from on or about 5 March 2012 to on or about 9 March 2012. His punishment consisted of reduction from PFC/E-3 to private/E-1; forfeiture of \$745.00 pay per month for 2 months; extra duty for 15 days; and restriction for 15 days.

7. The applicant was counseled on the following dates for the reasons shown:

- 3 April 2012 – being arrested by civil authorities for criminal trespassing
- 5 April 2012 – notification that his command was recommending that he be separated from the Army and barred from reenlistment
- 10 April 2012 – missing extra duty on three occasions
- 20 April 2012 – notification that he would be dropped from the rolls (DFR) and reported as a deserter the next time he was AWOL

8. The applicant failed to report for duty on 24 April 2012. His duty status was changed from PDY to AWOL and then from AWOL to DFR on 25 April 2012.

9. The applicant's duty status was changed from AWOL to Confined by Civilian Authorities (CCA) on 30 April 2012; and from CCA to PDY on 15 May 2012.

10. The applicant was counseled on the following dates for the reasons shown:

- 22 May 2012 – failing to obey a written order from a superior commissioned officer
- 30 May 2012 – failing to report to accountability formation
- 31 May 2012 – failing to report to accountability formation; and willfully disobeying a lawful order from a commissioned officer

11. A DA Form 458 (Charge Sheet) show court-martial charges were preferred against the applicant on 1 June 2012. As a result, the applicant was placed in pretrial confinement while pending appearance before a Special Court-Martial. On 27 June 2012, additional charges were preferred against the applicant.

12. On 19 July 2012, the applicant and his counsel submitted an offer to plead guilty to all charges and specifications. In exchange for this offer, the Convening Authority would agree to not refer charges and specifications to a General Court-Martial and to approve

no sentence to confinement in excess of 3 months. The Convening Authority accepted the plea offer on 18 September 2012.

13. A DA Form 4430 (Department of the Army Result of Trial) shows the applicant appeared before a Special Court-Martial on 11 October 2012.

a. He pled guilty and was found guilty of:

- three specifications of failing to go at the time prescribed to his appointed place of duty
- two specifications of AWOL
- one specification of willfully disobeying a lawful command from a superior commissioned officer
- one specification of being disrespectful in language and deportment toward a superior noncommissioned officer (NCO)
- one specification of willfully damaging by tampering with a fire suppression sprinkler and a confinement cell

b. He was sentenced to confinement for 175 days.

14. The applicant was released from military confinement on 11 October 2012 and advised that he was being recommended for separation based on his history of misconduct and behavior unbecoming of a Soldier.

15. On 26 October 2012, the applicant's immediate commander notified the applicant of his intent to initiate actions to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, for commission of a serious offense. The specific reasons for this action were the applicant's disobeying a superior commissioned officer, being disrespectful in language and deportment toward an NCO, willfully damaging military property of a value less than \$500.00, and his periods of AWOL. He was advised that he was being recommended for a general, under honorable conditions discharge. The applicant acknowledged receipt of the proposed separation notification on the same date.

16. On 26 October 2012, the applicant's immediate commander formally recommended his separation from service prior to the expiration of his term of service, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of commission of a serious offense. The applicant's interim commander concurred with the recommendation.

17. On 29 October 2012, the separation authority approved the recommendation for separation, and directed the applicant be issued a general, under honorable conditions discharge.

18. Orders and the applicant's DD Form 214 show he was discharged from the Regular Army on 7 November 2012, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of Misconduct (Serious Offense), with separation code "JKQ" and reentry code "3." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 1 year, 8 months, and 18 days of net active service this period. He had time lost due to AWOL from 5 March to 8 March 2012; from 24 April to 14 May 2012; and 30 May 2012. He had time lost due to confinement from 1 June to 10 October 2012. He did not complete his first full term of service.

19. 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. Applicants do not have a right to a hearing before the ABCMR.

20. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service. In addition, he is requesting a change to the narrative reason for his separation to medical disability rather than misconduct. He contends he was experiencing mental health conditions that mitigate 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 14 September 2010; 2) The applicant deployed to Iraq from 2 June-6 December 2011; 3) Court-martial charges were preferred against the applicant on 1 June 2012. As a result, the applicant was placed in pretrial confinement while pending appearance before a Special Court-Martial. On 27 June 2012, additional charges were preferred against the applicant. On 19 July 2012, the applicant and his counsel submitted an offer to plead guilty to all charges and specifications. In exchange for this offer, the Convening Authority would agree to not refer charges and specifications to a General Court-Martial and to approve no sentence to confinement in excess of 3 months. The Convening Authority accepted the plea offer on 18 September 2012; 4) The applicant appeared before a Special Court-Martial on 11 October 2012. He pled guilty and was found guilty of: A) three specifications of failing to go at the time prescribed to his appointed place of duty; B) two specifications of AWOL; C) one specification of willfully disobeying a lawful command from a superior commissioned officer; D) one specification of being disrespectful in language and deportment toward a superior NCO; and E) one specification of willfully damaging by tampering with a fire suppression sprinkler and a confinement cell; 5) The applicant's was discharged on 7 November 2012, Chapter 14-12c, by reason of Misconduct (Serious Offense). His service was characterized as Under Honorable Conditions (General). He was credited with completion of 1 year, 8 months, and 18 days of net

active service this period. He had time lost due to AWOL from 5 March to 8 March 2012; from 24 April to 14 May 2012; and 30 May 2012. He had time lost due to confinement from 1 June to 10 October 2012.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

d. The applicant noted mental health conditions as a contributing and mitigating factor in the circumstances that resulted in his separation. The applicant first engaged with behavioral health services on 14 February 2012. He had reported ongoing relationship problems with his fiancé as his primary stressor. He reported negative feelings, trouble sleeping, and anxiety related to this experience. He was diagnosed with bereavement without complications was offered therapy multiple times, but he declined. He was Command Referred to the Army Substance Abuse Program (ASAP) on 21 February 2012 to be assessed for substance use. He was diagnosed with alcohol dependence in remission, and outpatient treatment was recommended. He attended three command directed substance abuse appointments before discontinuing treatment.

e. The applicant again came to behavioral health services on 23 February 2012. He reported ongoing relationship problems with his fiancé, and he reported typical redeployment drinking, which he discontinued after a few weeks. In addition, he described recently totaling his car, which would have a financial impact on him. Lastly, the applicant reported not performing well at work due to his relationship. The applicant was recommended for continued behavioral health counseling to assist him with managing his stress related to his relationship, occupational, and financial/legal problems. He was diagnosed with an Adjustment Disorder with Anxiety, but he did not attend any follow-up sessions.

f. On 10 April 2012, the applicant came as a walk-in to behavioral health. He stated he needed a "Chapter Evaluation." The applicant did have the appropriate paperwork, but he would not report the reason why he was being separated. He later stated he was charged with criminal trespassing, going AWOL to see his mother, who was sick, and he failed to report to work several times. He continued to report sleep problems, but he stated he has experienced this level of sleep since high school. He was assessed for PTSD as the result of his deployment, but the applicant reported the experience was good, and his stress was related to his mother being sick, his wallet being stolen, his car accident, and relationship problems. He was also properly assessed for experiencing a traumatic brain injury (TBI), and the applicant did not have evidence of experiencing a TBI. The applicant was diagnosed with an Adjustment Disorder with Anxiety by medical

record and cleared to participate in administrative separation proceedings. Again, the applicant was offered behavioral health services, and he declined.

g. There is evidence in the electronic medical record that the applicant's defense attorney requested a sanity board evaluation from behavioral health services in August 2012. This was completed over several days and including various psychological and cognitive tests along with a clinical interview. The full results were released to the applicant and his defense attorney, but they were not available in the medical records. There was insufficient evidence the applicant was diagnosed with any condition beyond an Adjustment Disorder with Anxiety and Alcohol Abuse. The applicant was again provided a mental health evaluation as part of his administrative separation proceedings on 18 October 2012. He was again properly evaluated for PTSD and TBI. The applicant did not fit criteria for these conditions or any other mental health condition beyond an Adjustment Disorder. He was diagnosed with Adjustment Disorder with Anxiety per history, and he was psychiatrically cleared to participate in the administrative proceedings.

h. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition or has been awarded any service-connected disability. The applicant discussed receiving civilian medical care while on active serve, but no additional medical documentation of this event was provided for review.

i. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant had condition or experience that mitigates his misconduct. In addition, there is insufficient evidence to warrant a referral to IDES at this time.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant reports experiencing a mental health condition while on active service, which mitigates his misconduct. The applicant was diagnosed with an Adjustment Disorder with Anxiety while on active service consistently.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reports experiencing a mental health condition while on active service. He was diagnosed with an Anxiety Disorder with Anxiety while on active service.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is sufficient evidence beyond self-report the applicant was experiencing a number of stressors while on active service. He was appropriately evaluated by multiple behavioral health providers, who assessed for a mitigating mental health conditions

while on active service, and he was found to not be experiencing one. He was experiencing a lack of sleep, but the applicant denied any assistance for this condition along with any behavioral health assistance, despite multiple attempts to engage the applicant in care. The applicant did engage in erratic and avoidant behavior, which can be a sequela to some mental health conditions. Yet, the applicant was found repeatedly engaged in misconduct and stress related to the consequences of this misconduct. In addition, there is insufficient evidence the applicant was ever found to not meet retention standards from a psychiatric perspective, and he again was evaluated multiple times to assess for this possibility. However, the applicant contends he was experiencing a mental health condition that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military record and medical review, the Board concurred with the advising official finding is insufficient evidence to support the applicant had condition or experience that mitigates his misconduct. In addition, there is insufficient evidence to warrant a referral to IDES at this time.

2 The Board determined there is insufficient evidence of in-service mitigating factors to overcome the pattern of misconduct of failure to repair, AWOL, disobeying orders, disrespect, and damage of fire sprinkler. The Board noted, the record is absent any evidence the applicant was diagnosed with any condition beyond an adjustment disorder with anxiety and alcohol abuse. Furthermore, the applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board found, at the time of separation, the applicant's documentation supports the narrative reason for separation properly identified on his DD Form 214. The Board agreed, the applicant was discharged for misconduct and was provided an under honorable conditions (General) characterization of service. The Board found that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. As such, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

[REDACTED]

[REDACTED]

[REDACTED]

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 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 (ABCMR) 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 (Active Duty Enlisted Administrative Separations) 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 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions (UOTHC) 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.
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 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; 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//