

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 March 2024

DOCKET NUMBER: AR20230008576

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions (UOTHC) characterization of service
- a change of narrative reason for separation to an appropriate less derogatory narrative such as Secretarial Authority
- change of reentry eligibility (RE) code to RE-1, RE-2, or RE-3

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- legal counsel brief, certified date 21 May 2023 (nine pages)
 - Enclosure 1 – DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 26 February 1996
 - Enclosure 2– DD Form 149, 22 May 2023
 - Enclosure 3 – Memorandum, Secretary of Defense, Chuck Hagel, dated 3 September 2014
 - Enclosure 4 – character reference, from K.S., 2 December 2021
 - Enclosure 5 – enlistment documentation
 - Enclosure 6 – separation packet
 - Enclosure 7 – self-authored statement, 10 March 2022
 - Enclosure 8 – character reference, from M.M., 18 March 2022
 - Enclosure 9 – specimen result certificate, 5 August 2022
 - Enclosure 10 – medical reference letter, from R.S. Ph. D., 22 August 2022
 - Enclosure 11 – character reference, from B.A.S., 12 September 2022

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states, in effect, he is requesting a discharge upgrade and correction of administrative data because while serving, he suffered from a physically abusive marriage, and abuse of authority by another Soldier, Staff Sergeant (SSG) F.E., which caused him to have disciplinary issues which led to his discharge.

a. He went to boot camp in the winter of 1990, and became a 13B (Cannon Crewmember) for the Army Reserve. He had a great time with his unit and his civilian job, after three and a half years he went on active duty.

b. He was sent to Korea, where was promoted to specialist and was nominated for enlisted man of the quarter. The unit was put on alerts numerous times, and they conducted training with South Koreans. When he returned from Korea he was assigned to a unit at Fort Bliss, TX. He had no issues and got along with everyone, until he met another Soldier, SSG F.E., a Senior Noncommissioned Officer who lived in the barracks and would often throw parties. At one party, he had met a woman who he ended up marrying. He later found out the woman was SSG F.E.'s ex-girlfriend.

c. After they married, they started having issues, to include abuse. He tried to inform his Command of the abuse, by his spouse, however they would laugh at him. The abuse was so bad he had to call the police numerous times. He started receiving negative counseling statements and then he started getting harassed and threatened by SSG F.E., where he would threaten and intimidate him and ending up forcing him to move back into the barracks. He ended up going absent without leave (AWOL) because he was unable to get away from SSG F.E.

d. The unit had a urinalysis, which he thought nothing of because he did not do drugs. The results came back positive for cocaine which shocked him. This is when SSG F.E., said "I told you I would have you out and now you're done". He is convinced SSG F.E., altered the urine samples. He received nonjudicial punishment (NJP) for the positive urinalysis. When he was doing his extra duty, SSG F.E. would show up and harass and threaten him with violence. He continued to go AWOL because of these threats from SSG F.E. The Judge Advocate General and Command were no help at all, the Command didn't care about the abuse by his spouse. He was never asked if he was okay or needed help, nor was he offered a drug treatment program within the 5 days which regulations states.

e. He was three months short of completing his contract when he was separated. He was traumatized by everything that was going on, he finally gave up, without care of his physical or mental being. Once separated, he still suffered abuse from his spouse. They had a child with special needs, and he sought a divorce. He received full custody of his child because of his ex-wife's actions. His son is now 23 and they have a great relationship. He has been in a relationship for almost 20 years, he works as a federal contractor in charge of road and ground crews. He volunteers at a food based charity,

where they pack food for homeless people. He volunteered in a buddy program, which his son was involved in. He also holds a commercial driver's license, which requires him to be drug free. He was diagnosed with post-traumatic stress disorder (PTSD) by a psychiatrist based on what he went through in the military, he works through his PTSD and is becoming better.

3. Counsel briefly addresses the applicant's service in the Army and references the abusive marriage, and the NCO bullying and harassing the applicant. He references the applicant's diagnosed PTSD as new evidence and agreement that significantly changes the applicant's situation.

a. Counsel addresses the events leading to the applicant's discharge, reiterating the applicant's self-authored statement and the undiagnosed PTSD the applicant was struggling with while serving. Counsel addresses the applicant's life after military service, stating he is a dependable man of good character. He has lived an exemplary life despite his PTSD.

b. Counsel asserts that the applicant suffered abuse by his NCO and ex-wife and is seeking upgrade of his discharge referencing the Hagel memorandum. Stating the applicant met the criteria for liberal consideration of a discharge upgrade due to his PTSD diagnosis, he has gone most of his life without knowing and suffered in silence from his PTSD and associated symptoms.

c. Counsel additionally asserts that the Tripler Medical Drug Testing Facility was the subject of controversy for fraudulent and compromised testing. Stating the fact that the applicant's urinalysis was tested at a lab that has known issues. This must be taken in account by the Board.

4. The applicant enlisted in the Army National Guard on 1 February 1990. He entered active duty for initial active duty training (IADT) on 15 February 1990, and was released from IADT on 25 May 1990. He was awarded the military occupational specialty of 13B (Cannon Crewmember). His DD Form 214 shows his service was uncharacterized, he was credited with 3 months and 11 days of net active service this period.

5. He enlisted in the Regular Army on 7 January 1994, for a 3-year period in the rank/grade of specialist/E-4.

6. A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), shows he accepted NJP on 24 October 1995, for failing to go to his appointed place of duty on or about 16 August 1995. His punishment imposed was reduction to E-3, forfeiture of \$232.00 pay, and extra duty and restriction for 14 days.

7. A DD Form 2624 (Specimen Custody Document – Drug Testing) certified on 9 November 1995, by the Tripler Army Medical Center Forensic Toxicology Drug Testing Lab, shows the applicant tested positive for cocaine.
8. On 13 November 1995, the commander was notified by the Alcohol and Drug Control Officer of the positive urinalysis results. Stating the Soldier with a urine positive will be referred to the Alcohol and Drug Abuse Prevention and Control Program within five working days of notification.
9. On 21 December 1995, the applicant accepted NJP for wrongfully using cocaine on or about 24 October 1995. His punishment imposed was reduction to E-1, forfeiture of \$427.00 pay per month for two months, and extra duty and restriction for 45 days.
10. The applicant consulted with legal counsel on 23 June 1996 and acknowledged he had been advised of the basis for the contemplated separation action. Following his consultation, he voluntarily waived consideration of his case by an administrative separation board, contingent upon receiving a characterization of service no less favorable than under honorable conditions (general). He elected to not submit a statement in his own behalf, and made the request of his own free will without any coercion. He understood he may withdraw the waiver and request an administrative separation board. Additionally, he acknowledged he understood that he may be ineligible for many or all benefits as a Veteran under Federal and State laws, and he could expect to encounter substantial prejudice in civilian life as a result of the issuance of a general discharge.
11. On 26 January 1996, the applicant's immediate commander notified the applicant of his intent to initiate separation action under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, paragraph 14-12b, for pattern of misconduct. The commander noted his reasoning as:
 - a. The applicant wrongfully used cocaine on or about 24 October 1995.
 - b. The applicant was absent from his prescribed place of duty on or about 16 August 1995, 18 September 1995, 17 October 1995, 18 October 1995, 19 October 1995, and 20 October 1995.
 - c. The applicant was AWOL from his unit on or about 19 January 1996 and remained absent until on or about 22 January 1996.
12. On 26 January 1996, after being advised by counsel, the applicant acknowledged the basis for the contemplated action under the provisions of AR 635-200, paragraph 14-12b (patterns of misconduct). He acknowledged understanding of the following in his request:

a. He was subject to a characterization of service UOTHC. He waived consideration of his case by an administrative board.

b. He elected to not submit statements in his own behalf and requested consulting counsel.

13. On 30 January 1996, the applicant's intermediate commander recommended approval of the recommended separation, with a characterization of service as UOTHC.

14. On 9 February 1996, having waived an administrative separation board, the Staff Judge Advocate reviewed the administrative elimination packet and found that it complied with AR 635-200, and recommended the applicant be separated with an UOTHC.

15. On the same date, the separation authority approved the recommended separation and granted a waiver of further rehabilitative efforts. He further directed discharge with a characterization of service of UOTHC.

16. The applicant was discharged accordingly on 26 February 1996, under the provisions of AR 635-200, paragraph 14-12b, by reason of pattern of misconduct, in the rank of E-1. His service was characterized as UOTHC, and he received separation code JKA and reentry code 3. He was credited with 2 years, 4 months, and 18 days of net active service. He had time lost from 19 November 1996 to 21 January 1996 and 16 February 1996 to 26 February 1996. His DD Form 214 shows he was awarded or authorized the:

- National Defense Service Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar
- Sharpshooter Marksmanship Qualification Badge with Grenade Bar

17. Through counsel, the applicant provides:

a. Three-character reference letters from K.S., M.M., and B.A.S. to support the applicant's discharge upgrade request. The letters summarize the applicant as someone who endured violence from his first marriage and who was cheated out of so much, due to his negative marriage. He is loyal, dependable, caring, pro-active, and a dutiful father to his son. He is a good honorable person with solid morals, who is supportive and responsible to his family and friends. They respectfully ask the Board for the consideration to upgrade the applicant's discharge due to the abuse he suffered, the PTSD he endures, and totality of his life from his discharge to becoming a remarkable man that he is today.

b. A specimen result certificate, dated 2 August 2022, showing the applicant received a negative result for cocaine and amphetamines, tested for.

c. A medical letter from R.S. Ph. D., stating in effect, the applicant had been diagnosed with PTSD, due to his childhood experiences rather than an acute event. His parents were neglectful, he endured a lack of support and affection along with erratic parenting. His PTSD was unrecognized in his youth, as he was diagnosed with attention deficit/ hyper disorder (ADHD), when the applicant entered the military, his coping mechanisms were fragile, and the natural stresses of military life were too much for him to psychologically manager. The applicant reportedly coped by self-medicating his symptoms with alcohol and substances which led to poor decision-making and further dysfunctional behavior.

d. The Hagel Memoranda which provides clarifying guidance to Military Discharge Review Boards and Boards for the Correction of Military Records on liberal consideration and requests by Veterans for modification of their discharge due to mental health conditions, sexual assault/harassment, PTSD, and traumatic brain injury.

18. The Army Discharge Review Board (ADRB) reviewed his request for a discharge upgrade on 30 June 2010. After carefully examining the applicant's record of service during the period of enlistment under review and considering the analyst's recommendation and rationale, the Board determined that the discharge was both proper and equitable and voted to deny relief. Additionally, notwithstanding the propriety of the applicant's discharge, the Board found that someone in the discharge process erroneously entered on the applicant's DD Form 214, block 25, separation authority as "AR 635-200, paragraph 14-12c(2)", block 26 separation code as "JKK", block 27, reentry code as "4", and block 28, narrative reason for separation as "Misconduct." In view of these errors, the Board voted to administratively change block 25, separation authority to "AR 635-200, paragraph 14-12b", block 26, separation code to "JKA", block 27, reentry code to "3, and block 28, narrative reason for separation to "Pattern of Misconduct" as approved by the separation authority. Except for the foregoing modifications, the Board determined the discharge was both proper and equitable and voted not to change it.

19. Regulatory guidance states when an individual is discharged under the provisions of AR 635-200, chapter 14, for misconduct, an UOTHC characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

20. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

21. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his discharge from under other than honorable conditions (UOTHC) to honorable or under honorable conditions (general) and a change of his narrative reason for separation and reentry eligibility. He contends he experienced PTSD 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 7 January 1994; 2) The applicant accepted NJP on 24 October 1995, for failing to go to his appointed place of duty; 3) On 21 December 1995, the applicant accepted NJP for wrongfully using cocaine; 4) On 26 January 1996, the applicant's immediate commander notified the applicant of his intent to initiate separation action under the provisions of Chapter 14, paragraph 14-12b, for pattern of misconduct for: using cocaine, being absent from his place of duty six times between August-November 1995, and being AWOL from 19-22 January 1996; 5) On 26 February 1996, the applicant was discharged from active duty, Chapter 14-12b, by reason of pattern of misconduct. His service was characterized as UOTHC. He received separation code JKA and reentry code 3.

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) and civilian medical records provided by the applicant were also examined.

d. The applicant asserts he was experiencing PTSD, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition, including PTSD while on active service. A review of JLV was void of medical documentation, and the applicant does not any receive service-connected disability. The applicant provided civilian medical documentation from a psychologist dated 22 August 2022. The applicant was reported to meet criteria for PTSD related to his reported traumatic experiences in childhood. These experiences and resultant mental health symptoms caused the applicant to lack sufficient coping strategies to manage the stressors of his military service, which is why he likely engaged poor decision making and self-medicating drug use.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence to support the applicant had condition or experience that mitigates his misconduct.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he was experiencing PTSD while on active service, and he has been diagnosed with PTSD by a civilian psychologist.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing PTSD while on active service, and he has been diagnosed with PTSD by a civilian psychologist, which they contend was present during the applicant's active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence that the applicant has been diagnosed with PTSD related to his childhood experiences and could likely been experiencing of symptoms of PTSD while on active service. The applicant had multiple incidents of avoidant behavior such as going AWOL, not reporting on time, and self-medicating substance abuse. PTSD can be associated with such avoidant behavior. The applicant's misconduct could be a natural sequelae to his PTSD, which occurred as the result of his childhood trauma. Therefore, there is sufficient evidence to upgrade the applicant's discharge to a general discharge under honorable conditions. In addition, the narrative reason for separation could be adjusted to something less derogatory.

BOARD DISCUSSION:

1. The contentions and statements of the applicant and his counsel, the evidence provided to the Board, the military record, the Statutory and regulatory guidance, and the various Department of Defense Guidance pertaining to requests for discharge upgrades on the basis of liberal consideration or clemency were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted.

2. The Board disagreed with the medical advisory opinion and found the available evidence to be insufficient and inconsistent; the applicant had opinions and he made choices.

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 for correction of the records of the individual concerned.

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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 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical

advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. AR 635-5-1 (SPD) provides the specific authorities, reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214.

a. Separation code "JKA" is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 14, by reason of a pattern of misconduct.

b. Separation code "JFF" (involuntary) or "KFF" (voluntary) is the appropriate code to assign to Soldiers discharged by reason of Secretarial Authority.

4. AR 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 UOTHC discharge 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.

d. Chapter 15 (Secretarial Plenary Authority) states Secretarial plenary separation authority is exercised sparingly and used when no other provision of this regulation applies. Separation under this chapter is limited to cases where the early separation of a Soldier is clearly in the best interest of the Army. Separations under this chapter are effective only if approved in writing by the Secretary of the Army or the Secretary's

approved designee as announced in updated memoranda. Separation under this chapter may be voluntary or involuntary. Separations under this authority will be characterized as honorable or (general) under honorable conditions.

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 (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. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

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.

//NOTHING FOLLOWS//