

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 March 2024

DOCKET NUMBER: AR20230008879

APPLICANT REQUESTS:

- reconsideration of his previous request to change his characterization of service from under honorable conditions (General) to honorable
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show in:
 - item 4a (Grade, Rate or Rank): specialist (SPC)
 - item 4b (Pay Grade): E-4
 - item 28 (Narrative Reason for Separation): Expiration of Term of Service

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- DD Form 4/1 (Enlistment/Reenlistment Document)
- Two Joint Task Force Certificates, dated 20 December 1992 and 1 March 1993
- Certificate of Achievement, dated 25 February 1993
- Certificate of Appreciation, dated 25 February 1993
- DD Form 214, for the period ending 9 May 1994
- Army Board for Correction of Military Records (ABCMR) Docket Number AR20100022947, dated 17 March 2011
- Two Department of Veterans Affairs (VA) Letters, dated 24 January 2022 and 8 August 2022

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20220010671 on 8 June 2023.

2. The applicant states on 16 August 1989, he enlisted in the U.S. Army for 4 years and completed two combat tours in the Persian Gulf. He re-enlisted and served his first term

of service honorably. He got a driving while intoxicated (DWI) after his re-enlistment and does not feel that one incident on his second term of service accurately reflects his overall service. His DWI was due to self-medication and a direct result of his post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI). His PTSD and TBI are service connected through the VA.

3. On 16 August 1989, the applicant enlisted in the Regular Army for 4 years. He completed training with award of military occupational specialty 13F (Fire Support Specialist). He was promoted to the rank/grade of specialist (SPC)/E-4 on 16 October 1991.

4. The applicant received counseling on 27 July 1992 for nonpayment of a just debt.

5. The applicant provides:

a. A Joint Task Force certificate, for having demonstrated resolve and determination as a sentinel of the peace in the freed country of Kuwait, dated 20 December 1992.

b. A Certificate of Achievement for outstanding duty performance during intrinsic action as a member of Task Force 3-41 Infantry, 1st Cavalry Division, 20 October to 20 December 1992.

c. A Certificate of Appreciation for outstanding support of Task Force 1-9 Cavalry Division, during Operation Iris Gold January to February 1993.

d. A Joint Task Force certificate, for having demonstrated resolve and determination as a sentinel of the peace during Operation Southern Watch in the freed country of Kuwait, dated 1 March 1993.

6. His DD Form 4 shows he reenlisted on 25 June 1993, in the rank/grade SPC/E-4.

7. The applicant accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ). The DA Form 2627 (Record of Proceedings under Article 15, UCMJ) is not legible; however, shows his punishment consisted of reduction to the grade of private first class (PFC)/E-3, forfeiture of \$250.00 pay per month for 2 months, and 45 days extra duty. His record shows his date of rank to PFC/E-3 as 15 September 1993.

8. On or about 2 February 1994, the applicant accepted nonjudicial punishment under Article 15 of the UCMJ for failure to be at the time prescribed to his appointed place of duty on 14 January 1994. His punishment consisted of reduction to private/E-2, suspended to be automatically remitted if not vacated before 8 August 1994; and

forfeiture of \$217.00 pay, suspended to be automatically remitted if not vacated before 8 August 1994; 14 days restriction and 14 days extra duty.

9. On 4 April 1994, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c, for serious misconduct. He further stated separation is specifically recommended because of the applicant's two Article 15's, and a counseling on failure to pay debts. The applicant acknowledged receipt on the same date.

10. On 4 April 1994, the applicant consulted with counsel who advised him of the basis for the contemplated action to separate him under AR 635-200, Chapter 14-12c, and its effect; of the rights available to him; and the effect of any action taken by him in waiving his rights.

a. He acknowledged he understood the effect of any waiver of rights, and he understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him. He further understood that as the result of issuance of a discharge under other than honorable conditions he may be ineligible for many or all benefits as a veteran under both federal and state laws.

b. He understood that, as the result of issuance of a discharge certificate/character of service which is less than honorable, he may make application to the Army Discharge Review Board or the Army Board for Correction of Military Records for upgrading; however, he realizes that consideration by either board does not automatically imply upgrading. He also understood that he may until the date of the separation authority orders directs or approved his separation withdraw the waiver of any of the above right and request that an administration board if authorized here his case.

c. He elected to make statement in his own behalf, to which end, he provided a statement, wherein he states, in effect, he has been on active duty for 5 years; he was writing this letter in the hopes of retention on active duty. Recently his father and two younger brothers, who are still minors, were evicted from their home and would have ended up on the street had it not been for him securing them an apartment. Prior to that his father was facing credit card fraud charges and had several warrants out for his arrest which he paid. The applicant realizes what he has done is a serious offense and promises that it will never happen again. He has been attending Alcoholics Anonymous meetings and has also successfully completed the Central Texas Advanced Alcohol and Narcotics class; this was voluntary.

d. A letter of support provided by the Company Fire Support Officer, who stated he served with the applicant and depended on him to keep the section busy preparing for the next battle. Even though there were several times that his section chief and he were

not around, he always knew whatever he tasked the section, the applicant would make sure the section was prepared and ready for the battle. The applicant was a dependable member of his team, and he would be proud to serve with him on another rotation or war.

11. On 22 April 1994, consistent with the chain of command recommendations, the separation authority approved his discharge under the provisions of AR 635-200, paragraph 14-12, and directed the issuance of a General, Under Honorable Conditions Discharge Certificate.

12. On 9 May 1994, the applicant was discharged in accordance with Chapter 14-12c of AR 635-200 for misconduct with an under honorable conditions (General) characterization of service. His DD Form 214 shows he completed 4 years, 8 months, and 24 days of active service. It also shows in:

a. Item 4a: PFC.

b. Item 4b: E-3.

c. He was awarded or authorized the Army Achievement Medal (2nd award), National Defense Service Medal, Army Service Ribbon, Overseas Service Ribbon, Driver and Mechanic Badge with Driver-Wheel Vehicle, and the Marksman Marksmanship Qualification Badge with Rifle Bar.

d. He was issued separation code "JKQ" and reentry code "3".

e. Item 18 (Remarks) did not list his reenlistment period or his continuous honorable service.

13. The applicant provides ABCMR Docket Number AR20100022947 dated 17 March 2011, which shows the applicant of the case provided requested award of the Southwest Asia Service Medal and relief was granted.

14. The applicant also provides documentation that shows the VA granted him a combined rating of 90%, effective 2 November 2021:

- 70% for PTSD with anxiety, depression, bipolar II disorder, opioid use disorder and traumatic brain injury (TBI)
- 30% for post-traumatic headaches
- 10% for TBI

14. On 8 June 2023, in ABCMR Docket Number AR20220010671, the Board denied his request for an upgrade of his discharge.

15. On 12 June 2023, the applicant was issued a DD Form 215 (Correction to DD Form 214) which added in item 18 (Remarks) –

- member has completed first full term of service
- immediate reenlistments this period 19890816-19930624
- continuous honorable active service 19890816-19930624

16. Regulatory guidance provides, a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under Army Regulation 635-200, Chapter 14-12c (Commission of a Serious Offense).

17. In reaching its determination, the Board can consider the applicant's petition and her service record in accordance with the published equity, injustice, or clemency determination guidance.

MEDICAL REVIEW:

1. The applicant is applying to the ABCMR requesting reconsideration of his request for an upgrade of his under honorable conditions (general) discharge with an Expiration of Term of Service for the narrative reason and increase in his discharge rank/pay grade. He contends he had mental health conditions including PTSD that mitigated 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 into the Regular Army on 16 August 1989. On 16 August 1994, he reenlisted in the Regular Army; 2) The applicant's immediate commander notified him on 4 April 1994 of his intent to initiate actions to separate him under Chapter 14 for serious misconduct. The commander noted the specific reasons as: NJP received on 15 September 1993 for driving while intoxicated, NJP for failure to repair, and his negative counseling for failure to pay debts; 3) The applicant was discharged on 9 May 1994, Chapter 14-12c, by reason of misconduct. His service characterization was under honorable conditions (general) with separation code "JKQ" (misconduct).

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

4. The applicant asserts he was experiencing problems with substance abuse, PTSD, depression, and anxiety while on active service, which mitigated his misconduct. There is evidence the applicant was diagnosed with and treated for alcohol abuse while on active service. A Central Texas Council on Alcoholism & Drug Abuse letter stated the applicant had been referred to the Advance Alcohol & Drug Education course and had satisfactorily complete all requirements of the course on 28 February 1994. A review of JLV provided evidence the applicant has been diagnosed and treated for PTSD since 2018 related to his experiences during active service. In addition, he receives 70% service-connected disability for PTSD with anxiety, depression, bipolar II disorder, opioid use disorder, and traumatic brain injury. He also receives 30% for post-traumatic headaches, and 10% for TBI.

5. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had condition or experience that partially mitigated his misconduct.

6. Kurta Questions:

a. Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced mental health conditions that mitigated his misconduct. He has also been diagnosed with PTSD, mental health conditions, and a TBI as a result of his experiences during his active service.

b. Did the condition exist, or experience occur during military service? Yes, the applicant reporting experiencing mental health conditions while on active service. He has also been diagnosed with service-connected PTSD mental health conditions, and a TBI after his discharge.

c. Does the condition experience actually excuse or mitigate the discharge? Partial, the applicant reported experiencing PTSD, depression, anxiety, and substance abuse while in active service. There is sufficient evidence the applicant was experiencing PTSD, mental health symptoms, TBI, and alcohol abuse while on active service. There is, however, no nexus between these mental health conditions and failure to pay debts. However, the applicant was also found guilty of driving under the influence. The applicant's alcohol abuse could be an attempt to avoid his negative emotional state through self-medication. This behavior can be part of the natural history or sequelae of PTSD, TBI, and other mental health conditions. The applicant contends he was experiencing a mental health condition that mitigated his misconduct and there is evidence to partially support his contention, and per Liberal Consideration his assertion is sufficient for the board's consideration.

BOARD DISCUSSION:

1. The applicant requested, reconsideration of his previous request to change his characterization of service from under honorable conditions (General) to honorable, and correction of his DD Form 214 to show his rank/grade as SPC/E-4 and his narrative reason for separation as "Expiration of Term of Service." The Board thoroughly reviewed and carefully considered the application, all supporting documents, and the evidence found within the military record, the Medical Advisory opinion, the applicable regulatory and statutory guidance, and the Department of Defense regarding upgrade requests based on liberal consideration and/or clemency.

2. The Board considered the applicant's request for reconsideration of his previous request for an upgrade of his characterization of service to honorable and found relief was not warranted. The Board considered the opinion of the Medical Advisor, but ultimately, the Board did not feel compelled to extend liberal consideration to the applicant regarding his request for an upgrade of his characterization of service.

a. First, the applicant already received a general character of service.

b. Second, the Board notes but does not agree with the ARBA Medical Advisor's opinion that, in effect, there is sufficient evidence the applicant was experiencing PTSD, mental health symptoms, TBI, and alcohol abuse while on active service, which partially mitigated his misconduct. The applicant was found guilty of driving under the influence. His actions, in this instance, were not harmless, and could have resulted in the loss of someone's life.

3. The Board considered the applicant's request for correction of his DD Form 214 to show his rank and grade as SPC/E-4 instead of PFC/E-3 and found relief was not warranted.

a. The applicant was reduced in rank from SPC/E-4 to PFC/E-3 on 15 September 1993, as a result of non-judicial punishment (NJP) under the provisions of Article 15, UCMJ.

b. He again received NJP on 2 February 1994 for failure to report. Part of his punishment included reduction to the rank of private/E-2, but the punishment was suspended.

c. The applicant did not provide nor does the record contain sufficient evidence or argument to suggest the applicant's receipt of NJP, to include his reduction in rank to PFC/E-3, was an injustice or in error.

4. The Board considered the applicant's request for correction of his DD Form 214 to show his narrative reason for separation as "Expiration Term of Service" instead of "Misconduct" and found relief was not warranted.

a. The applicant reenlisted on 25 June 1993, for a period of 3 years; his expiration term of service was not until June 1996.

b. The applicant was far from reaching his expiration term of service; therefore, it would not be appropriate to separate him because he reached his expiration term of service.

c. His narrative reason for separation is not in error, he was discharged because of misconduct.

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. Army Regulation (AR) 635-200 (Enlisted Personnel – Personnel Separations) sets forth the basic authority for the separation of enlisted personnel. 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), commission of a serious offense, and convictions by civil authorities. 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.

a. 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 (Separation for Misconduct) establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave.

d. Paragraph 14-12c (Commission of a Serious Offense) applied to Soldiers who committed a serious military or civilian offense, when required by the specific circumstances warrant separation and a punitive discharge was or could be authorized for that same or relatively similar offense under the UCMJ.

2. AR 635-5-1 (Separation Program Designator (SPD) Codes prescribes the specific authorities, reasons for separation Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). It states the narrative reason for separation will be entered in block 28 of the DD Form 214 exactly as listed in tables 2-2 or 2-3. No deviation is authorized. For Soldiers separation with separation program designator (SPD) code "JKQ" the narrative reason for separation is Misconduct, the regulatory authority is AR 635-200, paragraph 14-12c.

3. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records

(BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors, when taking action on applications from former service members administratively discharged under other than honorable conditions, 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.

4. 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 BCM/NRs 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 a 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.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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.

6. Army Regulation 635-8 (Separations Processing and Documents), currently in effect, provides for the preparation and distribution of the DD Form 214. It states for

a. item 4a (Grade, Rate or Rank) and item 4b (Pay Grade) Verify that active duty grade or rank and pay grade are accurate at time of separation.

b. item 26 (Separation Code) contains the correct entry form AR 635-5-1, which provides the corresponding SPD code for the regulatory authority and reason for separation.

c. item 27 (Reentry Code) AR 601–210 determines reentry eligibility and provides regulatory guidance on reentry codes.

d. item 28 (Narrative Reason for Separation) this is based on regulatory or other authority and can be checked against the cross reference in AR 635–5–1.

7. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army (RA) and the U.S. Army Reserve. Table 3-1 included a list of the RA RE codes. RE codes are numbered 1, 3, and 4.

- RE-1 applies to Soldiers completing their term of active service who are considered qualified to reenter the U.S. Army; they are qualified for enlistment if all other criteria are met
- RE-3 applies to Soldiers who are not considered fully qualified for reentry or continuous service at the time of separation, but the disqualification is waivable; those individuals are ineligible unless a waiver is granted
- RE-4 applies to Soldiers ineligible for reentry

8. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.

//NOTHING FOLLOWS//