

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 Mach 2024

DOCKET NUMBER: AR20230008977

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) characterization of service.

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

- DD Form 149 (Application for Correction of Military Record) with self-authored statement
- Department of Veterans Affairs (VA) progress notes (6 pages), dated 6 June 2023

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:

a. His father retired from the Army after 22 years of service. It was the applicant's dream to follow in his footsteps. He participated in all 4 years of Junior Reserve Officers' Training Corps (JROTC) in high school and graduated amongst the top of his class. He was able to enlist as a private first class/E-3. His first duty station was in Hanau, Germany. Everything went well until his first combat deployment.

b. When they arrived at Task Force Hawk there was nothing. They were some of the first "boots on the ground." They ate Meals Ready to Eat (MRE) for 2 months, slept in a tent for a month or so, and were not permitted to go anywhere alone. They were constantly being shot at but not allowed to return fire. He was an M203 gunner and was required to always wear 70 pounds of gear. It was only 40 degrees outside, and camel spiders were infesting their tent. Working on the tarmac was even more terrifying. The moment your boots hit the asphalt; rounds were fired. You could hear them landing just out of range. He stopped caring that people were shooting at him. He remembers wondering if it would be so bad if he got hit. He went into a deep depression.

b. His primary mission was to maintain Apache Helicopters. The Apache Helicopters accompanied the Multiple Launch Rocket Systems (MLRS) into the combat zone. One MLRS missile can destroy a single grid square. Missions flew daily. His depression started upon realizing he was part of that process. He wondered how many men, women, and children he inadvertently killed.

c. He was not offered counseling when he returned to Hanau. Nothing went back to normal. He started drinking heavily. He drank to not think about the events, which turned into drinking to sleep, and then drinking to function during the day. The Army "encouraged" drinking. Soldiers were permitted to drink beer at the mess hall during lunch.

d. He was just getting back on track when another deployment came. He was being deployed to do the same thing. He gave up. No matter how much he drank, he could not escape reality. Everyone was excited about the deployment; he felt overlooked. Task Force Falcon was not as intense, but the things he witnessed were more up close and personal. He witnessed a truck burn to the ground with a local man inside, saw a Soldier lose his finger and tendon, and saw a child chewed up by razor wire. On one occasion, a Soldier dropped a live M203 round under the shower pallet. They had to wait in the shower for over an hour and a half before Explosive Ordnance Disposal (EOD) arrived. At that point, he did not care whether he lived or died.

e. He resumed drinking when he returned to Germany. Noncommissioned officers (NCOs) drank along with Soldiers at lunch. He got a driving under the influence (DUI) charge and Article 15. He started experimenting with drugs. He became suicidal. When he brought this to his NCO's attention, the NCO laughed and accused him of trying to get out of being chaptered. They sent him to a mental health facility in Landstuhl, Germany. He was never informed of his diagnosis. They kept him for a few weeks and returned him to proceed with his chapter. It all happened so fast.

f. He has concluded something is wrong with him. He still thinks about the events he witnessed. He is willing to accept help. The applicant notes post-traumatic stress disorder (PTSD) and other mental health as conditions related to his claim.

3. The applicant enlisted in the Regular Army on 31 December 1997 for a 4-year period. Upon completion of initial entry training, he was awarded military occupational specialty 35Y (Integrated Family of Test Equipment Operator/Maintainer). The highest rank he attained was specialist/E-4.

4. The applicant accepted nonjudicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice, on two occasions:

a. On 26 January 1999, for failure to go at the time prescribed to his appointed place of duty, on or about 18 December 1998. His punishment consisted of 14 days of extra duty.

b. On 15 November 2000, for the wrongful use of Methamphetamine, a Schedule I controlled substance, between on or about 12 June 2000 and 19 June 2000. His punishment consisted of reduction to private first class/E-3, forfeiture of \$630.00 pay, 45 days of extra duty, and 45 days of restriction.

5. The applicant was formally counseled on 15 February 2001 for failure to register his privately owned vehicle and failure to make good on a financial debt.

6. The applicant underwent a mental status evaluation on 21 February 2001. The evaluating provider noted a diagnosis of alcohol abuse, with no psychiatric disease or defect warranting disposition through medical channels. The applicant was determined to be mentally responsible, able to distinguish right from wrong, and was psychiatrically cleared to participate in chapter proceedings.

7. The applicant accepted nonjudicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice, on 2 April 2001, for operating a vehicle under the influence of alcohol, resisting apprehension by German police officers, and drunk and disorderly conduct, on or about 24 December 2000. His punishment consisted of reduction to private/E-1, forfeiture of \$521.00 pay per month for two months, 45 days of extra duty, and restriction for 45 days.

8. On 17 April 2001, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, paragraph 14-12c, by reason of commission of a serious offense. As the specific reasons, the commander cited the applicant's positive test for methamphetamine, operating a vehicle under the influence of alcohol, resisting apprehension, and drunk and disorderly conduct. The separation was deemed legally sufficient by trial counsel.

9. The applicant consulted with counsel on 1 May 2021. He was advised of the basis for the contemplated separation action, the rights available to him, and the effect of a waiver of his rights. He requested consideration of his case by an administrative separation board, a personal appearance before the board, representation by military counsel. He elected to submit a statement in his own behalf, however, the statement is not available for review in the applicant's service record.

10. On the same date, 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, Chapter 14.

11. The intermediate commanders reviewed and concurred with the recommendation, further recommending the issuance of a UOTHC characterization of service.
12. An administrative separation board was scheduled for 22 June 2001. The applicant was notified of the pending board date on 15 June 2001. The board was later rescheduled for 27 July 2001.
13. A memorandum from Headquarters, V Corps, shows the Staff Judge Advocate notified the separation authority that the applicant withdrew his request to appear before the administrative separation board and unconditionally waived his right to appear before the board. The applicant further acknowledged his understanding that he could be separated with a UOTHC characterization of service.
14. The applicant's record is void of the approval from the separation authority for the recommended separation action.
15. The applicant was discharged on 18 August 2001, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of misconduct, with separation code JKQ and reentry code RE-3. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his characterization of service as UOTHC. He was credited with 3 years, 7 months, and 18 days of active service. He was awarded or authorized the Army Service Ribbon and Overseas Service Ribbon.
16. Regulatory guidance provides when an individual is discharged under the provisions of Army Regulation 635-200, Chapter 14, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. Characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate.
17. The applicant provides six pages of VA Progress Notes, dated 6 June 2023, which show he underwent an initial mental health screening, to include suicide and alcohol use screening.
18. On 25 October 2023, the Army Review Boards Agency (ARBA), Case Management Division (CMD), sent the applicant a letter requesting additional medical documentation to support his contention of PTSD and other mental health issues.
19. Additionally, the ARBA, CMD, requested a copy of any Redacted Criminal Investigation Division (CID) and Military Police Reports (MPR) from the US Army CID. CID responded on 1 November 2023 and provided the following redacted law enforcement reports:

a. CID Report of Investigation, dated 9 December 2000, shows the applicant tested positive for methylenedioxy-methamphetamine (commonly referred to as “ecstasy”), during a 19 June 2000 urinalysis. The applicant received nonjudicial punishment on 15 November 2000, which is summarized in the record of proceedings above.

b. MPR, dated 12 January 2001, shows the German Police were dispatched to a gas station where [the applicant] had fallen asleep, in his car, at a gas pump. Upon arriving, the police attempted to wake [the applicant]. Upon waking, he refused to identify himself or exit the vehicle. He was subdued by police and transported to the station, where he refused a breath test. He was administered a blood test and released to military police. The applicant received nonjudicial punishment on 2 April 2001, which is summarized above.

20. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

21. MEDICAL REVIEW:

a. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents, integrated Personnel Electronic Records Management System (iPERMS), and the applicant’s medical records in the Armed Forces Health Longitudinal Technology Application (AHLTA) and Joint Legacy Viewer (JLV) and made the following findings and recommendations: The applicant is being treated for combat and MST related PTSD. Based on liberal consideration and the nexus between trauma and substance related behavior, the basis for separation is mitigated.

b. The applicant was discharged on 18 August 2001 under AR 635-200, para 14-12c, Serious Misconduct, with an Under Other Than Honorable characterization. The applicant was separated for a positive UA for methamphetamine in June 2000 and operating a vehicle under the influence of alcohol, resisting apprehension, and drunk and disorderly conduct in December 2000. Additional misconduct included failure to go at the time prescribed to his appointed place of duty in December 1998 and failure to register his vehicle and failure to make good on a financial debt in February 2001. The applicant requested an upgrade of his characterization. The applicant asserts combat related PTSD resulted in alcohol and drug use.

c. Due to the period of service, active-duty electronic medical records are void.

d. The applicant is service connected for flat feet. Although there is no indication he is service connected for a behavioral health condition or liberal consideration experience, within treatment notes it does indicate he receives services under MST.

e. In March 2023, the applicant requested housing resources. In June, he reported PTSD, depression, and MST to primary care and referred to behavioral health. He reported MST due to females in leadership harassing him for sexual favors. He reported combat related PTSD. The applicant reported an in-service hospitalization for a suicide attempt with post-service hospitalizations. He was diagnosed with PTSD, Major Depressive Disorder, Cannabis and Alcohol Dependence, and Cocaine Use Disorder.

f. In August, he was enrolled into a residential program with successful discharge the following month. During his treatment, he reported being sexually assaulted by his Drill SGT leading to substance use which was worsened by deployment. The applicant continues with outpatient care.

g. The separation packet contains a February 20001 Mental Status Exam (MSE) clearing the applicant for separation with diagnosis of Alcohol Abuse.

Kurta Questions:

(1) Does the applicant have a condition or experience that may excuse or mitigate the discharge? YES. The applicant is being treated for combat and MST related PTSD.

(2) Did the condition exist or experience occur during military service? YES. The applicant is being treated for combat and MST related PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? YES. Based on liberal consideration and the nexus between trauma and substance related behavior, the basis for separation is mitigated.

(4) Does the condition or experience outweigh the discharge? YES. MST outweighs substance related misconduct.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that 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. The Board considered the applicant's statement, the medical review, his record of service, the frequency and nature of the applicant's misconduct, and the reason for separation. The Board noted the applicant's contention of PTSD and MST and determined his statement, the medical advising official's review finding that the applicant is currently being treated for PTSD and MST and that the MST outweighs substance related

misconduct. Based on a preponderance of the evidence, including the applicant's entire service record, medical review, and statement by the applicant, the Board recommended that the characterization of service the applicant received upon separation be changed to honorable.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 18 August 2001, to show his characterization of service as honorable.

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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, USC, 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. Title 10, USC, Section 1556, 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. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - a. 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.

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 Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. 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.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NR 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//