

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 12 March 2024

DOCKET NUMBER: AR20230008988

APPLICANT REQUESTS: an upgrade of his characterization of service from under honorable conditions (general) to honorable, and a personal appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record), 17 May 2023
- Court case on Stephen M. Kennedy and Alicia J. Carson
- Department of Veterans Affairs (VA) benefits, 19 October 2022
- VA medical documentation (58 pages), 14 May 2023
- Official transcript, 14 May 2023

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 the past few years since his daughter was born, he has made significant changes to better his life to include getting help from the VA with his mental health, and he has made a career change into cybersecurity. He has recently been diagnosed with anxiety by the VA, which was undiagnosed during his time in service. When he deployed his anxiety got worse and he believes it contributed to his discharge due to misconduct and post-traumatic stress disorder (PTSD).
3. The applicant enlisted in the Regular Army on 4 January 2006, for a period of 3 years and 17 weeks.
4. His Enlisted Record Brief shows he was awarded the military occupational specialty of 13F (Fire Support Specialist) and the highest rank he attained was private/E-2.
5. A memorandum for the commander, dated 16 February 2007, states the applicant received a positive drug test for Methylenedioxyamphetamine (MDA).

6. On 12 March 2007, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), while deployed to Iraq, for wrongfully using MDA "also known as Ecstasy" on or about 2 February 2007 and 6 February 2007. His punishment was reduction to the grade of E-1, forfeiture of \$926.00 pay for 2 months, extra duty for 30 days and restriction for 30 days.
7. On 25 July 2007, he accepted NJP under the provisions of Article 15, UCMJ, for being disrespectful in language and deportment towards Sergeant M., a noncommissioned officer. His punishment imposed was forfeiture of \$326.00 pay for a month, extra duty for 14 days, and restriction for 14 days.
8. A Report of Mental Status Evaluation, dated 6 August 2007, indicates a psychiatrist diagnosed the applicant with adjustment disorder with mixed disturbances of emotions and conduct, polysubstance abuse (in a controlled environment), and personality disorder. The applicant was mentally capable to understand and participate in the proceedings and he did not have an unfitting diagnosis that would require a medical evaluation board.
9. The applicant's immediate commander notified the applicant of his intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c, Commission of a Serious Offense. He noted the specific reasons as the applicant's numerous acts of misconduct to include two NJPs. The commander recommended the applicant receive a general discharge.
10. The applicant having been advised of his right to see a qualified judge advocate pertaining to his administrative separation, waived his right to see a legal counsel and he certified he was not coerced by his chain of command to waive his right to seek legal counsel.
11. The applicant's immediate commander formally recommended the applicant be separated under AR 635-200, Chapter 14, prior to the expiration of his term of service.
12. The applicant's intermediate commander recommended approval of the separation action under AR 635-200, Chapter 14, with a general (under honorable conditions) characterization of service.
13. On 8 October 2007, the separation authority approved the recommended discharge, further directing a general characterization of service.
14. The applicant was discharged accordingly on 7 December 2007. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct (serious

offense), in the grade of E-1. His service was characterized as under honorable conditions (general). He received a separation code of JKQ and reentry code of 3. He completed 1 year, 11 months, and 4 days of net active service. He had 8 months and 22 days of foreign service, serving in Operation Iraqi Freedom (Iraq) from 24 February 2007 to 15 November 2007. He was awarded or authorized the following decorations, medals, badges, citations, and campaign ribbons:

- National Defense Service Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal
- Army Service Ribbon

15. The applicant provides:

- a. A court case pertaining to S.M.K. and A.J.C. versus the Secretary of the Army.
- b. His VA benefits statement showing he receives an 80% disability rating for service-connected disabilities.
- c. Approximately 58 pages of medical documentation from the VA summarizing his appointments, depression, anxiety, and attention deficit/hyperactivity disorder diagnosis, his rated disabilities for degenerative arthritis of the spine, paralysis of sciatic nerve, and PTSD, and additional medications prescribed to him from the VA.
- d. His official transcript showing multiple certifications earned for his cybersecurity career.

16. There is no indication the applicant applied to the Army Discharge Review Board within that board's 15-year statute of limitations.

17. Regulatory guidance states when an individual is discharged under the provisions of AR 635-200 Chapter 14, for misconduct, an under other than honorable conditions 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.

18. 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.

19. MEDICAL REVIEW:

- a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) characterization of service to honorable.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- Applicant enlisted in the RA on 4 January 2006.
- On 12 March 2007, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), while deployed to Iraq, for wrongfully using MDA "also known as Ecstasy" on or about 2 February 2007 and 6 February 2007.
- On 25 July 2007, he accepted NJP under the provisions of Article 15, UCMJ, for being disrespectful in language and deportment towards Sergeant M., a noncommissioned officer.
- Applicant was discharged on 7 December 2007. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct (serious offense), in the grade of E-1. His service was characterized as under honorable conditions (general). He received a separation code of JKQ and reentry code of 3.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, his ABCMR Record of Proceedings (ROP), DD Form 214, VA medical documentation, transcript, and documents from his service record and separation packet. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant states in the past few years since his daughter was born, he has made significant changes to better his life to include getting help from the VA with his mental health, and he has made a career change into cybersecurity. He has recently been diagnosed with anxiety by the VA, which was undiagnosed during his time in service. When he deployed his anxiety got worse and he believes it contributed to his discharge due to misconduct and post-traumatic stress disorder (PTSD).

e. Active-duty electronic medical records available for review show a mental status report, dated 6 August 2007, indicating the applicant was diagnosed with Adjustment Disorder with mixed disturbances of emotions and conduct, Polysubstance Abuse (in a controlled environment), and Personality Disorder. The applicant was cleared to participate in administrative proceedings for separation and did not have a diagnosis that required a medical evaluation board. Prior to that encounter, the applicant was seen on 12 March 2007 as a self-referral on the recommendation of his unit chaplain due to suicidal ideation. At that time, he was diagnosed with Adjustment Disorder with Depressed Mood. The applicant was assessed again the next day, he denied suicidal

thoughts and reported his symptoms abated since he received an Article 15 and was relieved that the ordeal had been addressed and his punishment was not more severe.

f. The applicant is 80% service connected, including 50% for PTSD, effective 8 August 2021. Per the applicant, he was deployed to Iraq and witnessed mortar attacks and experienced the loss of friends from his unit. The VA electronic medical records (JLV) available for review evidence the applicant has been receiving mental health services since 8 August 2008, with the applicant initially being diagnosed with Major Depressive Disorder; Cannabis dependence; and Alcohol Abuse. Applicant continued to receive ongoing mental health care via the VA and, per the record, has been hospitalized several times due to suicidal ideation and substance abuse. He has also participated in intensive outpatient services. On 27 October 2022, the applicant notified his therapist that his father committed suicide. The applicant was diagnosed and treated for Bereavement related to his father's suicide. The applicant's most recent appointment, on 07 December 2023, for medication management has him diagnosed with Unspecified Anxiety Disorder, Unspecified Trauma and Stressor Related Disorder, and Attention Deficit and Hyperactivity Disorder.

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence the applicant had an experience and subsequent behavioral health condition during military service that mitigates his discharge.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant asserts a mitigating condition.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 50% service-connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to wrongfully using MDA "also known as Ecstasy" and being disrespectful in language and deportment towards a noncommissioned officer. Given the nexus between PTSD and the use of substances to alleviate/cope with the symptoms of his behavioral health condition, the applicant's wrongful use of a controlled substance is mitigated by his diagnosis of PTSD. In addition, the applicant engaged in being disrespectful in language and deportment towards a noncommissioned officer. Given the nexus between PTSD and difficulty with authority, the applicant's disrespect in language and deportment towards a noncommissioned officer, is also mitigated by his diagnosis of PTSD.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. 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 and record of service, the frequency and nature of the applicant's misconduct and the reason for separation.
 - a. The evidence shows the applicant was separated for misconduct – commission of a serious offense after he wrongfully used illegal drugs and disobeying orders. He completed 1 year and 11 months of active service and received a characterization of service as general under honorable conditions. The Board found no error or injustice in his separation processing.

 - b. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical reviewer's finding sufficient evidence to support the applicant had condition or experience that mitigated his misconduct, and thus determined an honorable characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board also determined that such upgrade did not change the underlying reason for his separation, and that there would be no change to the narrative reason for separation and/or corresponding codes.

BOARD VOTE:

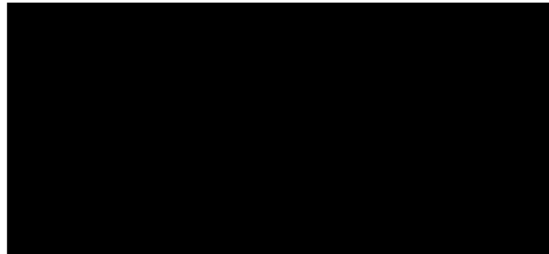
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■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 29 August 2013, to show:

- Character of Service: Honorable
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change



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 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.

3. AR 15-185 (ABCMR), the regulation governing this Board, states 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. AR 635-200 sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3, section II (Type of Characterization or Description) provides a description of the states the following types of characterization of service or description of service are authorized: separation with characterization of service as Honorable, General (under honorable conditions), or Under Other Than Honorable Conditions, and Uncharacterized (for entry level status) are authorized. These separation types will be used in appropriate circumstances unless limited by the reason for separation.

(1) Paragraph 3-7a states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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.

(2) 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.

b. 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.

(1) 14-12c(2) – Soldiers are subject to discharge for *Commission of a serious offense*. Commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the MCM. Specific instances of serious offenses include abuse of illegal drugs or alcohol.

(2) 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 such is merited by the Soldier's overall record.

5. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (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. 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//