

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 9 April 2024

DOCKET NUMBER: AR20230009633

APPLICANT REQUESTS: upgrade of his general, under honorable conditions characterization of service to honorable due to post-traumatic stress disorder (PTSD) and other behavioral health issues.

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

- DD Form 149 (Application for Correction of Military Record), 1 June 2023
- Self-authored Statement, 25 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 indicated on his DD Form 149 that PTSD and Other Mental Health issues or conditions are related to his issue. He states, in effect, he served his country with honor and distinction during the Persian Gulf War. As a result of his service, he developed mental health conditions that affected his ability to perform what was required of him.
3. A review of the applicant's service records shows:
  - a. On 13 April 1988, he enlisted in the Regular Army for a period of 4 years. He completed One Station Unit Training at Fort Sill and he was awarded military occupational specialty 13B (Cannoneer).
  - b. On 14 August 1988, he was assigned to C Battery, 5th Battalion, 41st Field Artillery, Germany. On 13 July 1989, he was promoted to specialist (SPC)/E-4 and on 1 September 1990 he was promoted to sergeant (SGT)/E-5.

c. While assigned to C Battery, 5th Battalion, 41st Field Artillery, he deployed to Saudi Arabia and he served during the Persian Gulf War in an imminent danger pay area from 31 January 1991 to 22 April 1991 (4 months).

d. On 28 February 1992, he reenlisted for 3 years at grade/pay grade SGT/E-5. On 6 August 1992, he was reassigned to Headquarters Battery, 3rd Battalion, 8th Field Artillery Regiment, Fort Bragg.

e. His records contain a DA Form 5180-R (Urinalysis Custody and Report Record) showing on 3 September 1992, Forensic Toxicology Drug Testing Lab Department of Pathology, Walter Reed Army Medical Center, Fort Meade, processed a urine specimen collected from him; the test basis code by which the specimen custody document was authorized was "U" (Unit Sweep), and showed a result of a positive test for cocaine. On 22 September 1992, the results of the laboratory tests were certified.

f. On 22 October 1992, he accepted field grade nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for wrongful use of cocaine on or about between 25 August 1992 and 3 September 1992 at an unknown location, detected by biochemical testing of a urine sample he submitted on 3 September 1992. His punishment consisted of reduction from SGT/E-5 to SPC/E-4, forfeiture of \$585.00 for 1 month, and extra duty and restriction for 30 days. He did not appeal this punishment.

g. On 2 November 1992, his Battery Commander, A Company, 3rd Battalion, 8th Field Artillery Regiment, notified him of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12c for commission of a serious offense, and advised him of his rights. His commander recommended his service be characterized as general, under honorable conditions and stated the reason for his proposed action was he received field grade NJP under the provisions of Article 15 the UCMJ for a positive urinalysis of a controlled substance: cocaine.

h. On 10 November 1992, he underwent a mental health examination as requested by his command. A DA Form 3822-R (Report of Mental Status Evaluation) shows the Chief Psychiatrist, Community Mental Health Service, Womack Army Medical Center, Fort Bragg, evaluated him under the provisions of Army Regulation 635-200, Paragraph 14. The report shows:

(1) He had normal behavior, a fully oriented level of alertness with an unremarkable mood or affect, and he had a clear thinking process with normal content and good memory.

(2) In the examiner's opinion, he had the mental capacity to understand and participate in the proceedings, he was mentally responsible, and he met the retention requirements of Army Regulation 40-501, Chapter 3.

(3) There was no evidence of psychiatric condition, which would warrant disposition through medical channels. He was psychiatrically cleared for any administrative action deemed appropriate by his command.

i. On 10 November 1992, he underwent a medical examination and gave a report of medical history for the purpose of a chapter separation. The applicant noted, in part, he was not taking medication, he had a history of frequent and severe headaches, swollen or painful joints, head injury, skin diseases, shortness of breath, pain in his chest frequent trouble sleeping, depression or excessive worry, a history of broken bones, and arthritis. The examining physician noted he was qualified for separation.

j. On 30 November 1992, he acknowledged receipt of his commander's separation notification. He indicated that he had been advised by his consulting counsel of the basis for the contemplated action to separate him for commission of serious offense under Army Regulation 635-200, paragraph 14-12c, and its effect; of the rights available to him; and of the effect of any action taken by him in waiving his rights. He understood that he was not entitled to have his case considered by an administrative separation board because he did not have more than 6 years of active service and/or he was not being recommended for an other than honorable characterization of service. He elected to submit a statement in his own behalf. He waived consulting counsel and further indicated:

- he understood he may expect to encounter substantial prejudice in civilian life if a discharge general, under honorable conditions was issued to him
- he further understood that as the result of issuance of a discharge general, under honorable conditions he may be ineligible for all benefits as a veteran under both Federal and State laws and that he may expect to encounter substantial prejudice in civilian life
- he requested copies of the separation documents that would be sent to the separation authority supporting the proposed separation

k. A written statement in response to his commander's notification memorandum is not contained in the available records.

l. On 2 November 1992, his Battery Commander initiated separation action against him under the provisions of AR 635-200, paragraph 14-12c, for misconduct-commission of a serious offense and recommended his service be characterized as general, under honorable conditions.

m. On an unspecified date, his Battalion Commander recommended approval of his separation with a characterization of general, under honorable conditions.

n. On 15 December 1992, the separation authority approved the discharge recommendation, and ordered the applicant's discharge under provisions of AR 635-200, paragraph 14-12c, for commission of a serious offense and directed he be issued a General Discharge Certificate.

o. On 13 January 1993, he was discharged. 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, Section III, by reason of misconduct -commission of a serious offense, with a general, under honorable conditions characterization of service, a separation code of JKQ, and a reenlistment code 3. He completed 4 years, 9 months, and 1 day of net active service with no time lost. His DD Form 214 further shows in:

(1) Block 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon, National Defense Service Medal, Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16), Army Achievement Medal (2nd Oak Leaf Cluster), and NCO Professional Development Ribbon

(2) Block 18 (Remarks) – he completed continuous honorable service from 13 April 1988 to 27 February 1992.

6. There is no evidence indicating he applied to the Army Discharge Review Board for an upgrade of his discharge within that board's 15-year statute of limitations.

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

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his general, under honorable conditions characterization of service. He contends he was experiencing mental health conditions including PTSD that mitigate his misconduct. 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 13 April 1988; 2) The applicant deployed to Saudi Arabia, and he served during the Persian Gulf War in an imminent danger pay area from 31 January 1991 to 22 April 1991 (4 months); 3) On 22 October 1992, the accepted field grade nonjudicial punishment (NJP) for wrongful use of cocaine; 4) On

13 January 1993, the applicant was discharged, Chapter 14-12c, by reason of misconduct-commission of a serious offense. He received a general, under honorable conditions characterization of service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and available military service and medical records. The VA's Joint Legacy Viewer (JLV) and VA documentation provided by the applicant were also examined. The applicant noted mental health conditions including PTSD as contributing and mitigating factors in the circumstances that resulted in his separation. The applicant underwent a Mental Status Evaluation as part of his separation proceedings. He was not diagnosed with a psychiatric condition, and he was found mentally responsible and able to participate in the separation proceedings. During his Report of Medical History on 10 November 1992, the applicant reported experiencing trouble sleeping and depression or excessive worry. A review of JLV provided sufficient evidence the applicant has been diagnosed with service-connected PTSD and Major Depression. He has also been awarded service-connected disability for PTSD (50%) since 2017. 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 mitigated 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 mental health conditions including PTSD that contributed to his misconduct. He has been diagnosed with service-connected Major Depression and PTSD by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reports experiencing PTSD while on active service. He did report prior to his separation, that he was experiencing problems sleeping and depression or excessive worry. He has also been diagnosed with service-connected PTSD and Major Depression.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing mental health conditions including PTSD while on active service. Avoidant behaviors are often a natural sequelae to PTSD and depression. It is likely the applicant abused illegal substances to cope with his negative emotions while on active service. Therefore, in accordance with Liberal Consideration, there is sufficient evidence the applicant was experiencing a mitigating mental health condition during his active service.

**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 applicant was discharged for misconduct, commission of a serious offense (tested positive for cocaine). He completed 4 years and 9 months of service, including service in Southwest Asia. He received a general discharge. The Board found no error or injustice in his separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the reviewing medical official. The Board concurred with the medical reviewer's finding sufficient evidence the applicant may have had a behavioral health condition during military service that mitigates his discharge. As a result, the Board determined an upgrade to 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:

Mbr 1      Mbr 2      Mbr 3

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:	:	:	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 13 January 1993, showing:

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

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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. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

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. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, 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.

d. Paragraph 14-12c 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, would be authorized for the same or a closely related offense under the Manual for Courts Martial.

(1) Paragraph 14-12c(2): Other personnel (first-time offenders below the grade of sergeant, or with less 3 years of total military service, Active and Reserve) may be processed for separation as appropriate.

(2) Paragraph 14-12c(2)a: First-time drug offenders. Soldiers in the grade of sergeant and above, and all Soldiers with 3 years or more of total military service, Active and Reserve, will be processed for separation upon discovery of a drug offense.



(3) Paragraph 14-12c(2)b: Second-time drug offenders. All Soldiers must be processed for separation after a second offense.

4. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator "JKQ" corresponded to "Misconduct (Serious Offense), and the authority, Army Regulation 635-200, paragraph 14-12c.

5. 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.

6. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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. 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 based on equity, injustice, or clemency grounds, BCM/NRs 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. 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.

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//