

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 April 2024

DOCKET NUMBER: AR20230010084

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

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

DD Form 149 (Application for Correction of Military Record), 19 June 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 effect, his undiagnosed severe post-traumatic stress disorder (PTSD) from his time in combat, led to his discharge. The actions which caused him to be discharged were all due to his PTSD. Through the years he has been fighting depression and PTSD and felt like giving up. He is requesting a discharge upgrade to try to change his life.
3. The applicant enlisted in the Regular Army on 5 March 2003, for a period of 4 years. He was awarded the military occupational specialty of 19K (M1 Armor Crewman) and the highest rank he attained was private first class/E-3.
4. The applicant served in Iraq in support of Operation Iraqi Freedom from 6 September 2003 to 28 February 2004.
5. A DD Form 2624 (Specimen Custody Document – Drug Testing), dated 7 May 2004 confirmed the applicant received a positive uranalysis test. Showing he tested positive for the use of D-Methamphetamine, Methylenedioxymethamphetamine, and Methamphetamine.

6. The Criminal Investigation Division (CID) completed an agent's investigation report on 2 June 2004. The CID agent found the applicant used alternative means to provide his urine sample. It additionally states the applicant's commander would not recommend court-martial for the applicant and an additional laboratory analysis was unnecessary.

7. On 6 July 2004, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ):

a. For his wrongful use of the following substances:

- Methamphetamine between on or about 1 May 2004 and 7 May 2004
- D-Methamphetamine between on or about 1 May 2004 and 7 May 2004
- Methylenedioxymethamphetamine between on or about 1 May 2004 and 7 May 2004
- Cocaine between on or about 17 May 2004 and 19 May 2004
- Marijuana between on or about 20 April 2004 and 19 May 2004

b. His punishment imposed was reduction the grade of E-1, forfeiture of \$596.00 pay per month for 2 months, restriction and extra duty for 45 days.

8. The applicant's immediate commander notified the applicant on 5 August 2004 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, for Commission of a Serious Offense. He noted the specific reasons as the applicant's positive drug test results from his use of methamphetamine, d-methamphetamine, methylenedioxymethamphetamine, cocaine, and marijuana. The commander recommended the applicant receive a under honorable conditions (general) discharge.

9. The applicant consulted with counsel on 10 August 2004, and was advised of the basis for the contemplated action to separate him and of the rights available to him, he understood he may encounter substantial prejudice in his civilian life, and elected to submit a statement on his behalf. His record is void of this specific statement.

10. On 10 August 2004, the applicant's immediate and intermediate commanders formally recommended the applicant be separated under AR 635-200, Chapter 14, prior to the expiration of his term of service. Additionally recommending his characterization of service be characterized as under honorable conditions (general).

11. On 24 August 2004, the separation authority directed the applicant be separated under the provisions of AR 635-200, Chapter 14, based on commission of a serious offense. He further directed the applicant be furnished a under honorable conditions (general) discharge.

12. The applicant was discharged accordingly on 18 October 2004. 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, in the grade of E-1. His service was characterized as under honorable conditions (general). He received a separation code of JKK and reentry code of 4. He completed 1 year, 7 months, and 14 days of net active service. He was awarded or authorized the following decorations, medals, badges, citations, and campaign ribbons:

- National Defense Service Medal
- Global War on Terrorism Service Medal
- Global War on Terrorism Expeditionary Medal
- Army Service Ribbon

13. On 6 October 2023, an Army Review Boards Agency analyst emailed the applicant and placed his case on a 30-day hold, pending receipt of additional documents, i.e., diagnosis, benefit letter, and DD Form 214. The applicant did not respond.

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

15. 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.

16. 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.

MEDICAL REVIEW:

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

2. 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:

a. Applicant enlisted in the RA on 5 March 2003.

b. Applicant served in Iraq in support of Operation Iraqi Freedom from 6 September 2003 to 28 February 2004.

c. A DD Form 2624 (Specimen Custody Document – Drug Testing), dated 7 May 2004 confirmed the applicant received a positive uranalysis test. Showing he tested positive for the use of D-Methamphetamine, Methylenedioxymethamphetamine, and Methamphetamine.

d. Criminal Investigation Division (CID) completed an agent's investigation report on 2 June 2004. The CID agent found the applicant used alternative means to provide his urine sample. It additionally states the applicant's commander would not recommend court-martial for the applicant and an additional laboratory analysis was unnecessary.

e. On 6 July 2004, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for his wrongful use of the following substances:

- Methamphetamine between on or about 1 May 2004 and 7 May 2004
- D-Methamphetamine between on or about 1 May 2004 and 7 May 2004
- Methylenedioxymethamphetamine between on or about 1 May 2004 and 7 May 2004
- Cocaine between on or about 17 May 2004 and 19 May 2004
- Marijuana between on or about 20 April 2004 and 19 May 2004

f. Applicant's immediate commander notified the applicant on 5 August 2004 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, for Commission of a Serious Offense. He noted the specific reasons as the applicant's positive drug test results from his use of methamphetamine, d-methamphetamine, methylenedioxymethamphetamine, cocaine, and marijuana. The commander recommended the applicant receive a under honorable conditions (general) discharge.

g. Applicant was discharged on 18 October 2004. 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, in the grade of E-1. His service was characterized as under honorable conditions (general). He received a separation code of JKK and reentry code of 4.

3. Review of Available Records Including Medical: 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, 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.

4. The applicant states his undiagnosed severe post-traumatic stress disorder (PTSD) from his time in combat, led to his discharge. The actions which caused him to be discharged were all due to his PTSD. Through the years he has been fighting depression and PTSD and felt like giving up. He is requesting a discharge upgrade to try to change his life.

5. Due to the period of service no active-duty electronic medical records were available for review. The VA electronic medical record available for review indicates the applicant is 100% service connected for PTSD. A psychiatric intake examination dated 8 December 2010 indicates the applicant met criteria for PTSD and was started on medication to address his symptoms. In addition, the applicant was further referred for a TBI screening due to exposure to a blast while deployed. The TBI screening occurred on 29 December 2010 and confirmed the history of blast exposure but concluded his symptoms were not consistent with concussion or TBI but were consistent with PTSD. A Compensation and Pension examination dated 15 June 2011 also diagnosed the applicant with PTSD. The applicant discontinued his medications due to side effects and did not participate in care. However, he reestablished care in October 2014 and was provided with psychiatry and medication. A Homeless Program note dated 03 March 2015 indicates the applicant experienced housing insecurity and was supported via homeless service. The applicant has continued to receive supportive services and BH treatment intermittently via the VA into the present.

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

7. Kurta Questions:

a. 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.

b. Did the condition exist or experience occur during military service? Yes. The applicant is 100% service-connected for PTSD.

c. Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to testing positive for methamphetamine, d-methamphetamine, methylenedioxymethamphetamine, cocaine, and marijuana use. Given the nexus between PTSD and the use of substances to alleviate/cope with the symptoms of his behavioral health condition, the applicant's use of methamphetamine, d-methamphetamine, methylenedioxymethamphetamine, cocaine, and marijuana is mitigated by his diagnosis of PTSD.

BOARD DISCUSSION:

1. The applicant's contentions, the military record, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted.
2. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant 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.
3. The Board concurs with the opinion of the ARBA Medical Advisor. Based on the available information, there is sufficient evidence the applicant had a behavioral health condition during military service that mitigates his discharge. Therefore, the Board determined it would be appropriate to upgrade the applicant's characterization of service to honorable.

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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:

- a. voiding his current DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 18 October 2004.
- b. issuing him a new DD Form 214 showing his characterization of service as honorable.

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 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 Manual for Court-Martial. 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//