

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 May 2024

DOCKET NUMBER: AR20230010354

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

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

- DD Form 149 (Application for Correction of Military Record)
- Military Service Record
- National Personnel Records Center (NPRC) Correspondence

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

a. An upgrade of the characterization will allow the applicant to obtain a reliable medical provider at the Veterans Affairs (VA) and provide care for his ongoing medical needs.

b. The lack of medical treatment he received were contributing factors of his actions. Had he been properly treated beforehand; his actions could have been prevented and the Uniform Code of Military Justice (UCMJ) actions would not have been necessary. The ability to receive care would drastically change his life. His negative behavior and disciplinary issues were a direct result from medical care provided and the upgrade of his characterization of service would correct any injustice he has endured. The applicant indicates other mental health as an issue/concern related to his application.

3. The applicant provides:

a. A self-authored statement that requests correction of his characterization of service from under other than honorable conditions to general under honorable conditions. He also recounts his time in service and the events that led to his discharge.

(1) He states that he entered active duty on 6 May 2002 for initial active duty training (IADT) for basic combat training (BCT) and advanced individual training (AIT). Immediately following completing of IADT, he was placed on orders in support of Operation Noble Eagle from 3 December 2002 to 19 March 2004. He was issued a DD Form 214 (Certificate of Release or Discharge from Active Duty) with an under other than honorable conditions characterization of service.

(2) During his time in service he was diagnosed with lumbar damage, T-spine degenerative disk disease, bipolar disorder, and non-combat related post-traumatic stress disorder (PTSD). The diagnoses have affected his everyday life and his drug addiction is a direct result of prolonged care for pain management. His addiction continues to be a condition that has yet to be appropriately treated.

(3) Prior to sustaining his injuries, his service was awarded with multiple certificates of appreciation and an Army Achievement Medal. Once he was injured, he was looked at as a less than a Soldier and ridiculed for attending medical appointments. Due to the amount of pain medication he was prescribed, he was unable to function reasonably and it altered his ability to perform simple tasks. His ability to control his actions were altered due to the pain medication. Prior to being prescribed pain medication he served honorably, met Army requirements, and successfully completed required schools. He contributes the pain medication to the misconduct, as he was unable to fully comprehend his actions and understand the process of being discharged from service. Before joining the service, he did not have a drug dependency, and this only developed after the injuries he sustained.

b. His entire military service record to include two DD Forms 214 (effective 16 October 2002 and 19 March 2004), active duty and separation orders, five DD Forms 689 (Individual Sick Slip), DA Form 3349 (Physical Profile), DA Form 3982 (Medical and Dental Appointment), award orders, DD Form 458 (Charge Sheet), separation documents, and a NGB Form 22 (effective 20 April 2002).

3. The applicant enlisted in the Army National Guard on 19 March 2002.

4. Orders: 051-03, issued by the Department of Defense Military Entrance Processing Station (MEPS) on 22 March 2002, ordered him to IADT on 7 May 2002 until completion of BCT and AIT.

5. He was released from active duty training with an honorable characterization of service. He completed 5 months and 11 days of active service. He was awarded or authorized the Army Service Ribbon.

6. Orders 331-295, issued by the State of Texas Adjutant General's Department on 27 November 2002, ordered him to active duty on 3 December 2002 in support of Operation Noble Eagle.

7. Orders 271-0101, issued by Headquarters, U.S. Army Medical Department Center & School and Fort Sam Houston on 28 September 2003, released him from active duty on 2 November 2003.

8. Orders A-12-302624, issued by U.S. Army Human Resources Command on 17 December 2003, ordered him to active duty, effective 3 December 2003 until 1 March 2004 for an active duty medical extension.

9. The complete facts, and circumstances surrounding the applicant's discharge are unavailable for review, however, his record does include:

a. A DD Form 458, dated 15 March 2004, preferred charges on him with the following charges:

(1) Charge I, Article 86 (Absent Without Leave) – four specifications of failing to go at the time prescribed to his appointed place of duty, to wit: 0730 hours, Company Formation adjacent building 3642, between on or about 1 March 2004 to on or about 10 March 2004.

(2) Charge II, Article 108 (Damage, Wrongful Disposition, Sale, Loss or Destruction of U.S. Military Property) – one specification of willfully damaging by driving a vehicle in "donuts" on a lawn, the military property of the United States, the amount of said damage being the sum of more than \$500, on or about 10 March 2004.

(3) Charge III, Article 112a (Wrongful Use, Possession, Etc., of Controlled Substances) – one specification of wrongfully possessing about two ounces of marijuana, on or about 10 March 2004.

b. Orders 079-0113, issued by Headquarters, US. Army Medical Department Center & School and Fort Sam Houston on 19 March 2004, released him from active duty for training, discharged him from the Reserve of the Army, and returned to the Army National Guard, effective 19 March 2004.

c. He was discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial with an under other than honorable conditions characterization of service and assigned a separation code of KFS. He completed 1 year, 3 months, and 17 days of active service. He was awarded or authorized the following:

- Army Achievement Medal
- National Defense Service Medal
- Armed Forces Reserved Medal (Mobilization)
- Army Service Ribbon

10. There is no indication the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

11. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or in lieu of trial by court-martial.

12. Also, by regulation (AR 635-5):

a. The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

b. For block 24 (Character of Service) the correct entry is vital as it affects a soldiers' eligibility for post-service benefits. Characterization or description of service is determined by directives authorizing separation. The entry must be one of the following: honorable, under honorable conditions (general), under other than honorable conditions, bad conduct, dishonorable, or uncharacterized.

13. 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.

MEDICAL REVIEW:

1. The applicant is applying to the ABCMR requesting an upgrade of his characterization of service from under other than honorable conditions. He contends he experienced mental health conditions including PTSD that mitigates 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:
 - a. The applicant enlisted in the Army National Guard on 19 March 2002;
 - b. The applicant was ordered to active duty on 3 December 2002 in support of Operation Noble Eagle, which was complete on 28 September 2003. He was again ordered to active duty 03 December 2003 until 01 March 2004 for an active duty medical extension;
 - c. On 15 March 2004, charges were preferred against the applicant for:
 - (1) AWOL from 1-10 March 2004;
 - (2) damaging military property on 10 March 2004; and
 - (3) possession of 2 ounces of marijuana on 10 March 2004.
 - d. The applicant was discharged from active duty and returned to the National Guard on 19 March 2004, Chapter 10-in lieu of trial by court-martial with an under other than honorable characterization of service. The complete facts and circumstances surrounding the applicant's discharge from the National Guard are unavailable for review.
3. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and available medical records. The VA electronic medical record (JLV) and hardcopy military medical records provided by the applicant were also examined.
4. The applicant asserts he was experiencing mental health conditions including PTSD while on active service, which mitigates his misconduct. The applicant provided hardcopy medical documentation indicating he was receiving medical care for physical concerns as well as attending the pain management clinic. The applicant also provided documentation that he was scheduled to be evaluated at behavioral medicine on 08 April 2003 to received psychological testing. There was insufficient evidence presented or available to the results of this test or evidence the applicant reported or was treated for a mental health condition. There was one additional unsigned sick call slip without

the applicant's name that he had a scheduled appointment at behavioral health on 21 April 2003.

5. A review of available electronic medical record did provide concurrent evidence the applicant was reporting back pain, and he repeatedly went to sick call and the ED starting in March 2003. There was no behavioral health documentation provided, but there was evidence the applicant had been prescribed oxycodone, gabapentin, Percocet, and Xanax (for stress) all at the same time between March and May 2003. There was a note the applicant was referred to behavioral health for an evaluation in April 2003, but the results were not available. On 20 February 2004, there was a note the applicant had a history of cocaine, amphetamine, and marijuana use, and he was being administratively separated from the military.

6. A review of JLV provided evidence the applicant has been engaged with the VA for assistance with homelessness and substance abuse, and he has been involved in inpatient substance abuse care. In 2018, he was diagnosed with unspecified bipolar disorder and significant poly-substance dependence. There was insufficient evidence presented the applicant has been diagnosed with PTSD or another service-connected mental health condition. Lastly, there was insufficient evidence presented the applicant was experiencing a mental health condition beyond substance abuse during his active service.

7. 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 mitigates his misconduct.

8. Kurta Questions:

a. Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, there is sufficient evidence the applicant was prescribed significant and various opioid medication during his military service. Later there is evidence he was diagnosed with bipolar disorder. The applicant also reported being diagnosed with PTSD, but there was insufficient evidence of this diagnosis in the available medical record.

b. Did the condition exist or experience occur during military service? Yes, there is sufficient evidence the applicant was prescribed significant and various opioid medication during his military service. The applicant also reported being diagnosed with mental health conditions including PTSD, but there was insufficient evidence of this diagnosis in the available medical record.

c. Does the condition experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was treated for pain and prescribed multiple opioid and other pain medications, while on active service due to his

report of injury and anxiety. There is insufficient evidence the applicant was experiencing PTSD beyond his self-report, but he did later have a diagnosis of bipolar disorder and poly-substance dependence. Due to the variety of significant and addicting medication the applicant was prescribed, and his later condition of bipolar disorder, there is evidence the applicant was experiencing negative emotions associated with his level pain, developing significant mental health condition, and was under the influence of prescribed opioid medication. The applicant's misconduct could be a natural sequela to this combination of events and conditions. Therefore, per the Liberal Consideration Policy, his contention and evidence available is sufficient for consideration for an upgrade of his characterization of service.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request for an upgrade of his under other than honorable conditions characterization of service to under honorable conditions (general), his contentions, his military record, and the applicable regulatory guidance. After reviewing the application, all supporting documents, and the evidence found within his military record, the Board found relief is warranted.
2. The answer to all three critical Kurta questions is yes, there was insufficient evidence he had PTSD beyond self-report, but later did get a diagnosis of bipolar and polysubstance dependence. The misconduct could be mitigated by his mental health conditions.
3. The Board recommend upgrading his characterization to under honorable conditions (general) and restoring his rank/grade based on the medical advisory opinion and the fact that he completed a deployment in the former Republic of Yugoslavia.

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 following blocks of his DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 19 March 2004, to read:

- block 4a/4b (Grade, Rate, or Rank/Pay Grade): Private First Class (PFC)/E-3
- block 12h (Effective Date of Pay Grade) 19 March 2003
- block 24 (Character of Service) under honorable conditions (general)

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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 (ABCMR) 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, which is that what the Army did was correct.

3. Army Regulation 635-5 (Separation Documents) states:

a. The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

b. For block 24 (Character of Service) the correct entry is vital as it affects a soldiers' eligibility for post-service benefits. Characterization or description of service is determined by directives authorizing separation. The entry must be one of the following: honorable, under honorable conditions (general), under other than honorable conditions, bad conduct, dishonorable, or uncharacterized.

4. Army Regulation (AR) 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a Soldier who committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not being coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was

normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. 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.

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

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

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 DRBs 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, traumatic brain injury, sexual assault, or sexual harassment. 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. 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.

6. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

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//