

punishment consisted of reduction to private first class/E-3, forfeiture of \$183.00, restriction, and extra duty.

6. The applicant was honorably released from active duty on 25 March 1987 and transferred to U.S. Army Reserve (USAR). His DD Form 214 shows he completed 2 years, 11 months, and 27 days of net active service.

7. On 30 March 1987, the executive officer requested issuance of a DD Form 215 (Correction to DD Form 214) for correction of the applicant's middle name and a DD Form 215 was issued on 10 August 1987.

8. Orders 7-24, issued by Headquarters, 90th USAR command, San Antonio, TX on 20 January 1988, show the applicant was released from Grand Prairie, TX. The reason was active component no show. He was assigned to the USAR Control group, effective 20 January 1988.

9. The applicant reenlisted in the Regular Army on 23 December 1988 and again on 18 November 1992.

10. The available record is void of a separation packet containing the specific facts and circumstances surrounding the applicant's separation.

11. The applicant was discharged on 2 October 1997. His DD Form 214 shows he was discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Paragraph 14-12c, for misconduct with Separation Code JKQ with Reentry Code 3. His service was characterized as under other than honorable conditions. He completed 8 years, 9 months, and 10 days of net active service. His awards include the: Army Commendation Medal (2nd award), Army Achievement Medal, Army Good Conduct Medal (2nd award) Southwest Asia (SWA) Service Medal with 3 bronze serve stars (bss), Army Service Ribbon, Overseas Service Ribbon (2nd award), Kuwait Liberation Medal (K), and the Kuwait Liberation Medal (SA). His DD Form 214 does not show service in SWA.

12. Soldiers are subject to separation under the provisions AR 635-200, Chapter 14, for commission of a serious offense. A discharge UOTHC 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 overall record. When a Soldier is to be discharged UOTHC, the separation authority will direct an immediate reduction to private/E-1, in accordance with Army Regulation 600-8-19 (Enlisted Promotions and Reductions).

13. The applicant provides Orders 268-0014 and a copy of his DD Form 214.

14. On 30 October 2023, an agency staff member requested the applicant provide medical documents that support his issue of PTSD. As of 30 November 2023, no response was provided.

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

16. MEDICAL REVIEW:

a. The applicant requests upgrade of his UOTHC to Honorable. He contends his misconduct was related to PTSD.

b. 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 into the Regular Army on 29 March 1984; 2) He accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on 19 November 1986, for wrongful use of marijuana on or between 7 September 1986 to on or between 18 September 1986; 3) The applicant was honorably released from active duty on 25 March 1987 and transferred to U.S. Army Reserve (USAR); 4) The applicant reenlisted in the Regular Army on 23 December 1988 and again on 18 November 1992; 5) The available record is void of a separation packet containing the specific facts and circumstances surrounding the applicant's separation. The applicant was discharged on 2 October 1997. His DD Form 214 shows he was discharged under the provisions of Army Regulation, 635-200, Paragraph 14-12c.

c. The VA electronic medical record (JLV), ROP, and casefiles were reviewed. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. No military BH-related records were provided for review. A review of JLV shows the applicant 70 percent SC for PTSD secondary to service during the gulf war. Initial PTSD DBQ, dated 13 June 2015 shows the applicant reported that while deployed to Iraq he experienced daily mortar and rocket attack which made him fear for his life, and witnessed the dead bodies of the enemy and fellow Soldier across the desert. The applicant reported PTSD symptoms onset following deployment. The provider noted the applicant endorsed sufficient symptoms to meet criteria for PTSD and deemed the disorder was related to military service. PTSD DBQ Review, dated 17 August 2022, shows the applicant continued to meet criteria for PTSD, and PTSD DBQ Review, dated 2 October 2023, shows the applicant's PTSD had worsened and that he also met criteria for MDD secondary to worsening PTSD.

d. Records suggest the applicant was diagnosed with PTSD and Depression NOS in April 2005 and sought treatment through November 2005 before discontinuing. He reengaged in treatment in August 2022 with chief complaints of feeling "down and out"

and wanting to know “what was wrong with him”. The applicant was scheduled for outpatient treatment. Records show the applicant engaged, inconsistently, from August 2022 to May 2023, with poor results. He appears to have attended a total of 5 sessions between the period.

e. The applicant requests upgrade of his UOTHC discharge to Honorable and contends his misconduct was related to PTSD. A review of the records was void of any BH diagnosis or treatment history during service. Post-service records show the applicant 70 percent SC for PTSD secondary to deployment to Iraq. While the applicant’s full separation packet is not available for review, the applicant asserts his separation, in 1997, was secondary to wrongfully use of marijuana. If the applicant’s assertion is taken as fact, his misconduct would be mitigated by PTSD given the nexus between PTSD and comorbid substance abuse for self-medicating PTSD-related symptoms. Although records show the applicant received NJP for marijuana use in September 1986, he remained in service and was subsequently honorably discharged in 1987. Records appear void of any other instances of drug use during his subsequent period of service, until after his traumatic exposures in Iraq.

f. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence that the applicant had a condition or experience during his time in service but given the lack of a separation packet, it is unclear if the condition mitigated his misconduct.

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 is 70 percent SC for PTSD.

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unclear. A review of the records was void of any BH diagnosis or treatment history during service. Post-service records show the applicant 70 percent SC for PTSD secondary to deployment to Iraq. While the applicant’s full separation packet is not available for review, the applicant asserts his separation, in 1997, was secondary to wrongfully use of marijuana. If the applicant’s assertion is taken as fact, his misconduct would be mitigated by PTSD given the nexus between PTSD and comorbid substance abuse for self-medicating PTSD-related symptoms. Although records show the applicant received NJP for marijuana use in September 1986, he remained in service and was subsequently honorably discharged in 1987. Records appear void of any other instances of drug use during his subsequent period of service, until after his traumatic exposures in Iraq.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief as not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and the medical advisory the Board considered the advising official finding sufficient evidence that the applicant had a condition or experience during his time in service but given the lack of a separation packet, it is unclear if the condition mitigated his misconduct. The Board noted the applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination.

2. The Board recognized under liberal consideration the applicant period of honorable service, his decorations, awards and his periods of deployments. However, the Board notwithstanding the opine finding sufficient evidence that the applicant had a condition or experience during his time in the service. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of using drugs. The Board found the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UO THC) discharge. Therefore, the Board denied relief.

BOARD VOTE:

| <u>Mbr 1</u> | <u>Mbr 2</u> | <u>Mbr 3</u> | |
|--------------|--------------|--------------|----------------------|
| : | : | : | GRANT FULL RELIEF |
| : | : | : | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| ■ | ■ | ■ | DENY APPLICATION |

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

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, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - 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. 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 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if merited by the Soldier's overall record.

4. AR 635-5 (Personnel Separations-Separation Documents) prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established the standardized policy for the preparation of the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. The general instructions stated all available records would be used as a basis for preparation of the DD Form 214. The information entered thereon reflects the conditions as they existed at the time of separation. It states for:

- Block 4a (Grade, Rate, or Rank) 4b (Pay Grade) enter the rank.
- Block 24 (Character of Service) characterization or description of service is determined by directives authorizing separation.

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 Service 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; 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 to 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. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and BCM/NRs on 25 July 2018, 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 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 grounds.

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//