

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 April 2024

DOCKET NUMBER: AR20230010574

APPLICANT REQUESTS:

- a. Correction of his DD Form 214 (Certificate of Discharge or Release from Active Duty) for the period ending 15 May 2000 to upgrade his character of service from under honorable conditions to honorable due to his disability (post-traumatic stress disorder (PTSD)).
- b. Add his Army Achievement Medal (AAM) to his service record.
- c. A personal appearance before the Board (in person or via video/telephone).

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

- DD Form 149 (Application for Correction of Military Record), 9 June 2023
- His letter to the Board
- AAM Certificate, Order number 062-9, 3 March 1999
- DD Form 214 for the period ending 15 May 2000
- His Bachelor of Science (Magna Cum Laude) degree, 31 August 2008
- His Master of Social Work degree, 9 August 2015
- A letter from Meriden Police Department, 22 September 2021
- His doctor's letter to the Board that addresses his PTSD
- Department of Veterans Affairs (VA) summary of benefits, 9 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 AAM was never noted in his DD Form 214. Also, that his discharge was assigned without regard to his PTSD diagnosis that was untreated at the time.

3. The applicant's request for the AAM will be administratively corrected in "Administrative Notes" pursuant to his AAM Certificate with Permanent Order Number 062-9 and will not be discussed further in these proceedings.

4. The applicant provides the following documents:

a. A letter to Board, stating in effect, consideration of his request to upgrade his discharge. He outlines his medical disabilities, PTSD, and traumatic brain injury (TBI) and how they affected his behavior during his service. He also discusses his many achievements since his separation from the Army, such as making a positive impact in his community, bettering himself through education, and community service and even helping save several lives.

b. A character reference letter from the Meriden Police Department for taking life saving measures, dated 22 September 2021. The applicant's actions helped save a woman's life who was about to harm herself. He was acknowledged for his bravery and concern for a fellow human being.

c. A letter from his doctor to the Board. Dr. [REDACTED] an American Association of Nurse Practitioners autonomous board-certified Adult-Gerontology Nurse Practitioner that has been caring for the applicant since August 2018, states she "would like to formally iterate my expert medical opinion pertaining to his discharge status and request to upgrade. On or about October 19, 1999, [applicant] suffered a profound life changing left ankle injury while serving on active duty that removed him from his current position in the military and in life. [Applicant] now has a current mental health diagnosis of major depressive disorder (MDD) with recurrent PTSD acquired on or about October 19, 1999, while still in active duty; and medical diagnosis of TBI acquired on or about the same date of October 19, 1999". Dr. [REDACTED] full letter and details on her diagnosis of the applicant is available for the Board's review.

d. His VA summary of benefits letter shows he is permanently disabled, with a rating of 80 percent for service-connected disabilities and is unable to work as of 12 September 2022. This document does list what his service-connected is for his disability rating.

4. The applicant's service record shows the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document) shows he enlisted in the Regular Army on 12 June 1997. Applicant previously served in the Army National Guard

from 28 February 1992 to 1 February 1997; however, the record does not reflect the original DD Form 4.

b. DA Forms 4856 (General Counseling Form) shows the following issues on:

- 24 May 1999: Failure to be at appointed place of duty
- 4 August 1999: Failure to pay debt
- 10 August 1999: Provoking speeches and gestures, and disorderly conduct

c. Military Police (MP) Report number: 05199-99-MPC034, dated 29 August 1999 shows he made a false official statement to the MP's claiming that his car was vandalized. It was later discovered that he caused the damages.

d. DA Form 2823 (Sworn Statement), dated 29 August 1999 reflects the applicant made a statement which states, in effect, that another Soldier vandalized his vehicle.

e. DA Form 2823, dated 2 September 1999 reflects the applicant admitted to damaging his own vehicle.

f. DA Form 3881 (Rights Warning Procedure/Waiver Certificate), dated 2 September 1999 reflects that the applicant was given all his rights including a right to request a lawyer. The applicant signed this document.

g. On 3 November 1999, the applicant received non-judicial punishment under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for on or about 29 August 1999, with intent to deceive, he made an official statement to another Soldier, that he was not sure who scratched his vehicle and accused another Soldier of vandalism, a statement, he knew to be false. He was found guilty and received punishment of 15 days restriction and extra duty and a reduction in grade to E-3, He did not appeal. He also received a partial suspended punishment of forfeitures of pay of \$297.00 for one month, which was later vacated for his failure to report to extra duty.

h. DA Forms 4856-E (Developmental Counseling Form) show on:

- 15 November 1999: he had three counts of failing to obey an order or regulation and one count of failing to be at his appointed place of duty
- 22 November 1999: for larceny. he had his off-post pass and clothing privileges revoked

i. On 20 December 1999, he received a counseling in the form of Memorandum for Record (MFR) for ignoring leaderships instructions on not to drive his vehicle until he can show proof of insurance.

j. On 21 December 1999, the applicant security clearance was recommended for revocation due to his multiple disciplinary actions.

k. On 5 January 2000, he submitted an MFR, Subject: Extenuation and Mitigation, in response to his MFR for the reason why he failed to follow instructions of his restriction. The applicant states, he essentially helped a friend that was going to drive drunk, so he volunteered to drive him instead. On the way back he was hit by another driver causing him to be injured that prevented him from showing up to extra duty.

l. On 6 January 2000, the applicant received nonjudicial punishment under the provisions of Article 15, UCMJ for failure to be at the time prescribed to his appointed place of duty, failure to obey a lawful order by a noncommissioned officer not to operate your vehicle, willfully disobey lawful order by a commissioned officer, and for breaking restriction. He received punishment of 14 days restriction and extra duty and a reduction in grade to E-2. He did appeal; however, his appeal was denied.

m. DA Form 4856-E, dated 29 January 2000 shows:

- Two specifications of violation of Article 86 (Failure to Report)
- Violation of Article 134 (Unlawful entry)

n. DA Form 4856, dated 8 February 2000 shows he was recommended for separation in accordance with Army Regulation (AR) 635-200, Chapter 14-12b, Patterns of Misconduct.

o. On 17 March 2000, his commanding officer initiated action to separate him for patterns of misconduct, which consisted of the following issue:

- provoking speech and gestures
- disorderly conduct
- failure to pay debt
- failure to be at the time prescribed to his appointed place of duty on four occasions
- unlawful entry
- willful disobedience of a noncommissioned officer

p. In a Memorandum, Subject: Request for Conditional Waiver for applicant, dated 4 April 2000, the applicant acknowledged:

- He had the right to consult with counsel

- He has been advised by his counsel of the basis of his discharge for misconduct
- His voluntarily request to waive his case before an administrative separation board contingent upon receiving an honorable discharge
- To submit a statement on his own behalf
- That he made this request of his own free will
- That if his request is rejected that he still has the right to an administrative separation board and to be present
- That he will be ineligible to apply for enlistment in the Army for a period of 2 years after discharge

q. On 10 April 2000, he voluntarily withdrew his request for a conditional waiver and by withdrawing the request, he acknowledged that he would receive a character of service of no less than a general discharge. He also waived his separation board. He understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issue to him.

r. On 18 April 2000, his battalion commander recommended the separation request be approved with a general discharge.

s. On 26 April 2000, the separation authority directed that the applicant be separated from the Army with a characterization of General Under Honorable Conditions. He also ordered he not be transferred to Individual Ready Reserve (IRR).

t. DD Form 214 for the period ending 15 May 2000, shows he was discharged with an under honorable conditions (general) discharge, due to misconduct, pursuant to Army Regulation 635-200, Chapter 14-12b. He received a separation code of "JKA" and a reentry code of "3". He completed 2 years, 11 months, and 4 days of net active service this period, with 4 months and 11 days of total prior active service and 4 years, 11 months, and 3 days of total prior inactive service.

u. The applicant's claim of PTSD is sufficient to request a medical review by the Behavioral Staff at the Army Review Boards Agency.

5. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR) (AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records

Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 21 June 2000 discharge characterized as under honorable conditions (general). On his DD 149, he indicates that PTSD and TBI are issues related to his request. He states: "Discharge status was assigned without recognition of my PTSD diagnosis that was not medically managed at the time."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the regular Army on 12 June 1997 and was discharged under honorable conditions (general) on 15 May 2000 under the separation authority provided by paragraph 14-12b of AR 635-200, Personnel Separations – Enlisted Personnel (26 June 1996): Pattern of Misconduct. The DD 214 does not show a period of service in a hazardous duty pay area.

d. On 17 March 2000, the applicant's company commander informed him of the initiation of separation action under be processed under paragraph 14-12b of AR 635 200:

"Provoking speech and Gestures, Disorderly Conduct, Failure to Pay Debt, Failure to be at appointed place of duty on four occasions, unlawful entry, and willful disobedience of noncommissioned officer."

e. Review of his Article 15's show that in addition to the above, he had also failed to follow the orders of a commissioned officer and made a false official statement accusing a fellow Soldier of damaging the applicant's vehicle. This latter act was summarized in a military police report showing he was responsible for intentionally damaging his own vehicle:

"Dispatched to BLDG 9425 in reference to damage to private property. Upon arrival, patrol 242 made contact with [Applicant] who reported that between 1330 Hrs. on 990827 and 2100 hrs. on 990829, person(s) unknown by unknown means caused the above damage to his black 1977 Pontiac Trans Am which was parked and unattended at the above location. The estimated cost of damage is unknown. Applicant was issued a DD FM 2701.

Further investigation by MPI [military police investigator] disclosed that during the above times and dates [Applicant] caused the above damage to his vehicle. On 990902 at 0800 hrs., [Applicant] was advised of his legal rights, which he waived, rendering a written statement admitting to the offense."

f. A second report shows he was charged with making a false official statement accusing a fellow Soldier of damaging vehicle. The applicant also filed a false insurance claim for the damage with USAA who informed the MPs of this offense.

g. On 14 May 2003, Brigade Commander approved the applicant's separation and directed he be separated with a characterization of Service of General Under Honorable Conditions.

h. There are no contemporaneous clinical encounters in the EMR. JLV shows he has four VA service-connected disabilities, been diagnosed with non-service-connected PTSD and major depressive disorder, and there are no TBI related diagnoses.

i. There is no evidence the applicant had a mental health or other medical condition during his service which would have then contributed to or would now mitigate his multiple UCMJ violations and thereby warrant consideration of an upgrade under liberal consideration guidelines. Furthermore, there is no evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant self-asserts PTSD led to his misconduct.

(2) Did the condition exist or experience occur during military service? Applicant self-asserts his PTSD began during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence to support applicant had a mitigating BH condition while on active duty. The applicant has submitted no medical documentation indicating a diagnosis of PTSD and/or other mental health conditions. Review of the VA medical records indicates that the applicant has not been diagnosed with a service BH condition. However, under liberal consideration, applicant's self-assertion of PTSD is sufficient to warrant consideration by the board.

j. If his PTSD did exist during his service, it would only partially mitigate his misconduct. As PTSD is associated with avoidant behaviors and difficulties with authorities, it would mitigate his multiple failures to report, provoking speech and gestures, disorderly conduct, and willful disobedience of both commissioned and noncommissioned officers. However, PTSD does not interfere with or affect one's ability to differentiate right from wrong and adhere to the right, and so cannot mitigate

his failure to pay debt, false official statements, and the filing of a fraudulent insurance claim.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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 review, the Board concurred with the advising official finding insufficient evidence to support applicant had a mitigating BH condition while on active duty. The Board noted the opine finding the applicant's self-asserted PTSD does not interfere with or affect one's ability to differentiate right from wrong and adhere to the right, and so cannot mitigate his failure to pay debt, false official statements, and the filing of a fraudulent insurance claim.
2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the pattern of misconduct. The Board agreed the applicant provided insufficient evidence to support his contentions indicating a diagnosis of PTSD and/or other mental health conditions. The Board found no error or injustice that warrants correction of the applicant's DD Form 214 for the period ending 15 May 2000 to upgrade his character of service from under honorable conditions to honorable due to his disability (post-traumatic stress disorder (PTSD)). As such, the Board denied relief.
3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.
4. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, the Board found 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.

4/11/2024

X

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CHAIRPERSON

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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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows he is authorized an additional award not listed on his DD Form 214. As a result, amend his DD Form 214 for the period ending on 15 May 2000 by adding to item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) the Army Achievement Medal (AAM).

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. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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.

3. Army Regulation AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

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 14-12b establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline), 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. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

4. Army Regulation 635-8 (Separation Processing and Documents). 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 REFRAD, retirement, or discharge. The DD Form 214 is not intended to have any legal effect on termination of a Soldier's service.

5. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

6. Army Regulation 635-5-1 (Separation Program Designator Codes) states that the Separation Program Designator (SPD) codes are three-character alphabetic combinations which identify reasons for, and types of, separation from active duty. SPD code "JKA" is the appropriate code to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200, Chapter 14-12b, based on Misconduct.

7. 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.

8. 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.

9. 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.

10. Title 10, U.S. Code, section 1556 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//