

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 July 2024

DOCKET NUMBER: AR20230011134

APPLICANT REQUESTS:

- a. Upgrade of his under other than honorable conditions discharge due to post-traumatic stress disorder (PTSD) incurred while on active duty.
- b. Permission to appear personally before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) letter
- VA Rating Decision

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10 (Armed Forces), United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). 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, the Army wrongfully discharged him without any explanation, and they did not allow him to defend himself. Additionally, he did not get an opportunity to sign his discharge; they just told him to leave the base and that they would mail his paperwork.
 - a. While deployed in Iraq, the applicant encountered traumatic events that included losing a close friend; at that time, he and his fellow Soldiers were not permitted to talk about mental health, especially if you wanted to remain on active duty.
 - b. After leaving the Army, the applicant sought help, and his doctors diagnosed him with PTSD with bipolar disorder; he is currently managing his condition with medication and psychiatric treatment.

c. The applicant states he feels the Army failed him and just let him go; his leadership would not let him discuss what he was going through. Despite his hard work and the medals he earned, it was just easier for the Army to separate him rather than deal with his problems.

d. On his DD Form 149, the applicant has checked the block indicating PTSD is related to his upgrade request, and he provides a VA Rating Decision, dated in May 2023, that permits VA treatment of his service-connected PTSD with bipolar II disorder.

3. A review of the applicant's service record reveals the following:

a. On 1 October 2002, the applicant enlisted into the Regular Army for 6 years. Upon completion of initial entry training and the award of military occupational specialty 13B (Cannon Crewmember), orders assigned him to the 2nd Battalion, 3rd Field Artillery Regiment in Germany, and he arrived at his unit, on or about 24 February 2003.

b. According to Defense Finance and Accounting Service (DFAS), the applicant deployed to Kuwait/Iraq, on 12 May 2003. Effective 1 April 2004, the applicant's chain of command promoted him to Specialist (SPC)/E-4. DFAS shows the applicant redeployed, on 5 July 2004.

c. On 3 February 2005, the applicant's command awarded him the Army Achievement Medal for meritorious service, between 22 February 2003 and 15 February 2005. On or about 15 February 2005, the applicant completed his tour in Germany, and orders reassigned him to Fort Bragg, NC (now renamed Fort Liberty); he arrived at his new duty station, on or about 14 March 2005.

d. On 7 November 2005, the applicant's commander received notice that the applicant had tested positive for PCP (phencyclidine). On 21 November 2005, the applicant accepted his battalion commander's offer of nonjudicial punishment, under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for wrongfully using phencyclidine, a violation of Article 112a (Wrongful Use of a Controlled Substance). The battalion commander's punishment included reduction from SPC to private (PV1)/E-1.

e. On 19 December 2005, the applicant's company commander advised him, via memorandum, that he was initiating separation action against the applicant, per paragraph 14-12c (2) (Commission of a Serious Offense – Abuse of Illegal Drugs), chapter 14 (Separation for Misconduct), Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations). The reason for his action was the applicant's wrongful use of phencyclidine.

f. On 21 December 2005, after consulting with counsel (a Judge Advocate General (JAG) officer), the applicant acknowledged counsel had advised him of the basis for his separation action and informed him of his rights and the effect of waiving those rights. The applicant elected to conditionally waive his right to appear with counsel before an administrative separation board, contingent on the separation authority's approval of a character of service no less favorable than a general discharge under honorable conditions. Additionally, the applicant requested counsel but opted not to submit statements in his own behalf.

g. On 22 December 2005, the applicant's company commander completed his separation recommendation and advocated for the applicant to receive an under other than honorable conditions character of service.

h. On 18 January 2006, after consulting with a second JAG officer, the applicant affirmed that he waived his rights to have his case considered by, and to appear, with counsel, before an administrative separation board. Additionally, he elected not to retain counsel. On 19 January 2006, the separation authority approved the commander's separation recommendation and directed the applicant's under other than honorable conditions discharge. On 3 February 2006, orders discharged the applicant accordingly.

i. The applicant's DD Form 214 shows he completed 3 years, 4 months, and 3 days of his 6-year enlistment contract. The report additionally reflects the following:

(1) Item 12f (Foreign Service): "0000/00/00."

(2) Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized):

- Army Achievement Medal (2nd Award)
- Army Good Conduct Medal (1st Award)
- Global War on Terrorism Service Medal
- Army Service Ribbon
- Overseas Service Ribbon

(3) Item 18 (Remarks): no entry indicating a deployment to Iraq.

(4) Special Additional Information:

- Item 25 (Separation Authority) – AR 635-200, paragraph 14-12c (2)
- Item 26 (Separation Code (SPD)) – "JJK"
- Item 27 (Reentry (RE) Code) – RE-4
- Item 28 (Narrative Reason for Separation) – "Misconduct (Drug Abuse)"

j. On 24 August 2009, the applicant petitioned the Army Discharge Review Board (ADRB), requesting an upgraded character of service and arguing he suffered from PTSD. In support of his request, he provided medical records showing his doctors had admitted him to a hospital for treatment of PTSD and depression. On 16 December 2009, following a records review, the ADRB voted to deny relief, citing an absence of mitigating factors for an upgrade.

k. On 28 May 2013, the applicant requested, in effect, that the ADRB conduct a second records review to reconsider his upgrade request.

(1) The applicant stated, in 2003, the enemy ambushed his unit and, as a result of that experience, he incurred PTSD; his behavior subsequent to the ambush led to his adverse discharge.

(2) On 30 July 2013, the ADRB administratively closed the applicant's petition. The ADRB informed the applicant that it did not consider requests for reconsideration; however, the applicant could file a new application to have a personal appearance hearing before the ADRB.

4. AR 15-185, currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

5. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. He contends he experienced Posttraumatic Stress Disorder (PTSD) that mitigates 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 (AR) on 01 October 2002 as a cannon crewmember, 2) according to the Defense Finance and Accounting Service (DFAS), the applicant deployed to Kuwait/Iraq on 12 May 2003 and redeployed on 05 July 2004, 3) on 03 February 2005 the applicant was awarded the Army Achievement Medal (AAM) for service between 22 February 2003 and 15 February 2005, 4) on 21 November 2005 the applicant received an Article 15 for wrongfully using phencyclidine (PCP) for a specimen collected on 31 October 2005, 5) on 19 December 2005 the applicant was informed that his commander intended to separate him under the provisions of Army Regulation (AR) 635-200, Chapter 14, paragraph 14-12c (2) (Commission of a Serious Offense-Abuse of Illegal Drugs). The reason for this action was listed as the applicant's wrongful use of phencyclidine. The applicant was discharged on 03 February 2006, 6) his military service records demonstrate he was awarded several medals and ribbons during his service to include two AAMs and an Army Good Conduct Medal, 7) the applicant

previously petitioned the Army Discharge Review Board (ADRB) for an upgrade on 24 August 2009 citing depression and PTSD. The Board denied relief citing absence of mitigating factors for an upgrade. The applicant re-petitioned the Board in 2013 requesting re-consideration of his upgrade request. On 30 July 2013, the ADRB administratively closed the petition with the reason for closure listed being the ADRB does not consider requests for reconsideration though the applicant was notified he could file a new application.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. Review of JLV documented the applicant's completion of a Mental Status Examination on 01 December 2005 in conjunction with his Chapter 14 separation. The mental status examination findings were provided by the applicant as part of his application and documented that the applicant did not meet criteria for a psychiatric condition that would warrant disposition through medical channels and was psychiatrically cleared for any administrative action deemed necessary by his command. At the time of the evaluation, he was diagnosed with an occupational problem and noted did not meet criteria for an Axis II condition (personality disorder). There were no other in-service BH records available for review.

d. A Department of Veterans Affairs disability rating letter dated 18 May 2023 documented that the applicant was granted 0% service connection (for treatment purposes only) for PTSD and Bipolar II Disorder. The applicant underwent a Compensation and Pension (C&P) evaluation on 10 May 2023 and was diagnosed with PTSD and Bipolar II Disorder. It was noted that the applicant also had Alcohol Use Disorder secondary to PTSD in efforts to self-medicate but was not included in the diagnoses as the condition was in sustained full remission at the time of the evaluation. The stressor associated with the applicant's diagnosis of PTSD was identified as the death of one of his battle buddies while deployed to Iraq.

e. VA records were available for review in JLV from 09 June 2022 through 29 February 2024. He initiated services due to homelessness on 09 June 2022 and was referred for a transitional housing mental health evaluation. He completed an evaluation for Traumatic Brain Injury (TBI) on 12 September 2022 and the diagnostic impressions were 'Mild TBI (deployment related), Attention and concentration deficits, Anxiety/depression, sleep disorder, and headaches.' It was noted that his cognitive concerns were more related to anxiety/depression, sleep disorder and headaches than prior TBI. The applicant was referred to psychiatry for medication management of PTSD and Bipolar Disorder on 09 December 2022. After this referral, there is no BH documentation in the record until 22 August 2023 when the applicant was again referred

for medication management. He was evaluated by psychiatry on 11 September 2023 and was prescribed Sertraline for mood. The applicant was referred to community care for psychotherapy for Generalized Anxiety Disorder on 10 October 2023. The last BH note available in JLV dated 24 February 2024 documented the applicant had discontinued Sertraline. The provider documented the applicant had previously been trialed on the following medications: Xanax, Lamictal, Quetiapine, Paroxetine, Melatonin, Trazodone, Ambien, and Sertraline.

f. The applicant provided a copy of civilian treatment records from the University of Iowa Hospitals and Clinics as part of his application. The applicant was psychiatrically hospitalized from 28 March 2009 to 31 March 2009 due to suicidal ideation. A discharge summary dated 31 March 2009 documented the applicant had a history of two suicide attempts (2007 and 2008). The admission note dated 28 March 2009 documented that the applicant's family provided collateral information stating that they believed he had been depressed since returning from Iraq and believed he had PTSD. The applicant was evaluated on 03 April 2009 following his discharge and it was noted that the applicant was reporting difficulties due to the anniversary of his friend's death in Iraq. It was documented that the applicant reported the following symptoms at the time of the evaluation: re-experiencing (e.g., intrusive thoughts, nightmares), avoidance (e.g., avoids crowds), alterations in cognition and mood (e.g., sense of foreshortened future) and hyperarousal (e.g., exaggerated startle response, hypervigilance, irritability, poor concentration, and insomnia). The applicant was diagnosed with PTSD, he was prescribed Trazodone and Citalopram, and was recommended to initiate therapy for PTSD.

g. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. He contends he experienced PTSD that mitigates his misconduct. The applicant's military treatment records are void of any BH treatment or diagnoses. Post-discharge, the applicant has been 0% service-connected (for treatment purposes only) for PTSD and Bipolar II Disorder through the VA. The VA C&P examination also noted the applicant had a history of self-medicating with alcohol though had been sober and in full remission at the time of the evaluation in 2023. Available civilian BH records also documented that the applicant was diagnosed with PTSD in 2009, has a history of at least two previous suicide attempts, and has a history of one psychiatric hospitalization due to suicidal ideation (last documented in 2009).

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant is 0% service-connected for PTSD and Bipolar II Disorder through the VA.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 0% service-connected for PTSD and Bipolar II Disorder through the VA. Service connection establishes that the condition existed during service.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes. Review of the available in-service treatment records were void of any BH diagnoses or treatment history. Since his discharge, the applicant has been 0% service-connected through the VA for PTSD and Bipolar II Disorder. Review of the available service records do not indicate the applicant had any misconduct prior to his deployment. Self-medicating with substances is a common form of avoidance. Given the nexus between PTSD, self-medication with substances, and avoidance, there was likely an association between the applicant's PTSD and positive urinalysis that led to his separation. As such, BH medical mitigation is supported.

BOARD DISCUSSION:

1. 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 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 the applicant had no misconduct prior to his deployment. The Opine noted, that given the nexus between PTSD, self-medication with substances, and avoidance, there was likely an association between the applicant's PTSD and positive urinalysis that led to his separation.

2. The Board determined there is sufficient evidence of in-service mitigating factors to overcome the misconduct. The Board noted, the applicant honorable service and awards prior to his deployment. Evidence in the records show the applicant through civilian BH records documented that the applicant was diagnosed with PTSD in 2009, has a history of at least two previous suicide attempts. The Board agreed, based on the preponderance of evidence and opine that an upgrade of the applicant's character of service is warranted. As such, the Board granted relief to upgrade his discharge to under honorable (general) conditions.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction be 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:

In addition to the administrative notes annotated by the Analyst of Record (below the signature), 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 reissuing the applicant a DD Form 214 showing his characterization of service as general, under honorable conditions.

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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):

1. Army Regulation (AR) 635-5 (Separation Documents), in effect at the time, stated:

a. Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) was to list all authorized awards and decorations.

b. Item 12f will show the total amount of service performed outside CONUS during the period of the report, to include deployments.

c. Item 18 (Remarks). When Soldiers deployed during the term of the report, the following comment was added to item 18, "SERVICE IN (NAME OF COUNTRY DEPLOYED) FROM (inclusive dates)."

2. The evidence of record shows the applicant completed foreign service between 22 February 2003 and 15 February 2005. DFAS confirms the applicant deployed to Kuwait/Iraq, from 12 May 2003 to 5 July 2004; while deployed, he was assigned to the 2nd Battalion, 3rd Field Artillery Regiment.

3. AR 600-8-22 (Military Awards), currently in effect, states the Iraq Campaign Medal is awarded to members who have served in direct support of Operation Iraqi Freedom (OIF). The period of eligibility is from on or after 19 March 2003 through 31 December 2011. A bronze service star is authorized for wear with this medal for participation in each credited campaign; approved campaigns are:

- Transition of Iraq (2 May 2003-28 June 2004)
- Iraqi Governance (29 June 2004-15 December 2005)

4. Department of the Army General Orders Number 65, dated 2014, awarded the Presidential Unit Citation to the 2nd Battalion, 3rd Field Artillery Regiment, for the period 9 March to 27 June 2004.

5. Based on the foregoing, amend the applicant's DD Form 214, ending 3 February 2006, as follows:

a. Item 13: add the Iraq Campaign Medal with two bronze service stars and the Presidential Unit Citation.

b. Item 12f: delete the current entry and replace with "0001/11/24."

c. Item 18: "SERVICE IN KUWAIT/IRAQ FROM 20030512 TO20040705."

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 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

3. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) stated an honorable discharge was separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. An honorable discharge could be furnished when disqualifying entries in the Soldier's military record was outweighed by subsequent honest and faithful service over a greater period of time. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 3-7b (General Discharge). 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. Paragraph 5-3 (Secretarial Plenary Authority). Separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums. Secretarial separation authority is normally exercised on a case-by-case basis but may be used for a specific class or category of Soldiers.

d. Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Commanders were required to initiate separation action when they determined a Soldier had committed serious misconduct and could clearly establish rehabilitation was impracticable or unlikely to succeed. Paragraph 14-12c (Commission of a Serious Offense) applied to Soldiers who committed a serious military or civilian offense, for which the UCMJ authorized a punitive discharge for the same or similar offense. Per subparagraph (2), abuse of illegal drugs was deemed serious misconduct.

4. The Manual for Courts-Martial, in effect at the time, showed punitive discharges among the available maximum punishments for violations of UCMJ Article 112a (Wrongful Use, Possession, Manufacture, or Introduction of Controlled Substances).

5. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in item 28 (Narrative Reason for Separation). For item 27 (RE Code), the regulation referred preparers to AR 601-210 (Regular Army and Army Reserve Enlistment Program).

6. AR 635-5-1, in effect at the time, stated Soldiers separated in accordance with paragraph 14-12c (2), AR 635-200 were to receive an SPD of "JKK" and have, "Misconduct (Drug Abuse)" entered in item 28 of their DD Form 214.

7. The SPD/RE Code Cross Reference Table, in effect at the time, provided instructions for determining the RE code for Active Army Soldiers; the table shows the SPD code and its corresponding RE code. The SPD code of "JKK" has a corresponding RE code of "4."

8. AR 601-210, in effect at the time, prescribed policies and procedures for the enlisting prospective and former Soldiers. Table 3-1 (Inter-Service RE Codes) showed the following:

- RE-1 – Fully qualified for immediate reenlistment
- RE-3 – Not eligible for reenlistment unless waiver consideration was permissible and was granted
- RE-4 – Not eligible for reenlistment. Nonwaivable disqualification

9. 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.

10. 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 (DRBs) and Board for Correction of Military/Naval Records (BCM/NRs) 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 (PTSD); Traumatic Brain Injury (TBI); 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.

11. 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. 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, 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.

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.

12. AR 15-185, currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

//NOTHING FOLLOWS//