

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 May 2024

DOCKET NUMBER: AR20230011233

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Two Self-Authored Statements
- Two Chronological Records of Medical Care, dated 31 August 2005 and 25 September 2005
- Medical Question Regarding Discovered Drugs, dated 19 October 2005
- Two DA Forms 2823 (Sworn Statement), dated 25 October 2005
- Three Letters of Support
- Memorandum, subject: Separation Under the Provisions (UP) of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations)
- Statement from the Defense Counsel, dated 9 December 2005
- Psychiatric Evaluation, dated 5 August 2010

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 he wishes to access his G.I. Bill benefits so he can further his education. In addition, he would like to use his Department of Veteran Affairs (VA) loan to purchase a home. He is asking that the Board review the DA Forms 2823 he provided. The applicant annotated post-traumatic stress disorder (PTSD) and other mental health as an issue/condition related to his request.
3. The applicant provides:

a. A letter to this Board, available in its entirety for the Board's review. He states the events that took place while he was deployed and that eventually led to his separation, such as:

- claims of alcohol possession while deployed, although the alcohol was given to him for his noncommissioned officer, he faced the punishment
- not being able to return fire after his convoy got attacked, he simply froze and could not fire at the enemy; he believes that if he had fired back, he would not have gotten accused of possession of alcohol or a bee sting kit
- he has been filled with shame over the past 20 years over that incident and for being deprived of his benefits, such as the G.I. Bill
- he was diagnosed with PTSD while in Afghanistan and has been receiving treatment ever since
- he was recently hospitalized for 8 days due to PTSD
- he is working with the VA so he can file for disability due to his condition

b. The applicant provides medical documents which will be reviewed and discussed by the behavioral health staff of the Army Review Boards Agency.

c. A psychiatric evaluation, dated 5 August 2010, that is available in its entirety for the Board's review, reflects that the applicant continues to experience PTSD symptoms that effect his life even as a civilian. This evaluation further discusses the following:

- Current symptoms; his background and upbringing
- His military training and experiences; attack that took place in Afghanistan in 2005
- His background and upbringing; his substance history; his and his family's past psychiatric and medical history; social history, and his diagnosis

d. Three letters of support (presumably during the applicant's separation proceedings), which all speak to the applicant being ready to take on any mission, being energetic, his actions not being reflective of the total Soldier and not being worthy of a chapter, and that his NCO should have provided leadership and not abused his rank.

e. A letter from the applicant which states he always tried his best and adapted to the lifestyle. He learned to road march longer than he ever thought he could and practiced techniques that knew were important. He always tried to do his job with character and grace, even in the face of danger. He feels as though his career was cut short and that he might have been able to accomplish so much more in the Army. The entire letter it is available for the Board's review.

f. Two DA Forms 2823, dated 25 October 2005:

- SGT B. N., on the behalf of the applicant: he was motivated, hardworking, never caused problems, never seen him under the influence or behaving in a destructive manner. He was a role model in the barracks
- SSG B. S., on the behalf of the applicant: he is of good character, straight forward, sincere, and honest. He had the potential to excel in the military, but for reasons unknown he was singled out and scrutinized

4. The applicant's service record shows:

a. He enlisted in the Regular Army on 7 January 2004. He served in Afghanistan from 1 February 2005 to 30 November 2005. He received counseling on/for:

- On 3 August 2005, violation of a direct order/off limits, violation of three General Orders
- On 3 August 2005, he was counseled on making false statements to an NCO
- On 28 August 2005, he was counseled on unsafe and improper driving
- On 29 August 2005, he was counseled on improper use of chain of command
- On 31 August 2005, he was counseled on Violation of GO Number 1- Possession of Drug Paraphernalia
- On 30 September 2005, he was counseled on accepting alcohol

b. On 1 September 2005, the applicant wrote a letter stating he promised he will not attempt to harm himself in any way. If he felt that he might, he would contact a supervisor and talk to a mental health professional.

c. On 2 September 2005, his Forward Operating Base (FOB) privileges were revoked by his commanding officer. He was to remain in his assigned living quarters.

d. Memorandum: subject: A Medical Question Regarding Discovered Drugs, dated 19 October 2005 from Lieutenant Colonel M- to Major M-, which reflects in response to a sworn statement regarding discovered drugs and drug paraphernalia. The statement summarizes that "prescription drugs (Adrenaline and Benadryl) and drug paraphernalia (intravenous needles) were discovered..." "Neither Adrenaline nor Benadryl are prescription drugs as both can be obtained over the counter at any local pharmacy. Additionally, needles cannot be classified as "intravenous as the same needles are used for intramuscular and subcutaneous injections. The agents and equipment discovered are consistent with a standard issue anaphylaxis (bee sting) kit for Soldiers. Further, in addition to not being prescription drugs, these agents are not controlled substances as they do not produce euphoric or psychogenic states, nor do they induce addiction or tolerance. There would be no use or benefit to ingesting these drugs for illicit use".

e. He accepted nonjudicial punishment on 21 October 2005 for violation of a lawful GO to wit: paragraph 5c, Combined/Joint Task Force-76 GO Number 1, dated 18 March 2005, by wrongfully possessing alcohol. This is a violation of Article 92, UCMJ. His punishment included reduction in grade to private.

f. On 8 December 2005, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of AR 635-200, Chapter 14, Paragraph 14-12c, Commission of a serious offence for:

- on or about 26 August 2005 – Violation of a lawful general order, to wit: paragraph 5e. Combined Joint Task Force – GO number 1, dated 18 March 2005, by wrongfully possessing drugs and paraphernalia
- on or about 20 September 2005 - Violation of a lawful general order, to wit: paragraph 5c. Combined Joint Task Force – GO number 1, dated 18 March 2005, by wrongfully possessing alcohol

g. On 8 December 2005, the applicant acknowledged receipt of his notification of separation under the provisions of AR 635-200, Chapter 14, Paragraph 14-12c, Commission of a Serious Offense. On 9 December 2005, he stated he was told by his first sergeant and commander that some of his counseling statements were not going to be used against him. In this document he was also advised by his consulting counsel of the following:

- the basis for the contemplated action to separate him for Commission of a Serious Offense under AR 635-200, Chapter 14, and its effects
- the rights available to him and the effect of any action taken by him in waiving his rights
- he understood that the commander recommended he receive a General discharge
- he requested consulting counsel and representation by military counsel or civilian counsel at no expense to the Government
- he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him
- he understood that if he received a discharge/character of service, which is less than honorable, he may make application to the Army Discharge Review Board or the Army Board of Correction of Military Records for upgrading
- he will be ineligible to apply for enlistment in the United States Army for a period of 2 years after discharge

h. On 9 December 2005, his legal counsel responded to the separation initiation, dated, 8 December 2005 with the following:

(1) The applicant is being considered for separation in accordance with AR 635-200, Chapter 14-12c with a recommendation for a general discharge. There are two reasons cited in the proposed separation: (1) possession of drug paraphernalia and (2) possession of alcohol. Both are violations of GO number 1, and each offense allows for a punitive discharge in the maximum possible punishment; thus, both offenses are defined as "serious offenses."

(2) It is appropriate to cross out the allegation that the applicant possessed drug paraphernalia while deployed to Afghanistan. He admits to the possession of alcohol, received an Article 15, and carried out the punishment assigned to him. However, the command specifically did not go forward with the charge of possession of drug paraphernalia, as the evidence was lacking. Specifically, the items found in his room were a bee sting kit belonging to his former roommate, a medic.

(3) Please find attached to this request a memorandum from Dr. M. explaining the significance of what was found in the applicant's room. He should not be separated for something he did not do. This is an unfounded allegation and should not be the basis for his separation from the military.

i. DA Form 3822-R (Report of Mental Status Evaluation), 16 December 2005 reflects he was seen at the psychiatric clinic as a command referral for a mental status evaluation as part of a Chapter 14-12c procedures. The evaluation showed no evidence of suicidal or homicidal ideations, he was psychiatrically cleared for any administrative action deemed appropriate by the command. This document also shows the applicant:

- Had normal behavior; he was fully alert and fully oriented
- His mood or affect was unremarkable, and his thinking process was clear
- His thought content was normal, and his memory was good

j. On 5 January 2006 his commander recommended separation under the provisions of AR 635-200, Chapter 14, Paragraph 14-12c, Commission of a serious Offense.

k. On 5 January 2006, the separation authority approved the recommended discharge. He further directed that the conditions of his service be as general, under honorable conditions.

l. He was discharged on 1 February 2006, under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct – commission of a serious offense. He

completed 2 years and 25 days of active service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) also shows in:

- item 24 (Character of Service): under honorable conditions (General)
- item 25 (Separation Authority): AR 635-200, Para 14-12c
- item 26 (Separation Code): JKQ
- item 27 (Reentry Code): RE-3
- item 28 (Narrative Reason for Separation): Misconduct, (Serious Offense)
- item 29 (Dates Of Lost Time): None

6. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

7. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) characterization of service to honorable. He contends post traumatic stress disorder (PTSD), and other mental health issues mitigate his discharge.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- Applicant enlisted in the RA on 7 January 2004.
- Applicant served in Afghanistan from 1 February 2005 to 30 November 2005.
- On 30 July 2005, his commanding officer provided written authorization to search the applicant's room and his personal belongings. This decision was based on information that he allegedly was in possession of an illegal and/or non-prescription substance.
- On 8 December 2005, his commanding officer initiated separation under the provisions of AR 635-200, Chapter 14, Paragraph 14-12c, Commission of a serious offence, with a general discharge for the following offences:
- On or about 26 August 2005 – Violation of a lawful general order, to wit: paragraph 5e. Combined Joint Task Force – GO number 1, dated 18 March 2005, by wrongfully possessing drugs and paraphernalia
- On or about 20 September 2005 - Violation of a lawful general order, to wit: paragraph 5c. Combined Joint Task Force – GO number 1, dated 18 March 2005, by wrongfully possessing alcohol
- Memorandum: Subject: A Medical Question Regarding Discovered Drugs, dated 19 October 2005 from LTC M- to MAJ M-, which reflects in response to a sworn

statement dated 31 August 2005 regarding discovered drugs and drug paraphernalia. Medical personnel were asked to exclusively review the medical accuracy of the sworn statement regarding the substances and equipment. The statement summarizes that "prescription drugs (Adrenaline and Benadryl), and drug paraphernalia (intravenous needles) were discovered..." "Neither Adrenaline nor Benadryl are prescription drugs as both can be obtained over the counter at any local pharmacy. Additionally, needles cannot be classified as "intravenous as the same needles are used for intramuscular and subcutaneous injections. The agents and equipment discovered are consistent with a standard issue anaphylaxis (bee sting) kit for soldiers. Further, in addition to not being prescription drugs, these agents are not controlled substances as they do not produce euphoric or psychogenic states, nor do they induce addiction or tolerance. There would be no use or benefit to ingesting these drugs for illicit use".

- Applicant was discharged on 1 February 2006. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct (serious offense). His service was characterized as under honorable conditions (general). He received a separation code of JKQ and reentry code of 3.

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, his ABCMR Record of Proceedings (ROP), DD Form 214, self-authored statement, medical documentation, character reference letters, and documents from his service record and separation packet. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant states he wishes to access his G.I. Bill benefits so he can further his education. In addition, he would like to use his Department of Veteran Affairs (VA) loan to purchase a home. In a self-authored statement, the applicant states he was given a bottle of alcohol by a civilian contractor for his NCO, but he faced the punishment for alcohol possession while deployed. The applicant indicates not being able to return fire after his convoy got attacked, he simply froze and could not fire at the enemy. He believes that if he had fired back, he would not have gotten accused of possession of alcohol or of a bee sting kit, the charges that led to his discharge. The applicant states he has been filled with shame over the past 20 years over that incident and for being deprived of his benefits, such as the G.I. Bill. He was diagnosed with PTSD while in Afghanistan and has been receiving treatment ever since, he was recently hospitalized for eight days due to PTSD and is working with the VA so he can file for disability due to his condition.

e. Consistent with the applicant's assertion, on 9 December 2005, his legal counsel responded to the separation initiation, stating: "it is appropriate to cross out the allegation that the applicant possessed drug paraphernalia while deployed to Afghanistan. He admits to the possession of alcohol, received an Article 15, and carried out the punishment assigned to him. However, the command specifically did not go forward with the charge of possession of drug paraphernalia, as the evidence was lacking. Specifically, the items found in his room were a bee sting kit belonging to his former roommate, a medic."

f. The applicant provides hardcopy medical documentation indicating he was treated by behavioral health services while on deployment. An encounter dated 25 September 2005, indicates he self-referred due to anxiety and panic attacks. He was diagnosed with Panic Disorder and provided with medication. Active-duty electronic medical records available for review show that on 09 November 2005 the applicant was seen for an initial post-deployment assessment. He reported during that encounter having witnessed several deaths including some of his friends while on deployment. He further reported difficulty sleeping, acknowledged that he had abused alcohol, and had nightmares about being attacked and unable to defend himself. In addition, he was isolating from his family or friends who did not serve in Afghanistan. A referral to ASAP and a psychiatry consult was recommended. The applicant was diagnosed with Generalized Anxiety Disorder. The record indicates he was seen by psychiatry and prescribed medication of his symptoms. A follow-up psychiatry appointment on 16 December 2005 diagnosed the applicant with Anxiety Disorder, NOS.

g. The VA electronic medical records (JLV) available for review indicate the applicant is 90% service connected, including 70% for PTSD. Per the VA record, the applicant has been treated for PTSD since September 2011 and has participated in group and individual therapy as well as medication management.

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

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 asserts a mitigating condition, and the medical record indicates he was diagnosed with Panic Disorder, Generalized Anxiety Disorder, and Anxiety Disorder while in military service.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 70% service-connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to wrongfully possessing drugs and paraphernalia, and wrongfully possessing alcohol. Given the nexus between PTSD and the use of substances to alleviate/cope with the symptoms of his behavioral health condition, the applicant's wrongful possession of drugs and alcohol is mitigated by his diagnosis of PTSD. However, the charge of wrongfully possessing drugs and paraphernalia appears unusual given what is being referred to is a bee sting kit.

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The applicant was discharged from active duty due to misconduct, serious offense (Violation of a lawful general order, by wrongfully possessing drugs and paraphernalia and wrongfully possessing alcohol) and he received a general discharge. The Board found no error or injustice in her separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the reviewing medical official. The Board concurred with the medical official's finding sufficient evidence the applicant had an experience and subsequent behavioral health condition during military service that mitigates his misconduct. The Board determined an upgrade of his discharge to honorable is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board also determined that such upgrade did not change the underlying reason for separation and thus the narrative reason for separation and corresponding codes should not change.

2. 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.

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 correction addressed in Administrative Note(s) below, 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 applicant's DD Form 214 for the period ending 1 February 2006 to show:

- Character of Service: Honorable
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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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 served in Afghanistan from 1 February 2005 to 30 November 2005. As a result, amend his DD Form 214 by adding to item 18 (Remarks): "Service in Afghanistan from 1 February 2005 to 30 November 2005."

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 635-200 (Active Duty Enlisted Administrative Separations) 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.

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.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities for separating Soldiers from active duty and the separation codes to be entered on the DD Form 214. Separation Code JKQ is assigned to enlisted Soldiers separating due to misconduct, serious offense in accordance with chapter 14-12c of AR 635-200. The SPD/RE Code Cross Reference Table included in the regulation establishes that RE code "3" is the proper code to assign members separated with separation code "JKQ."

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) provides that an RE code is not upgraded unless it was administratively incorrect when originally issued.

a. RE code "1" applies to personnel who have completed their obligated term of active service and are considered qualified to reenter the U.S. Army if all other criteria are met.

b. RE code "3" applies to personnel who are not considered fully qualified for reentry or continuous service at time of separation, but whose disqualification is waivable. They are ineligible unless a waiver is granted.

c. RE code "4" applies to personnel separated from last period of active duty service with a nonwaivable disqualification.

5. 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.

6. 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.

7. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, 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 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.

8. 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//