

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 June 2024

DOCKET NUMBER: AR20230011531

APPLICANT REQUESTS: correction of her son's DD Form 214 (Certificate of Release or Discharge from Active Duty) ending 24 September 2004 to upgrade his character of service from under honorable conditions to honorable. Additionally, she requests:

- a copy of his DD Form 214
- restoration of his rank of specialist (SPC)
- any financial remuneration she is entitled to as his survivor
- his Army Commendation Medal (ARCOM)
- his Combat Infantryman Badge (CIB)
- personal appearance before the Board

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 149 (Application for Correction of Military Record)
- A letter to the Board
- DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) 6 May 2003
- Permanent Orders 059-241, dated 28 February 2000
- DA Form 3340-R (Request for Reenlistment of Extension in the Regular Army), dated 20 June 2002
- Permanent Orders # 280-04, dated 07 October 2002
- DA Form 3340-R, dated 19 May 2003
- Medical Records
- Six DA Forms 2823 (Sworn Statement), dated 15 August 2004
- DA Form 4856 (Developmental Counseling Form), dated 15 August 2004
- DA Form 2627 (Record of Proceedings Under Article 15, UCMJ)
- Request for chapter form
- DD Form 2648 (Preseparation Counseling Checklist), dated 21 September 2004
- Orders 261-007, dated 17 September 2004
- DA Form 2-1 (Personnel Qualification Record)
- Enlisted Record Brief (ERB)

- A letter from the deceased service member (SM) to the Northport, NY Department of Veterans Affairs (VA) Medical Center, dated 14 April 2006
- A letter from the applicant to the State Veteran Counselor of the VA NY Harbor Health Care Center, dated 10 May 2006
- A character reference, dated 26 May 2006
- A congressional inquiry response to the SM's Senator, dated 2 June 2006
- An Army Review Boards Agency (ARBA) response to the SM's Senator, dated 29 June 2006
- A letter from the SM
- The Senator's response to the SM
- Applicant's letter to ARBA, 21 September 2006
- Applicant's letter the VA of New York, NY, 18 March 2007
- Applicant's letter to the Senator, 1 May 2007
- SM's VA decision for claim and compensation, 15 April 2008
- SM's death certificate, dated 8 May 2009
- A letter issued by National Personnel Records Center (NPRC), 10 May 2010
- Letter to the applicant from ARBA, dated 2 September 2010
- Applicant's letter to the Secretary for VA benefits administration, 7 November 2010
- VA Form 21-8416 (Medical Expense Report)
- VA evidence and reasons for decision document
- Applicants fax to Tragedy Assistance Program for Survivors (TAPS)
- SM's letter

#### 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 she is requesting an upgrade to her son's character of service from under honorable conditions (general) to honorable, restoration of his rank of SPC, any financial remuneration she is entitled to as his survivor, his ARCOM, and his CIB added to his record so she can place them on his grave, like she promised. Her son passed away on 8 May 2009, by suicide after the unsuccessful request to the Army Discharge Review Board (ADRB).
3. The applicant will be provided a copy of the SM's DD Form 214 and/or DD Form 215 (Correction to DD Form 214) for her records. Therefore, this issue will no longer be discussed in these proceedings.

4. The applicant's request for any financial remuneration on behalf of the SM is unclear. The applicant may submit a new application specifying the monetary benefits she believes she is entitled to, with supporting evidence of such entitlement, and the Board will reconsideration her request. Therefore, this issue will no longer be discussed in these proceedings.

5. The Board will only consider the remaining issues for (1) discharge upgrade, (2) restoration of the SM's rank to SPC/E4, and (3) award of the CIB.

6. The applicant provides the following documents:

a. Medical records, which will be reviewed and discussed by the Behavioral Health Staff at the Army Review Boards Agency (ARBA).

b. A letter from the SM to the Northport, NY Department of Veterans Affairs (VA) Medical Center, 14 April 2006, authorizing the release of his medical records to his mother (the applicant).

c. A letter from the applicant to the State Veteran Counselor of the VA NY Harbor Health Care Center, 10 May 2006, stating the SM could not locate anyone he had served with in Iraq and therefore he was unable to supply any additional statements other than his own.

d. A character reference from Mr. W. J., dated 26 May 2006, shows that he served with the SM when he stationed in Italy and while serving in Iraq. He describes the professionalism of the SM especially during direct fire conflicts in Iraq, of over 12 hours at a time. The SM was dependable and never hesitated to provide cover fire during conflicts. Upon their return to Italy, he was concerned for him, as he noticed a decline in his performance and social life, and even approached the chain of command (COC) and asked that they provide assistance to him as he did not want any harm to come to his career. This was all due to the lack of leadership, lack of mental health and an overall poor support system.

e. A congressional inquiry response from the Office of the Chief of Legislative to the SM's Senator, 2 June 2006, shows they advised that the SM had the right to request a review of his concerns to the ADRB.

f. A response from ARBA to the SM's Senator, 29 June 2006, reflects that at the time they could not locate an application as it pertained to the SM. They further advised the Senator that the applicant submit a DD Form 149, in order to initiate the review of his military records.

g. A letter from the SM, 7 July 2006 shows he arrived in Italy and left for Iraq only after 3 weeks. He had high expectations and a positive attitude, he wanted to make the Army a career. After his return from Iraq, he felt hostile and even self-enrolled in anger management classes, which provided him with medications that made him ill and further angered him. In order to cope he began drinking while off duty, this made him less anxious, more like his old self and he was able to communicate with others. Drinking, however, caused black outs that led to damaging of government property and physical altercations. He was eventually reduced in rank and enrolled in the Army Substance Abuse Program (ASAP). He was given new medication while enrolled in ASAP that caused him to be nauseous, not be able to eat, his hands shook and had terrible headaches, so he discontinued the medication and resumed drinking while on leave. He was not able to complete ASAP and was separated from the Army on 24 September 2004. He now was suffering with leg, shoulder and backpain that he treated by drinking to ease the pain. He was able to find employment but unable to maintain it due to his injuries from the Army. He sought out help through the VA, so he could enroll in a detoxification program. He had to move in with his parents for financial support and shelter. He took pain killers for his constant pains but feared he would become addicted. He asked the Board to consider an upgrade to his character of service. He does not know what happened to him, and his life was in despair.

h. Applicant's letter to ARBA, 21 September 2006, states that she and the SM's father submitted requests that were not processed, as every form submitted for a review was obsolete. Her son is now disabled and cannot complete this process on his own, she has a power of attorney and was trying to submit the request on his behalf. He volunteered to serve in Iraq after 11 September 2001, and she is committed to correcting his record. She is further asking that the request be retroactive to the date his father began the process.

i. Applicant's letter the VA of New York, NY, 18 March 2007, shows she believed her son was deprived of Veteran rights due to the way they have been treated while trying to seek help. He was released from the Army with health conditions that were not addressed and now he has become drug dependent. She can no longer care for him; he needed disability benefits.

j. Applicant's letter to the Senator, 1 May 2007, reflects where she provides updates in her son's case. She explains that no action has been taken to correct his DD Form 214. The SM was suffering, he could not work, could not study and was in constant pain and is a financial burden on the family as she too was disabled. The SM was less competent at 26 years old than what he was in grade school, and although he had four years of meritorious service, this was the result of his service in Iraq, yet the Army would not admit he was even there.

k. SM's VA decision for claim and compensation, dated 15 April 2008 shows he received a service-connected disability rating of 100 percent (%) with an effective date of 1 April 2006.

l. The applicant provides a copy of the SM's death certificate, 8 May 2009.

m. A letter issued by NPRC, 10 May 2010 reflects no record has been found to show the SM was authorized the CIB.

n. Letter to the applicant from ARBA, dated 2 September 2010, explaining that after contacting the Defense Finance and Accounting Service (DFAS), his service from 14 August 2003 to 20 February 2004 in Iraq was confirmed.

o. Applicant's letter to the Secretary for VA benefits administration, 7 November 2010 where she is asking for help in obtaining her son's medals and upgraded DD Form 214 and restoring his rank. She explains how her countless attempts over the last six years have not produced any results. She is also requesting survivor benefits.

p. A VA letter which shows that "The death of a Veteran will be considered as having been due to a service-connected disability when the evidence establishes that such disability(s) was either the primary or contributory cause of death. During the Veteran's lifetime, the Veteran was 100 % service connected for post-traumatic stress disorder (PTSD). The cause of death is recorded as: acute mixed drug intoxication including methadone and buprenorphine. Review of VA treatment reports, VA N.Y. HCS, from November 2007 to March 2008, show that the Veteran was treated for alcohol and substance abuse. We requested a medical opinion as to whether it is least as likely as not that the veteran's cause of death was related to his service-connected disability of PTSD, or if his service-connected disability substantially or materially contributed to death. The VA Medical Opinion dated January 6, 2011, stated that it is at least as likely as not that the Veteran's service-connected disability of PTSD caused or contributed to the Veteran's death. The opinion notes that the Veteran's alcohol and substance abuse was related to the anxiety and stress he experienced on his return from Iraq and served to self-medicate his symptoms of PTSD. Service connection for the cause of the Veteran's death is granted since evidence shows that the contributory cause of death was related to military service".

q. Applicant's fax to Tragedy Assistance Program for Survivors (TAPS) shows that she is asking for help in obtaining her son's medals and upgraded DD Form 214, restoring his rank and all funds that were taken from him to include his reenlistment bonus, to be returned to his account. She also requests a lawyer that handles wrongful death cases like her son's.

r. In a letter by the SM, he explains how he proudly served and that after 11 September 2001 he decided to change his military occupational specialty (MOS) to become an Infantryman (11B) because he wanted to serve his country in combat. After his reclassification he arrived in Italy and was sent to Iraq shortly after. He competed and was selected to serve with an elite surveillance team for about five months while servicing in Iraq, but asked to be placed back with his original unit as he believed he was permanently traumatized during a surveillance mission. He further explains the mission in great detail. The letter is available in its entirety for the Boards review.

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

a. DD Form 4 shows the SM enlisted in the Regular Army on 28 July 1999, followed by one reenlistment on 6 May 2003. He was promoted to the rank of specialist/E4 on 28 September 2001.

b. Permanent Order Number 204-01, issued by Division Support Command on 23 July 2003 awarded the SM the Army Commendation Medal for service from 14 March 2000 to 21 May 2003.

c. DA Form 2627 (Record of Proceedings Under Article 15, UCMJ), 1 July 2004 shows he was found guilty and received non-judicial punishment under the provisions of Article 15, UCMJ for the below infractions. His punishment consisted of reduction in rank to private (PVT), forfeitures of pay of \$597.00 a month for two months, and 45 days restriction and extra duty. He elected not to appeal. He was found guilty of the following:

- Damage of military property,
- Fail to go at the time prescribed to your appointed place of duty,
- Damage of military property,
- Unlawful entry
- Wrongfully communicate a threat to injure
- Wrongfully communicate a threat to injure
- Resist being apprehended
- Wrongfully communicate a threat to injure
- Unlawful assault
- Drunk and disorderly

d. DA Form 4856 (Developmental Counseling Form), dated 15 August 2004 reflects he was counseled for assaulting another Soldier. Additionally, DA Forms 2823 (Sworn Statement), dated 15 August 2004, reflects the following:

(1) SM states all he remembers is he simply woke up another Soldier for duty when he got upset because no one was watching the radio while he was waking him up. The Soldier then walked out, slammed the door, and said a\*\*hole. The SM went after him to ask what he had said and believed he was going hit him, so he restrained him and later informed the COC.

(2) Mr. B.W. states he was woken up by the SM and asked who was watching the radio when the SM stated no one was he did get upset and did say jack-a\*\* as he was walking out when he was pushed by the SM and asked him what did he say. Mr. B. W. replied with what are you doing? That is when the SM started kicking him.

(3) Mr. I. S. states he woke up from the sound of the fight and heard one of noncommissioned officers (NCO) trying to stop the fight. By the time he went outside the SM was sent to his room and he was posted as guard in front of the room till the SM was dealt with by the COC.

(4) Mr. J. M. S. states he was woken up by yelling outside his window, he got to see the SM kicking Mr. B. W. while he was on the ground. He then opened the window and yelled at them to stop and then instructed the SM to go to his room.

(5) Mr. J. M. M. states he was woken up by the SM yelling and the NCO trying to calm him down. The SM them was placed under the watch of a guard.

(6) Mr. D. S. states he woke up by the fight that was going on between the SM and Mr. B. W. The NCO also yelled from the window to stop the fight and he believes that is what they stopped.

(7) Mr. J. T. states he heard yelling and saw the SM on top of Mr. B.W. kicking him several times.

d. DA Form 3822-R (Report of Mental Status Evaluation) dated 2 September 2004, shows he underwent a mental status evaluation. There is no psychiatric disease or defect which warrants disposition through medical channels. The evaluation showed no evidence of suicidal or homicidal ideations at this time. The SM is psychiatrically cleared for any administrative action deemed appropriate by the command. He met retention requirements of AR 40-501 (Standards of Medical Fitness), Chapter 3; and was cleared for any administrative action deemed appropriate by command:

- 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

e. On 13 September 2004, his commander notified the SM that he was initiating actions to separate him from service under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c, for commission of a serious offense, with a general, under honorable conditions characterization of service. The commander's proposed action was based upon

- damage to government property on 7 May 2004
- failing to report to accountability formation on 14 May 2004
- damage to government property with the said damage to be a sum of about \$900.00 on 31 May 2004
- unlawfully entering the barracks room of Specialist (SPC) P. J. on 31 May 2004
- communicating a threat to SPC P. J. and SPC C. S. P. "to beat your a\*\*" "I am going to kick your a\*\*" "I am going to kick the s\*\*t out of you" or words to that effect on 31 May 2004
- communicating a threat to Staff Sergeant (SSG) M. S. and Sergeant (SGT) A. B. "I will kick your a\*\*" or words to that effect on 31 May 2004
- resisting apprehension by SGT A. B. and SPC J. W. Military Police (MP) communicating a threat towards SPC J. W. "I am going to kill you" or words to that effect on 31 May 2004
- assaulting SPC J. W. by spitting in face on 31 May 2004
- being drunk and disorderly on 31 May 2004

f. On 16 September 2004, after acknowledging receipt of the notification memorandum, the applicant consulted with counsel and was advised of the basis for the contemplated actions to separate him under the provisions of AR 635-200, Chapter 14, and its effect; of the rights available to him; and of the effect of any action taken by him to waive his rights. He voluntarily waived consideration of his case by an administrative separation board contingent upon receiving no less favorable than a general under honorable conditions discharge. He acknowledged he may encounter substantial prejudice in civilian life if he received a less than honorable discharge. He elected not to submit a statement in his own behalf.

g. In a memorandum, subject Separation Under the Provisions of AR 635-200, Chapter 14, paragraph 14-12c, Commission of a Serious Offense, the SM's battalion commander recommended approval of his elimination. He recommended a general discharge.



h. On 16 September 2004, the separation authority approved the recommended discharge. He further directed that the SM not be transferred into the Individual Ready Reserve (IRR) and be issued a general, under honorable conditions discharge.

i. The SM's DA Form 2-1 shows in item 9 (Awards, Decorations and Campaigns): Army Service Ribbon (ASR), National Defense Service Medal (NDSM), and the Parachutist Badge. This document does not reflect the CIB.

j. The SM's ERB shows in:

- PMOS (Primary MOS): 92A (Automated Logistical Specialist) this section does not reflect MOS 11B
- Section VIII (Awards and Decorations): NDSM and the Global War on Terrorism Service Medal (GWOTSM); this section does not reflect the CIB

k. The SM's DD Form 214 shows he was discharged on 24 September 2004, under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct with a General, Under Honorable Conditions discharge (Separation Code JKQ, RE Code 3). He completed 5 years, 1 month, and 27 days of net active service this period. This document also shows in:

- item 11 (Primary Specialty): 92A; this item does not reflect MOS 11B
- item 13 (Awards): NDSM, ASR, Parachutist Badge, and the GWOTSM. It does not reflect the CIB
- item 18 (Remarks): Does not reflect service in Iraq; it lists his reenlistment, item 18 does not list his continuous honorable service

8. On 29 August 2007, the Army Discharge Review Board (ADRB) denied the applicant's request for an upgrade to his characterization of service and to amend his narrative reason for separation. The ADRB found that the reason for his discharge and the characterization were both proper and equitable. The complete case is available for the Boards review.

9. In an email from Defense Finance and Accounting Service, it shows that the SM served in Iraq from 14 August 2003 to 20 February 2004. In another email from Trainee Student Branch, Fort Moore, GA, it shows that pursuant to Orders 151-1, the SM successfully completed Infantry training and was awarded the MOS of 11B on 18 April 2003.

## 10. 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 deceased, and his mother is applying to the ABCMR requesting an upgrade of his 24 September 2004 discharge characterized as under honorable conditions (general); restoration of his rank; and, in essence, a referral to the Disability Evaluation System. She has indicated that PTSD, TBI (traumatic brain injury), and other mental health concerns are issues related to this request. 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 28 July 1999 and was discharged under honorable conditions (general) on 24 September 2004 under the separation authority provided by paragraph 14-12c of AR 635-200, Personnel Separations – Enlisted Personnel (1 November 2000): Commission of a serious offense. It does not list a period of service in a hazardous duty pay area.

c. The applicant, a Specialist (E04) at the time, received a field grade Article 15 on 1 July 2004 for numerous violations which would later serve as the basis for his involuntary administrative separation. As part of his punishment, he was reduced in rank to Private (E01). He underwent a mental status evaluation on 2 September 2004. The psychiatrist documented the applicant was anxious but an otherwise a normal examination. He opined the applicant had the mental capacity to understand and participate in the proceedings, was mentally responsible, and met the medical retention standards prescribed in Chapter 3, AR 40-501, Standards of Medical: He went on to state:

“There is no psychiatric disease or defect which warrants disposition through medical channels. The evaluation showed no evidence of suicidal or homicidal ideations at this time. The SM [service member] is psychiatrically cleared for any administrative action deemed appropriate by Command.”

d. On 13 September 2004, the applicant's company commander informed him of the initiation of separation action under be processed under paragraph 14-12c of AR 635 200:

"My proposed action is based upon your damage to government property on 7 May 2004, failing to report to accountability formation on 14 May 2004, damage to government property with the said damage to be a sum of about \$900.00 on 31 May 2004, unlawfully entering the barracks of SPC P.J. on 31 May 2004, communicating a threat to SPC P.J. and C.S. "to beat your ass", "I am going to kick your ass", "I am going to kick the shit out of you" or words to that effect, on 31 May 2004, communicating a threat to SSG M.S. and SGT A.B. to wit: "I will kick your ass," or words to that effect on 31 May 2004, resisting apprehension by SGT A.B and SPC J.W, Military Police, communicating a threat towards SPC J.W. to wit: "I am going to kill you" or words to that effect on 31 May 2004, assault SPC J.W by spitting in his face on 31 May 2004, and being drunk and disorderly on 31 May 2004."

e. On 16 September 2004, the Commander of the 173<sup>rd</sup> Airborne Brigade approved the applicant's separation under paragraph 14-12c of AR 635-200 and directed he be separated from service with a General Discharge Certificate.

f. His pre-separation examination shows he was taking Zoloft. The provider documented a normal examination and cleared the applicant for separation. There were no additional contemporaneous medical documents submitted with the application of in the EMR

g. There is no probative 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.

h. A VA Benefits Decision and JLV show the applicant was awarded a 100% service-connected disability rating for PTSD effective 14 March 2006. There was no service-connected disability rating for a TBI or TBI related sequelae.

i. The DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

j The applicant's death certificate shows he was found dead in his residence on 8 May 2009 with the immediate cause of death - "Acute Mixed Drug intoxication including Methadone and Buprenorphine."

k. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: PTSD

(2) Did the condition exist or experience occur during military service? YES: It has been service connected by the VA

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. As the condition is associated with avoidant behaviors and self-medicating with alcohol, it mitigates his failure to repair and drunk and disorderly conduct. However, it does not negatively affect ones ability to differentiate right from wrong and adhere to the right and therefore cannot mitigate most of his UCMJ violations, to include damage of government property, communications of threats to fellow Soldiers, unlawfully entering another Soldier's room, resisting apprehension, and assaulting a fellow Soldier.

#### BOARD DISCUSSION:

1. The Board determined 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.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial 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.

a. Army Commendation Medal: Grant. Permanent Orders awarded the SM the Army Commendation Medal. This award should be reflected on his DD Form 214.

b. Discharge Upgrade: The SM was discharged for commission of a serious offense (damage to government property, failing to report to accountability formation, unlawfully entering the barracks room of another Soldier, communicating a threat to other Soldiers, resisting apprehension by Military Police, assault, and being drunk and disorderly). His service was characterized as under honorable conditions (general). The Board found no error or injustice in the separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions

of the medical reviewing official the SM had a condition that allows for partial mitigation. As the condition is associated with avoidant behaviors and self-medicating with alcohol, it mitigates his failure to repair and drunk and disorderly conduct. However, it does not negatively affect one’s ability to differentiate right from wrong and adhere to the right and therefore cannot mitigate most of his UCMJ violations, to include damage of government property, communications of threats to fellow Soldiers, unlawfully entering another Soldier’s room, resisting apprehension, and assaulting a fellow Soldier. Therefore, the based on a preponderance of evidence, the Board determined that the character of service the SM received upon separation was not in error or unjust.

c. Grade: Deny. The applicant violated the UCMJ and received non-judicial punishment for his violation. The resultant punishment consisted of reduction to the lowest enlisted grade of private/E-1. The applicant elected not to appeal. The Board found no evidence the applicant was promoted back to a higher grade between the date of his reduction and the date of his separation. Therefore, the Board the grade he received at the time of separation is not in error or unjust.

d. Combat Infantryman Badge: Deny. The Board found no evidence in the service record and the applicant does not provide evidence that her son, the SM, was awarded the Combat Infantryman Badge.

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:

1. In addition to the correction addressed in Administrative Note(s) below, the Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by adding the Army Commendation Medal to his DD Form 214.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to his grade, character of service, and Combat Infantryman Badge.



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 additional awards and other information not listed on his DD Form 214. As a result, amend his DD Form 214 by amending:

- Item 11 (Primary Specialty) to show 11B1P Infantryman 1 year, 5 months. This change is pursuant to Orders 151-1, dated 30 May 2024, that reflect the SM changed his MOS on 18 April 2003.
- Item 24 (Awards) add the Army Good Conduct Medal (1st Award), Permanent Orders 280-04, 7 October 2002 and Iraq Campaign Medal (ICM)
- Item 18 (Remarks): Add "Service in Kuwait/Iraq from 14 August 2003 to 20 February 2004" and Add "Continuous Honorable Service 28 July 1999 to 5 May 2003"

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 15-185 (ABCMR) states ABCMR members will review all applications that are properly before them to determine the existence of an error. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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 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. 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 UOTHC discharge was normally considered appropriate. However, the separation authority could direct a general discharge if such was merited by the Soldier's overall record.

c. Paragraph 14-12c provides conditions that subject Soldiers to discharge for Commission of a serious military or civil offense if the specific circumstances of the offense warrant separation and a punitive discharge is or would be authorized for the same or a closely related offense under the MCM.

4. Army Regulation 600-8-22 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards.

a. The CIB is authorized to Soldiers when the three requirements are met. The Soldier must be an infantryman satisfactorily performing infantry duties, he must be assigned to an infantry unit during such time as the unit is engaged in active ground combat, and he must actively participate in such ground combat. Specific requirements state that an Army enlisted Soldier must have an infantry or special forces specialty and must have satisfactorily performed duty while assigned or attached as a member of an infantry, ranger, or special forces unit of brigade, regimental, or smaller size during any period such unit was engaged in active ground combat.

b. The ICM is authorized for service in direct support of Operation IRAQI REEDOM (OIF). The area of eligibility encompasses all land area of the country of Iraq, and the

contiguous water area out to 12 nautical miles, and all air spaces above the land area of Iraq and above the contiguous water area out to 12 nautical miles. The ICM period of eligibility is on or after 19 March 2003 to a future date to be determined by the Secretary of Defense or the cessation of OIF.

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.

9. 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//