

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 May 2024

DOCKET NUMBER: AR20230011955

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (general) discharge to honorable
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 4980-18 (Army Achievement Medal (AAM) Certificate)
- Certificate of Training Combat Lifesaver Course
- Permanent Orders 173-17 Temporary Change of Station (TCS)
- DD Form 2414 (The Joint Service Achievement Medal Certificate)
- Certificate of Training Drivers Training Course
- Expert Infantryman Badge Certificate
- DA Forms 4856 (Development Counseling Form)
- DA Form 330 (Language Proficiency Questionnaire)
- Sworn Statement
- DA Form 3881 (Rights Warning Procedure/Waiver Certificate)
- Certificate of Appreciation
- Standard Form 93 (Report of Medical History)
- DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ))
- Initiation of Separation
- Election of Rights
- Commander's Report
- Chain of Command Recommendation
- Approved Separation
- Excerpt from 82nd Airborne Division Regulation 190-2
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Notice of Summary Suspension
- Evaluation Report Cover Sheet
- Letter from Office of the Sheriff of Ogle County
- Circuit Court of the 15th Judicial Circuit Document

- Circuit Court of the Eighteenth Judicial Court Documents
- Report and Order of Discharge from Probation
- Letter from Department of Probation and Court Services
- Petition to Seal Felony Drug Conviction and/or First Offender Drug Probation
- Letter from Illinois State Police
- Letters of Support
- Department of Veteran Affairs (VA) Rating Decision
- Employment Data Report
- Year-End discussion Resources
- KPMG Certificates
- Columbia University Official Transcript

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:

a. At the time of his discharge, he was suffering from an undiagnosed and untreated medical condition of post-traumatic stress disorder (PTSD) from his deployment to Haiti from 29 June 1999 to 26 September 1999 for Operation Uphold Democracy.

b. During his service, PTSD was not understood as well as it is today and he was not afforded the opportunity for treatment nor were these incidents taken into account, when he was discharged from his military service. As such, he feels this is an injustice that warrants a discharge upgrade from under honorable conditions (general) to honorable. Furthermore, the applicant's roommate, at the time, was participating in the same activity that resulted in the applicant's Article 15 that led to his discharge. His roommate was not discharged and went on to complete a fulfilling career as a warrant officer, so the punishment was disproportionate to others committing the same offense.

c. During the applicant's deployment, he served as a turret gunner with his unit, performing reconnaissance patrols and assisting on humanitarian missions such as aiding local civilians to uncover mass graves and securing the build sites of schools and hospitals. They regularly encountered aggression from local Haitians and had a few incidents ranging from gunshots in front of Camp Fairwinds to riots in the city of Port-au-Prince.

d. On a particular incident that occurred sometime during the months of July through September, they were driving through Port-au-Prince and a small pickup truck

attempted to break their convoy. The pickup abruptly cut in front of their High Mobility Multipurpose Wheeled Vehicle (HUMVEE) and would have disrupted their convoy. Their vehicle impacted the small pickup roughly at a speed between 40 and 50 miles per hour and caused the pickup to contort into a Z pattern. The driver of the small pickup also received a direct impact to his body, during this time, and sustained severe injuries. As instructed by their chain of command, their vehicle did not stop nor let the driver enter their convoy. Later, the driver's family appeared at Camp Kinzer to demand compensation and they learned the driver passed away from his injuries.

e. The applicant has experienced severe symptoms, since his deployment and recently, on 12 October 2022, the VA evaluated his condition and rated him at 100 percent (%) service connection for PTSD related to his deployment to Haiti.

f. Prior to his deployment to Haiti, the applicant was a star Soldier and was the youngest to get promoted to specialist in his unit, being awarded with an AAM only a few months after joining his unit.

g. The applicant had not done hard drugs nor abused alcohol prior to his deployment, but that changed after the incident in which their HUMVEE struck and killed a civilian. He could not sleep, and his mood began to grow very volatile after their collision and with continued exposure to dead bodies, diseases, and violence.

h. He, along with many in his unit, began drinking heavily and inhaling keyboard cleaner, while in Haiti. When they returned from deployment, this escalated into inhaling nitrous oxide and he was introduced to ecstasy, ketamine, and other hard drugs by his fellow Soldiers, which the applicant felt, at the time, helped him to cope with increasing feelings of anxiety, depression, and recollections of his trauma.

i. He attempted to seek treatment due to his substance abuse, depression, and impulsive behavior but the noncommissioned officers (NCO) in his chain of command denied his attempt to seek treatment, ridiculed him, and actively dissuaded him from pursuing any treatment. This resulted in the applicant's aggressive outbursts and volatile behavior towards his chain of command, which led to him receiving two Article 15s (in May and April 2000) for disrespect towards an NCO.

j. Any perceived threat would cause the applicant to be filled with rage and act impulsively and continues to this day. This led to his Chapter 14 discharge and his service characterization of under honorable conditions (general).

k. Following his discharge, the applicant was still struggling with his experience in Haiti. He wanted to die. He began to abuse drugs heavily as this was the only thing that alleviated the anxiety, hopelessness, and extreme physical symptoms of blood rushing

to his face, and fight or flight response during any social interaction and feeling vulnerable without possessing a weapon.

l. Within six months of his discharge, he had been charged with felony possession of ketamine (on or about July 2001) and then shortly after being convicted of this felony, he was arrested for driving under the influence of alcohol (on or about September 2002). He spent most of his 20s in jail, court, and rehabilitation. During this time, it was recommended to the applicant to sign up for VA benefits and explore treatment options, so he began going to the VA hospital.

m. He began speaking with Dr. D- L- at the VA in connection to treatment for hyperactivity and other symptoms related to PTSD and began opening up more over the years he had attended appointments with the doctor. Initially the applicant did not trust Dr. L-, nor did he want to discuss his experiences in Haiti. Eventually, the applicant did begin to discuss some of his symptoms, which led to Dr. L-'s official diagnosis of adjustment disorder on 28 October 2008.

n. Eventually, the applicant was encouraged to file for disability assessment by fellow veterans struggling with PTSD and received a 100 percent service-connected rating for PTSD on 12 October 2022. The applicant still struggles with issues from the trauma he experienced during his military service.

o. The applicant has had a criminal record, homelessness, unstable employment and has spent over 23 years trying to understand and mitigate his symptoms, but despite these struggles, he has worked very hard to recover from the trauma he has experienced.

p. Since recovering from addiction and managing his PTSD symptoms, he has earned a degree from one of the most prestigious universities in the world, Columbia University. He is currently employed as a litigation consultant with the Office of General Counsel for one of the largest and most prestigious firms in the world, KPMG. He is also recognized as one of the best litigation consultants in his field, working on some of the largest and most publicized matters (including such sensitive matters as Justice Kavanaugh's confirmation hearing) and providing regular mentorship to younger peers.

q. The attitude and treatment options for PTSD have changed significantly since the applicant served in the U.S. Army. He feels the Articles 15s and resulting chapter for misconduct would not have occurred with the treatment options available today. He also requests that his progress and significant achievements since overcoming the adversity of his trauma be considered as part of his application for a discharge upgrade, in addition to his service-connected rating of 100% for PTSD.

3. The applicant provides the following documents:

a. DD Form 4980-18, dated 10 March 1999 shows the applicant received the AAM for meritorious achievement from 23 January 1999 to 6 February 1999 as a grenadier.

b. Certificate of Training showing the applicant completed the Combat Lifesaver Course on 21 May 1999.

c. Permanent Orders 173-17, published by Headquarters, 82nd Division, dated 25 June 1999 unit temporary change of station (TCS) orders in support of Operation Uphold Democracy from on or about 6 July 1999 until return of last redeployment main body aircraft.

d. DD Form 2414, dated 25 September 1999 shows the applicant received the Joint Service Achievement Medal for distinguishing himself by exceptionally meritorious achievement while temporarily assigned to Security Force, United States Support Group-Haiti from 29 June 1999 to 26 September 1999.

e. Certificate of Training showing the applicant completed the Drivers Training Course on 17 December 1999.

f. Certificate of Achievement showing the applicant received the Expert Infantryman Badge on 8 May 2000.

g. DA Forms 4856, show the applicant was counseled on:

(1) 14 June 2000, for his initial counseling at his unit. The applicant agreed with the counseling and signed the form.

(2) 18 July 2000, which reflects the applicant was doing a good job in his unit. The applicant's day-to-day appearance was fine but he needed to strive harder to make his appearance event better. The applicant agreed with the counseling and signed the form.

(3) 17 August 2000, which reflects the applicant performed his duties to standard. He needed to focus on technical stuff while in garrison and tactical stuff, while in the field. His appearance was up to standard. The applicant agreed with the counseling and signed the form.

h. Certificate of Appreciation dated 20 August 2000 for the tireless support given to the U.S. Army Survival, Evasion, Resistance and Escape (SERE) School as a role player.

i. Notice of Summary Suspension, dated 22 January 2002 shows the applicant was unable to control his vehicle as it weaved across all three lanes on an interstate nearly

striking another vehicle. Upon stopping the applicant, the officer detected red glassy eyes and an odor of alcohol. The applicant failed the field sobriety test and was arrested.

j. Evaluation Report Cover Sheet, dated 25 October 2002 show the applicant's substance risk was high and his criminal risk was minimum. He was classified as substance risk high due to the blood alcohol level and two symptoms of abuse and three symptoms of substance dependence. The evaluator recommended 75 hours of substance abuse treatment.

k. A letter from the Office of the Sheriff of Ogle County, dated 17 June 2003 states the sheriff's office had received a warrant for the applicant's arrest. The entire letter is available for the Board's review.

l. Circuit Court of the 15th Judicial Circuit Sentencing Order shows the applicant's offense was possession of a controlled substance. He was to serve nine days in the Ogle County Jail and abide by all rules thereof; execution stayed to 16 November 2003.

m. Circuit Court of Eighteenth Judicial Circuit document, which is illegible. It is available for the Board's review.

n. Report and Order of Discharge from Probation, dated 19 May 2005 states the probation officer reported the applicant was found guilty of driving under the influence, he was admitted to probation on 22 May 2003 for a period of 24 months, he had complied with the conditions of probation as ordered by the Court, and the period of probation had elapsed.

o. Letter from Probation and Court Services, dated 19 May 2005 states the applicant was discharged from probation and his probation had been terminated.

p. Petition to Seal Felony Drug Conviction and/or First Offender Drug Probation, dated 11 February 2011, wherein the applicant requested his record of arrest and/or conviction and all related records be sealed as allowed by law. The entire document is available for the Board's review.

q. Letter from Illinois State Police, dated 18 March 2011 states they had received the petition of the applicant regarding the sealing of the applicant's record. Order to Seal Felony Drug Conviction and/or First Offender Drug Probation, dated 21 April 2011, granted the applicant's request to have his official records sealed. Letter from Illinois State Police, dated 3 June 2011 informed the applicant his records were sealed. The entire documents are available for the Board's review

r. Letters of support, which state:

(1) From D- M- a retired sergeant first class who was a witness of events during the period of 29 June 1999 to 26 September 1999, while they were deployed to Haiti. The author describes the incident with the pickup truck and HUMVEE while they were in a convoy. The driver of the pickup suffered damage and external bleeding to his arm. The author was unaware of the status of the driver or how the incident was resolved. The applicant cleaned the residual blood from the HUMVEE. The author has remained the applicant's friend for 23 years. The applicant is still affected by his deployment to Haiti now and at the time, was severely traumatized by the incident. The incident led to increased stress and discipline action from the Army that continues to impact the applicant today. The entire letter is available for the Board's review.

(2) From F- D- who served with the applicant from 1 September 1998 until 30 August 2000. During that time, they were deployed to Haiti. The author detailed the incident with the HUMVEE and pickup. The applicant witnessed the collision with the pickup. The author has remained in contact with the applicant over the years. They have periodically talked about the incident in Haiti and how the applicant is still bothered to the point where it has caused him anxiety when in high traffic and populated areas and has experienced years of self-destructive behavior following the incident that led to arrests and legal issues that have impacted the applicant's life. The entire letter is available for the Board's review.

s. VA rating decision, dated 11 October 2022 shows the applicant received 100% service connection for PTSD effective 10 January 2022. The entire document is available for the Board's consideration.

t. Employment Data Report, dated 7 August 2023, which includes all employment and income data in the applicant's file and a list of all verifiers who had requested the applicant's data in the past 24 months.

u. Year-end Discussion Resources, which states Values: Consistently Demonstrated, Competencies: Developing toward next level, Contributions: In Line; and Promotion: Not Promoted at year-end. The entire document is available for the Board's review.

v. KPMG Certificates, which show the applicant received two platinum Certificates, one silver Certificate and one gold Certificate.

w. The applicant's Columbia University Official Transcript.

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

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows the applicant enlisted in the Regular Army and entered active duty on 6 July 1998.

b. DA Form 4856, dated 25 April 2000 shows the applicant received disciplinary counseling for being disrespectful to an NCO and for disobeying a lawful order of an NCO. The applicant agreed with the counseling and signed the form.

c. DA Forms 2627 show the applicant accepted nonjudicial punishment on:

(1) 31 May 2000 for being disrespectful to an NCO and disobeying a lawful order of an NCO. The applicant did not demand trial by court-martial. His punishment included reduction to private/E-2 suspended, forfeiture of \$273 suspended, and extra duty and restriction for 14 days. The applicant did not appeal his punishment.

(2) 18 September 2000 for wrongfully inhaling nitrous oxide with the intent to induce a state of intoxication. The applicant did not demand trial by court-martial. His punishment included reduction to private/E-1, forfeiture of \$502, and extra duty and restriction for 45 days. The applicant did not appeal his punishment.

d. Sworn Statement of the applicant, dated 21 August 2000 states the applicant used nitrous oxide as an experiment to relieve stress. The applicant had used a controlled substance. He had smoked marijuana once or twice and used ecstasy a few times. He used the marijuana when he got to the unit in December 1998 and the ecstasy in the end of 1998 until the beginning of 2000. The marijuana made the applicant feel goofy and the ecstasy made him feel happy and ecstatic. On 17 August 2000, before the battalion picnic the applicant and another Soldier inhaled the gas called nitrous oxide in their room.

e. Standard Form 88 (Report of Medical Examination), dated 13 September 2000 does not indicate the applicant had any medical or mental health issues and was qualified for administrative separation. Standard Form 93 (Report of Medical History), dated 13 September 2000, shows the applicant suffered from depression or excessive worry and that he used illegal substances.

f. DA Form 3822 (Report of Mental Status Evaluation), dated 18 September 2000 shows there was no evidence of any psychiatric disorder that would warrant treatment or disposition through medical channels, or such a personality disorder as to warrant recommendation for appropriate administrative action. The applicant was mentally responsible for his behavior and could distinguish right from wrong, and possessed sufficient mental capacity to participate in administrative or judicial proceedings. The applicant was cleared for any administrative action deemed appropriate by command.

g. On 28 September 2000, the applicant's commander-initiated action to separate the applicant under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c (Commission of a Serious Offense) for wrongfully inhaling nitrous oxide with the intent to induce a state of intoxication and for disrespecting an NCO. The commander was recommending an under honorable conditions (general) discharge. The recommendation and the applicant's reply would be submitted to the separation authority who would make the final decision in the applicant's case. On the same day, the applicant acknowledged receipt of the initiation of separation.

h. On 23 October 2000, the applicant stated he had been afforded the opportunity to consult with counsel. He had been advised, by his counsel, of the basis of the contemplated action to separate him for misconduct, its effects, the rights available to him, and the effect of any action taken by waiving his rights. He declined to submit statements on his own behalf.

i. The applicant's chain of command recommended approval of the applicant's separation with an under honorable conditions (general) discharge. In an undated memorandum the appropriate approval authority approved the applicant's separation with an under honorable conditions (general) discharge.

j. On 29 November 2000, the applicant was discharged accordingly. His DD Form 214 shows he was discharged under AR 635-200, paragraph 14-12c (Commission of a Serious Offense) and his service was characterized as under honorable conditions (general). He had completed 2 years, 4 months, and 24 days of active-duty service. He was discharged for misconduct with Separation Code JKQ and Reentry Code 3. He was authorized or awarded the following awards:

- Joint Service Achievement Medal
- Army Achievement Medal
- Armed Forces Service Medal
- Army Service Ribbon
- Expert Marksmanship Qualification Badge with Rifle Bar
- Expert Infantryman Badge
- Parachutist Badge

5. Based on the applicant's assertion he was diagnosed with PTSD and the VA documents showing he was 100% service-connected for PTSD, the ARBA Medical Section provided a medical review for the Board's consideration.

6. MEDICAL REVIEW:

a. The applicant requests upgrade of his Under Honorable Conditions, General, discharge to Honorable. He contends his misconduct was related to PTSD.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted into the Regular Army on 6 July 1988; 2) He accepted NJP under provision of Article 15 of the UCMJ on 31 May 2000 for being disrespectful to an NCO and disobeying a lawful order, and on 18 September 2000 for wrongfully inhaling nitrous oxide with the intent to induce a state of intoxication; 3) A Sworn Statement of the applicant, dated 21 August 2000 states, in part, that he used marijuana when he got to the unit in December 1998 and ecstasy in the end of 1998 until the beginning of 2000; 4) On 28 September 2000, the applicant's commander initiated action to separate the applicant under the provisions of AR 635-200, paragraph 14-12c. On 23 October 2000, the applicant stated he had been afforded the opportunity to consult with counsel. He declined to submit statements on his own behalf; 5) In an undated memorandum the appropriate approval authority approved the applicant's separation with an under honorable conditions (general) discharge, and on 29 November 2000 the applicant was discharged accordingly.

c. The VA electronic medical record (JLV), ROP, and casefiles were reviewed. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Included in the applicant's casefile is his Report of Medical History and Report of Medical Examination, dated 13 September 2000, that shows the applicant endorsed a history of depression or excessive worry but was medically cleared for administrative separation. Also included in the casefile is the applicant's Report of Mental Status Evaluation, dated 18 September 2000, that shows the evaluator found no evidence of any psychiatric disorder that would warrant treatment or disposition through medical channels, or such a personality disorder as to warrant recommendation for appropriate administrative action. The applicant was mentally responsible for his behavior, could distinguish right from wrong, possessed sufficient mental capacity to participate in administrative or judicial proceedings, and cleared for any administrative action deemed appropriate by command. No other military BH-related documentation was provided for review.

d. A review of JLV shows the applicant 100 percent SC for PTSD secondary to traumatic experiences while stationed in Haiti and during a training exercise. Initial PTSD DBQ, dated 8 August 2022, shows the applicant was diagnosed with PTSD secondary traumatic exposures to include repeated exposure to dead bodies while stationed in Haiti. Also, while in Haiti, being the gunner of a vehicle in convoy that rammed a civilian pick-up truck, killing the driver. The convoy commander reportedly

directed drivers to not let the truck into the convoy and not to stop after hitting the vehicle. The applicant also reported being injured in a parachute jump, through fog, in 2000. He reported that during the jump there was no visibility, he experienced a panic attack, was kicked in the face, and could not see anything as he descended. He reportedly stopped descending when he encountered a tree and became stuck some 30 feet in the air. He reported sufficient symptoms to meet criteria for PTSD and the examiner deemed the disorder related to military service. A VA C&P Examination, dated 11 July 2022, shows the applicant was also diagnosed with Intermittent Explosive Disorder, with onset associated with deployment to Haiti.

e. Records show the applicant's initial BH-engagement with the VA began in January 2008 whereby he reported difficulty with attention and concentration, was diagnosed with ADHD, trialed on stimulant medication, and enrolled for treatment. Records show he engaged in treatment routinely with good results and on 30 January 2009 reported discontinuing the medication as exercise and positive focus on artistic activities were proving effective at addressing his inattention issues. The applicant reengaged in therapy in March 2009 to address phase of life issues, characterized by lack of structure, recent unemployment, and difficulties with preparation for college. He was diagnosed with Adjustment Disorder NOS and scheduled for outpatient treatment. Records show the applicant resume taking ADHD medication once he enrolled in college and continued in outpatient treatment of Adjustment Disorder NOS and ADHD through July 2012: He continued outpatient treatment of ADHD, via medication management, through July 2020 with good results.

f. Records further show that on 10 August 2022 the applicant presented to the BH clinic to reestablish services for counseling. He reported a history of Adjustment Disorder, ADHD, and Anxiety treatment, and had concerns with persistent symptoms of anger, irritability, verbal aggressiveness, and getting into physical altercations that he thought may be related to PTSD. He additionally endorsed a history of nightmares, self-isolative behavior, hyper-arousal, rumination, and sleep difficulties that began after traumatic experiences while stationed in Haiti, to include exposure to dead bodies, coming under direct fire, and being involved in a large traffic incident. He reported symptom onset after returning from Haiti and a history of alcohol and ketamine abuse to treat his symptoms, which resulted in military separation and problems with the legal system, post-service, for possession of ketamine and DUI. He reported no drug use since 2008. During the interview, he produced positive screeners for depression, anxiety, and PTSD, and was subsequently diagnosed with Unspecified Trauma/Stress Related Disorder r/o PTSD, MDD, Hallucinogen Use Disorder in Sustained Remission, Tobacco Use Disorder in Sustained Remission, and rule-outs for Intermittent Explosive Disorder, and ADHD vs. Attention Secondary to Other Disorders. He was referred for outpatient BH treatment.

g. Records shows the applicant PTSD diagnosis was confirmed in September 2022 and that his Intermittent Explosive Disorder had been confirmed during a VA C&P in July 2022. The applicant continued in outpatient treatment for through February 2024 with fair results.

h. The applicant requests upgrade his Under Honorable Conditions (general) Discharge to Honorable. He contends his misconduct was related to Other Mental Health Issues. A review of the records was void of any BH diagnosis or treatment history during service. Post-service records show the applicant 100 percent SC for PTSD and with additional disorders of MDD and Intermittent Explosive Disorder secondary to traumatic exposures in Haiti and during an Airborne training exercise. Given the association between PTSD and substance abuse to self-medicate symptoms, and PTSD and problems with authority, the applicants misconduct characterized by substance abuse that occurred subsequent his traumatic exposure in Haiti is mitigated by the disorder. Additionally, misconduct characterized by disrespect of an NCO and disobeying a lawful order are mitigated is also mitigated. However, misconduct characterized by abuse of substances that predate his traumatic exposure (i.e., self-asserted drug use that began in December 1998), is not mitigated as the applicant had yet to encounter the traumatic experiences that resulted in the diagnoses.

i. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence that the applicant had a condition or experience during his time in service that partially mitigated his misconduct.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant is 100 percent SC for PTSD.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. A review of the records was void of any BH diagnosis or treatment history during service. Post-service records show the applicant 100 percent SC for PTSD and with additional disorders of MDD and Intermittent Explosive Disorder secondary to traumatic exposures in Haiti and during an Airborne training exercise. Given the association between PTSD and substance abuse to self-medicate symptoms, and PTSD and problems with authority, the applicants misconduct characterized by substance abuse that occurred subsequent his traumatic exposure in Haiti is mitigated by the disorder. Additionally, misconduct characterized by disrespect of an NCO and disobeying a lawful order are mitigated is also mitigated. However, misconduct characterized by abuse of substances that predate his traumatic exposure (i.e., self-

asserted drug use that began in December 1998), is not mitigated as the applicant had yet to encounter the traumatic experiences that resulted in the diagnoses.

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 consideration for requesting upgrade of discharge characterization of service. Upon review of the applicants petition, available military records and medical review, the Board concurred with the advising official finding sufficient evidence that the applicant had a condition or experience during his time in service that partially mitigated his misconduct. The opine noted the association between PTSD and substance abuse to self-medicate symptoms, and PTSD and problems with authority, the applicants misconduct characterized by substance abuse that occurred subsequent his traumatic exposure in Haiti is mitigated.

2. The Board noted the applicant's post service achievements at Columbia University and his numerous character letters of support attesting to the integrity, character and commitment of the applicant and his struggles since his discharge. The Board determined there is sufficient evidence based on the opine to support an upgrade of the applicant's under honorable conditions (general) discharge to honorable with amending his narrative reason to secretarial authority and restoration of the applicant's rank to private first class.

3. 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:

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 honorable, the narrative reason as secretarial authority and restoration of the applicant's rank to private first class..



I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, 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) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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. AR 635-200 (Active Duty Enlisted Administrative Separations) prescribed the policy for enlisted separations.
 - a. An honorable discharge is a separation with honor and entitles a Soldier to full Federal rights and benefits provided by law. The honorable characterization is appropriate when the quality of the Soldier'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 of the regulation dealt with separation for various types of misconduct. The issuance of a discharge under other than honorable conditions (UOTHC) was normally considered appropriate for separations under the provisions of chapter 14. In a case in which an UOTHC is authorized by regulation, a member may be awarded an honorable or general discharge, if during the current enlistment period of obligated service, he has been awarded a personal decoration or if warranted by the particular circumstances of a specific case. Paragraph 14-12c provided for the separation of a Soldier due to commission of a serious military or civil offense if the specific circumstances of the offense warrant separation and a punitive discharge would be authorized for the same or a closely related offense under the Manual for Court-Martial.

4. AR 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities, reasons for separating Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows code JKQ is used for discharge for misconduct.

5. AR 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waivable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaivable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

6. 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.

7. 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 DRBs

and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury (TBI); sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on 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.

8. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

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.

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//