

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 July 2024

DOCKET NUMBER: AR20230012058

APPLICANT REQUESTS: in effect, an upgrade of his under honorable conditions discharge (General).

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

- DD Form 149 (Application for Correction of Military Record)
- Commander's Letter of Appreciation, 12 October 2003
- Character Letter, 13 January 2010
- Condolence Letter, 17 January 2014
- Honor's Society Letter, 6 February 2014
- Physical Therapy Assistant (PTA) Program Verification Form

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. The error or injustice is due to the post-traumatic stress disorder (PTSD) and mental health care he received between 2003 to 2005 during his career and his separation from the Army. He believes other Soldiers received favorable action for other types of discharges associated with driving under the influence (DUI), healthcare, and the Army Physical Fitness Test (APFT). He is currently rated 70% for PTSD from the Department of Veterans Affairs (VA).

b. His PTSD and the death of his father during his deployment, in addition to only being 20 years old, contributed to his mistakes. He paid his dues by losing rank, money, and his summary court-martial. There were senior noncommissioned officers (NCO) with the same offense, DUI, kept quiet and swept under the rug. He was denied going back to school through vocational rehabilitation because he was told it expired. An upgrade of his discharge would allow him to accomplish furthering his education. His

accomplishments while in a combat zone should be considered to afford him opportunities. He was an exceptional Soldier and overnight was considered a "dirtbag." PTSD was not recognized at the time, and he was not allowed to see he had PTSD, although the box was checked on his discharge documents.

c. He served his punishment of 45 days of hard labor, fined \$3000.00, and was reduced in rank to private (PVT)/E-1. As a 39-year-old, he now sees it was a leadership failure. The war and death changed him. Since his discharge he has been denied job opportunities, treatment, and college/vocational rehabilitation. He has been living paycheck to paycheck attempting to get a degree to better himself. His mother passed away and it has hindered him from getting his vocational rehabilitation. He was delayed in enrolling and several counselors delayed the process.

3. The applicant provides:

a. A letter of appreciation dated 12 October 2003 to the applicant's aunt, Ms. PM, which stated the applicant distinguished himself in his performance and dedication to mission. He was a consistently strong performer, self-disciplined, and displayed dependability in his performance as a sapper. The commander was particularly proud of the applicant's recent efforts to help establish a safe and secure environment for the people of Iraq and the Soldiers of the Coalition.

b. A character letter dated 13 January 2010 from Ms. PM, his legal guardian since 1988. She witnessed a dramatic change in the applicant's behavior following his return from the war. Before going to war, he was a happy go lucky guy and then he became sullen, moody, and depressed. His alcohol consumption increased, and he would make comments about being a failure. At times he would share stories about the war and other times he would not want to discuss it at all. The applicant became moody, and she could see he was very troubled. Upon his return they elected to celebrate at a restaurant, and it started out well until the applicant became quiet and sad. He indicated he felt out of place and upon hearing a balloon pop at a nearby birthday celebration, he jumped out of his seat, as if he had heard gunfire. One morning he approached her attacking her and screaming, it took 6 men to hold him down, his strength was extraordinary, and they were able to finally get him calm. She quickly realized he was no longer the same man as before the war.

c. A letter of condolence, dated 17 January 2014, from Brigadier General (BG) JEM for the tragic loss of the applicant's mother. She was well respected by her peers, a credit to her community, and strengthened the Air Force's ability to deliver world-class healthcare to millions. Her presence would be missed.

d. A letter, dated 6 February 2014 commended the applicant on his academic achievements and invited him to become a member of a prestigious honors society.

e. A Physical Therapy Assistant (PTA) Program Verification Form, dated 23 February 2015 shows the applicant volunteered from 17 February 2015 through 23 February 2015. He was extremely energetic, happy, and did a great job observing three supervised physical therapy sessions.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 19 February 2003.

b. He served in Iraq from 11 April 2003 through 18 March 2004.

c. He accepted nonjudicial punishment on 14 October 2004 for one specification of consuming alcohol while underage on or about 20 April 2004. His punishment included reduction to the grade of private (PVT)/E-1.

d. A second DA Form 2627 (Record of Proceedings Under Article 15, UCMJ) shows the applicant accepted nonjudicial punishment on 15 February 2005 for one specification of consuming alcohol while underage on or about 17 January 2005. His punishment included reduction to the grade of private (PVT)/E-1.

e. A Mental Status Evaluation confirmed the applicant was command referred for a mental evaluation due to separation proceedings. The applicant was psychiatrically cleared for any administrative action deemed appropriate by the command.

g. On 28 April 2005, charges were preferred on the applicant for one specification of wrongfully consuming alcohol while underage on or about 20 February 2005 and one specification of breaking restriction.

h. On 6 May 2005, he was convicted by a summary court-martial for one specification of wrongfully consuming alcohol while underage on or about 20 February 2005 and one specification of breaking restriction.

i. On 10 May 2005, the convening authority approved the sentence and ordered it executed.

j. On 1 June 2005, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12b for patterns of misconduct. The reasons for his proposed action were the applicant lied to an NCO on 7 September 2004, consumed alcohol while underage on 20 January 2004 and 17 January 2005, and broke restriction on 20 January 2005. The applicant acknowledged receipt of the notification of separation action on the same day.

k. After consultation with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him
- he may be ineligible for many or all benefits as a veteran under both Federal and State laws
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he elected to submit matters

I. The applicant's rebuttal statement notes he self-referred to the Alcohol and Substance Abuse Program (ASAP) prior to any incidents of alcohol. He repeatedly asked his chain of command to go but did not go and subsequently received two Article 15's for underage drinking. He again asked to go to ASAP, but still did not go and even shared with his platoon sergeant that he believed he had a drinking problem. He still did not receive permission to attend ASAP due to training and field exercises. He was subsequently apprehended for DUI and received a summary court-martial. He was then promised he would go to ASAP, but never received treatment. He wondered if he had received treatment, the events that took place may not have happened. He understood he had to take responsibility for his actions, but also recognized his chain of command did nothing to help him. He has a problem and cannot control it. He was embarrassed and ashamed going from a fast-tracking Soldier and war Veteran, to a washed up drunk. He does not know if it will change anything in his case, but he would consider it a success if the next Soldier would get a fair chance.

m. On 9 June 2005, the immediate commander-initiated separation action against the applicant for patterns of misconduct. He recommended that his period of service be characterized as general, under honorable conditions. The intermediate commander recommended approval.

n. On 10 June 2005, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter 14, paragraph 14-12b for patterns of misconduct. He would be issued a general, under honorable conditions discharge.

o. On 21 June 2005, he was discharged from active duty with an under honorable conditions (General) characterization of service. His DD Form 214 shows he completed 2 years, 4 months, and 3 days of active service. He was assigned separation code JKA and the narrative reason for separation listed as "Misconduct," with a reentry code of 3. It also shows he was awarded or authorized:

- Global War on Terrorism Expeditionary Medal

- Global War on Terrorism Service Medal
- National Defense Service Medal
- Army Service Ribbon

5. On 1 June 2011, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

6. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

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

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR for an upgrade of his under honorable conditions discharge (General). He contends he experienced PTSD that mitigates his misconduct. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 19 February 2003; 2) The applicant deployed to Iraq from 11 April 2003-18 March 2004; 3) On 6 May 2005, he was convicted by a summary court-martial for one specification of wrongfully consuming alcohol while underage on 20 February 2005 and one specification of breaking restriction; 4) On 1 June 2005, the applicant's immediate commander notified the applicant of his intent to separate him for patterns of misconduct. The reasons for his proposed action were the applicant lied to an NCO on 7 September 2004, consumed alcohol while underage on 20 January 2004 and 17 January 2005, and broke restriction on 20 January 2005; 5) The applicant was discharged on 21 June 2005 with an under honorable conditions (General) characterization of service. His DD Form 214 shows he completed 2 years, 4 months, and 3 days of active service. He was assigned separation code JKA and the narrative reason for separation listed as "Misconduct."

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. The applicant asserts he was experiencing PTSD as a result of his deployment to Iraq while on active service, which mitigates his misconduct. There is insufficient

evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service.

d. A review of JLV provided evidence the applicant has been evaluated and diagnosed with service-connected PTSD since 2009. He has been actively engaged in behavioral health treatment at the VA. Currently, the applicant receives service-connected disability for PTSD (70%).

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a condition or experience that mitigates his misconduct which led to his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct while on active service. The VA has diagnosed the applicant with service-connected PTSD.

(3) Does the condition/experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. The applicant did engage in multiple incidents of consuming alcohol while underage after combat exposure. This type of avoidant and self-medicating behavior can be a natural sequela to PTSD. Therefore, per Liberal Consideration, the applicant's misconduct, which led to his discharge is mitigable.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board considered the advising official finding sufficient evidence to support the applicant had a condition or experience that mitigates his misconduct which led to his discharge. The opine noted. this type of avoidant and self-medicating behavior can be a natural sequela to PTSD.

2. However, the Board notwithstanding the advising determined the applicant's general under honorable conditions characterization of service was appropriate based on his misconduct of multiple nonjudicial punishments for consuming alcohol while underage. The Board found insufficient evidence of in-service mitigating factors to overcome the seriousness of the repeated misconduct. The Board carefully considered the applicant's deployment time and his character letters of support speaking to how the applicant had changed after he returned from deployment. The Board found the applicant was not remorseful and did not take ownership for his mistakes associated driving under the influence. The applicant was discharged for misconduct and was provided an under honorable conditions (general) characterization of service. Furthermore, the Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Based on this, the Board denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

   DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

[REDACTED]

[REDACTED]

[REDACTED]

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 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - a. An honorable discharge is a separation with honor. 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

3. 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 post-traumatic stress disorder (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.
4. 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, sexual assault, or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based, in whole or in part, 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.
5. 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 based on equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.
 - 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.

6. Section 1556 of Title 10, United States Code, 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//