

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 June 2024

DOCKET NUMBER: AR20230012215

APPLICANT REQUESTS:

- an upgrade of his general, under honorable conditions discharge
- a 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 3822-R (Report of Mental Status Evaluation)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) Benefits Letter, dated 23 February 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states he is requesting a "correction" of his general, under honorable conditions discharge for patterns of misconduct to reflect honorable due to his post-traumatic stress disorder (PTSD).
3. The applicant provides:
  - a. The below listed documents to be referenced in the service record:
    - DA Form 3822-R, 28 June 2006
    - DD Form 214, for the period ending 18 July 2007
  - b. A VA summary of benefits letter, dated 23 February 2023, shows the applicant is 100% totally and permanently disabled due solely to his service-connected disabilities, effective 18 January 2023, and receives monthly compensation.

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

- a. He enlisted in the Regular Army on 13 April 2004.
- b. He served in Iraq from 4 January 2005 through 12 December 2005.
- c. He accepted nonjudicial punishment on 7 April 2006 for four specifications of failure to be at his appointed place of duty.
- d. The service record includes the applicant's medical examinations, dated 19 June 2006, for the purpose of administrative separation which indicated he was generally in good health. The applicant was marked qualified for service and separation.
  - DD Form 2807-1 (Report of Medical History)
  - DD Form 2808 (Report of Medical Examination)
- e. A DA Form 3822-R (Report of Mental Status Evaluation), dated 28 June 2006, shows the applicant was mentally responsible and had the mental capacity to understand and participate in separation proceedings. The psychologist further noted in the remarks, the applicant deployed from January 2005 through December 2005 and experienced insomnia, increased alcohol use, depression, irritability, flashbacks, and bad memories. He recommended referral to VA after discharge. The applicant was psychiatrically cleared for administrative action deemed appropriate by the command.
- f. On 28 June 2006, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14 for a pattern of misconduct. The reasons for the commander's proposed action were for multiple failures to report and disrespect to a noncommissioned officer. The applicant acknowledged receipt of the notification of separation action on the same day.
- g. On 29 June 2006, after consulting 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 is issued to him
  - he may apply to the Army Discharge Review Board or the ABCMR for upgrading
  - he is ineligible to apply for enlistment for a period of 2 years after discharge
- h. The applicant accepted nonjudicial punishment on 29 June 2006 for one specification failure to obey a lawful order from superior commissioned officer. His punishment included reduction to private/E-1.

i. On 29 June 2006, 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.

j. 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 a pattern of misconduct. He would be issued a general, under honorable conditions discharge.

k. On 18 July 2006, he was discharged from active duty with an under honorable conditions (General) characterization of service. His DD Form 214 shows he completed 2 years, 3 months, and 6 days of active service. The narrative reason for separation is listed as "Pattern of Misconduct." It also shows he was awarded or authorized:

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

5. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

6. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as a pattern of 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. Background: The applicant is requesting an upgrade of his general, under honorable conditions discharge. He contends PTSD mitigates his discharge.

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:

- Applicant enlisted into the Regular Army on 13 April 2004.
- Applicant served in Iraq from 4 January 2005 through 12 December 2005.

- He accepted nonjudicial punishment on 7 April 2006 for four specifications of failure to be at his appointed place of duty.
- On 28 June 2006, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14 for a pattern of misconduct. The reasons for the commander's proposed action were for multiple failures to report and disrespect to a noncommissioned officer.
- Applicant accepted nonjudicial punishment on 29 June 2006 for one specification of failure to obey a lawful order from superior commissioned officer. His punishment included reduction to private/E-1.
- Applicant was discharged on 18 July 2006 under the provisions of AR 635-200, Chapter 14, paragraph 14-12b for pattern of misconduct. His DD Form 214 shows he completed 2 years, 3 months, and 6 days of active service. He was assigned separation code JKA and reenlistment code 3.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states he is requesting a "correction" of his general, under honorable conditions discharge for patterns of misconduct to reflect honorable due to his post-traumatic stress disorder (PTSD). Active-duty electronic medical records available for review indicate the applicant underwent a mental status evaluation on 28 June 2006, for the purpose of separation. He was diagnosed with Depressive Disorder, NOS, and had symptoms after returning from deployment consistent with PTSD, including, insomnia, increased alcohol use, depression, irritability, flashbacks, and bad memories. It was recommended the applicant self-refer to the VA after discharge. However, the applicant was psychiatrically cleared for administrative action deemed appropriate by the command.

d. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100 % service connected for PTSD. VA electronic medical records available for review, indicate the applicant has been intermittently treated by the VA for his symptoms of PTSD since December 2007. The applicant has received psychiatric medication management and supportive psychotherapy, as well as case management services to address his issues of homelessness. The record indicates the presence of schizophrenia in the applicant's family of origin, and he has experienced psychotic symptoms as well. On 13 April 2022, he self-referred for a psychiatric hospitalization. He was diagnosed with Unspecified Psychotic Disorder, Alcohol Use Disorder, and Cannabis Use Disorder. He was stabilized and discharged on 19 April 2022. The applicant continues to receive mental health services via the VA and his most recent encounter, dated 21 March 2004, indicates his service connection for PTSD as well as his diagnosis of Unspecified Psychotic Disorder for which he is prescribed psychotropic medication.

e. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a behavioral health condition during military service that mitigates 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 a mitigating condition, PTSD.

(2) Did the condition exist or experience occur during military service? Yes. The applicant deployed to Iraq and a mental status evaluation, for separation purposes, documents symptoms consistent with PTSD post-deployment.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant is 100% service connected for PTSD and his VA treatment records indicate he has been treated for PTSD with psychiatric medication management and supportive psychotherapy. The applicant was also voluntarily hospitalized in order to stabilize his symptoms.

g. Given the nexus between PTSD and avoidance as well as difficulty with authority, his multiple failures to report and disrespect to a noncommissioned officer are mitigated by his behavioral health condition.

#### BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service to include deployment, the frequency and nature of his misconduct and the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA Behavioral Health Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination.

3. The Board found evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct being mitigated by PTSD. Based on a preponderance of the evidence, the Board determined the applicant's character of service should be changed to honorable.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	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 his DD Form 214 to show his character of service as honorable.

11/1/2024

X

CHAIRPERSON

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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. 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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), 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, such as a pattern of 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.

4. 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.

5. 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.

6. 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.

7. 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//