

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 May 2024

DOCKET NUMBER: AR20230012311

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Clinical Documentation (3 pages), 26 July 2021

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 seeking an upgrade of his under other than honorable conditions discharge. He believes he had undiagnosed post-traumatic stress disorder (PTSD) and mental issues.

a. He joined the Army at the age of 18 years old and at 19 years of age he experienced 9-11 with a subsequent deployment to Baghdad where he turned 21. Upon his return from deployment, he developed an alcohol problem and attributes his misconduct to alcoholism. He did not receive any treatment and although he was given an option to "stay," he informed his commander he did not want to. He was disrespectful to the new first sergeant (1SG) on his way out when he was informed his discharge would be downgraded from general to under other than honorable conditions.

b. Since his military service, he has worked in crisis intervention with at risk youth which taught him a great deal about the benefits of mentors and counseling. He has also been diagnosed with PTSD and a form of bipolar/hyper vigilance for which he takes

medication. He is now a business owner, a husband, and a father of three. He has no criminal record post military and one of the greatest regrets he has is not fighting harder for a fair discharge. He was young, depressed, and struggling with alcohol addiction. Prior to his deployment and during the deployment, he was a great Soldier. He was promoted in basic training, completed one of the most challenging advanced individual training (AIT) courses, maintained a security clearance, always scored 300 on the Army Physical Fitness Test, he was the class student 1SG in AIT, and received multiple waivers for promotion while overseas.

3. The applicant provides Clinical Documentation dated 26 July 2021, which states he has depression, among other diagnoses, managed with medication and struggles with sleep primarily related to military trauma.

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

a. He enlisted in the Regular Army on 24 May 2001.

b. His Enlisted Record Brief does not identify his service period in Iraq.

c. He accepted nonjudicial punishment on 25 June 2004 for one specification of failure to be at his appointed place of duty, one specification of drunk and disorder conduct, and one specification of unlawfully carrying a concealed weapon. His punishment included reduction to private first class (PFC)/E-3.

d. The service record includes the applicant's medical examinations, dated 27 August 2004, which indicated he was generally in good health. The applicant was marked qualified for service.

- 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 1 September 2004, shows the applicant was diagnosed with alcohol abuse. He had previously self-referred to the Army Substance Abuse Program about 3 months prior and declined to return back to the program. The applicant was psychiatrically cleared for administrative action deemed appropriate by the command.

f. On 2 November 2004, 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, for a pattern of misconduct. The reasons for the commander's proposed action were for drunk and disorderly conduct, unauthorized absences, insubordinate conduct, carrying a concealed weapon (brass knuckles), false official statement, failure to obey an order

and numbers counseling from his superiors regarding his pattern of misconduct as a Soldier. The applicant acknowledged receipt of the notification of separation action on the same day.

g. On 10 November 2004, 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 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 is ineligible to apply for enlistment for a period of 2 years after discharge

h. 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.

i. On 24 November 2004, the applicant acknowledged receipt of a General Officer Memorandum of Reprimand (GOMOR), dated 7 October 2004, for driving his privately owned vehicle while under the influence of alcohol. Additionally, he consented to an intoxilyzer test, which registered a .181 percent blood alcohol content (BAC) and a subsequent intoxilyzer test registered a .170 BAC. He was reprimanded for driving his vehicle while under the influence of alcohol and for his careless disregard of others in the community. The applicant elected not to submit written matters.

j. On 16 December 2004, after careful consideration, the imposing general officer directed the GOMOR and all related documents, be permanently filed in the applicant's Official Military Personnel File.

k. On 5 January 2005, a supplemental notification to the applicant's separation proceedings indicated since the initial notification on 2 November 2004, the commander received information of additional misconduct, specifically:

- apprehension for driving while intoxicated on 28 August 2004.
- apprehension for driving with a suspended license on 26 November 2004
- CID Report of Investigation Narrative concerning allegations of indecent assault on 25 October 2004

l. The applicant was afforded the opportunity to return to consult with counsel. On 7 January 2005, the applicant acknowledged the rights as previously listed and elected not to submit matters on his own behalf.

m. On 18 January 2005, consistent with the intermediate 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 an under other than honorable conditions discharge.

n. Permanent Order 026-00043 dated 27 January 2005, announced award of the Good Conduct Medal (1st award) for the applicant's exemplary behavior, efficiency, and fidelity from 28 May 2001 through 27 May 2004.

o. On 31 January 2005, he was discharged from active duty under the provision of chapter 14 of AR 635-200 with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 3 years, 8 months, and 2 days of active service with no lost time. Block 18 (Remarks) shows service in Iraq from 9 December 2002 to 20 October 2003. 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:

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

5. A review of the applicant's record confirms he is eligible for an award that is not recorded on his DD Form 214. The award will be added to his DD Form 214 as an administrative correction and will not be considered by the Board.

6. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

7. 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.

8. 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.

9. 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.

## 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 (AHLTA), 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 applying to the ABCMR requesting an upgrade of his 31 January 2005 discharge characterized as under other than honorable conditions. He had indicated on his DD form 149 that PTSD is a condition related to this request. He states:

“When I returned from Iraq, like most of my unit, I developed an alcohol problem. All my misconduct was alcohol related but despite that I was never received any counseling/treatment. I was given the option to stay but told my commanding officer that I didn't want to. I was disrespectful to my new first sergeant on the way out, in response he downgraded my discharge from general to other than honorable.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period under consideration shows he entered the regular Army on 24 May 2001 and was discharged under other than honorable conditions on 31 January 2005 under the separation authority provided by paragraph 14-12b(2) of AR 635-200, Active Duty Enlisted Administrative Separations ((15 July 2004):): Pattern of Misconduct. It shows Service in Iraq from 9 December 2002 to 20 October 2003.

d. The applicant received an Article 15 on 25 June 2004 for failure to repair, drunk and disorderly conduct, an “unlawfully carry on or about your person a concealed weapon, to wit: brass knuckles.”

e. The applicant underwent a pre-separation medical examination on 27 August 2004. The only item noted on the Report of Medical History was a history of open-heart surgery at the age of 4. Other than the well healed sternotomy incision, the provider documented a normal examination and found the applicant qualified for separation.

f. The applicant underwent a pre-separation Mental Status Evaluation on 1 September 2004. The provider documented a normal examination stating:

PVT [Applicant] was evaluated this day at BHS [Behavioral Health Service] Ft Huachuca, AZ He is diagnosed with alcohol abuse IAW DSM IV.

He had previously self-referred to the Army Substance Abuse Program about 3 months ago. He declined to return to the program.

PVT [Applicant] is cleared for any administrative action deemed appropriate by Command. He should avoid alcohol.

g. He received a General Officer Memorandum of Reprimand (GOMOR) on 7 October 2004 for driving under the influence of alcohol:

“On 28 August 2004, the Military Police apprehended you for driving your privately owned vehicle while under the influence of alcohol. Subsequently, you were advised of the Arizona Implied Consent Law. You consented to an intoxilyzer test, which registered a .181 percent blood alcohol content. An additional intoxilyzer test registered a .170 percent blood alcohol content. This chemical evidence and the enclosed police report convince me that you were driving while under the influence of alcohol.

You are reprimanded for driving your vehicle while under the influence of alcohol and for your careless disregard of others in the community. Your actions and misconduct demonstrate a complete lack of concern for others and reveal a serious lack of judgment. You have damaged your effectiveness as a Soldier in the United States Army.”

h. On 2 November 2004, his company commander initiated separation action under 14-12b of AR 635-200:

“The reasons for my proposed action are: You are being chaptered for unsatisfactory performance, specifically you have committed the offenses of drunk and disorderly conduct, unauthorized absence, insubordinate conduct, carrying a concealed weapon (brass knuckles), false official statement, and failure to obey an order. Additionally, you have received numerous counseling from your superiors regarding your pattern of misconduct as a Soldier.”

i. On 18 January 2005, the Commanding General of the United States Army Intelligence Center and Fort Huachuca directed the applicant be discharged with an under other than honorable conditions characterization of service and that he be reduced to the grade of E-1.

j. A 26 July 2021 civilian family practice encounter shows the applicant had been diagnosed with major depressive disorder, which was stable with Lexapro, and “He

does struggle with sleep, primarily related to military trauma. He uses trazodone nightly for sleep which helps break the cycle.”

k. He has no clinical encounters in JLV.

l. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant asserts he has duty-incurred PTSD and clinical documentation shows he has been diagnosed with major depressive disorder.

(2) Did the condition exist or experience occur during military service? Applicant asserts the PTSD is due to his Service in Iraq.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant has submitted no medical documentation indicating a diagnosis of PTSD and/or that his depression is a direct result of his military Service.

m. In the event the applicant was to have a potentially mitigating diagnosis, it would partially mitigate the misconduct for which he was separated. These conditions are associated with avoidant behaviors, resistance to authority, and self-medicating with drugs and/or alcohol. As such, it would mitigate the drunk and disorderly conduct, the GOMOR for driving under the influence, and failure to obey lawful orders and/or disrespect to superior NCO's or officers. However, these conditions do not interfere with one's abilities to differentiate right from wrong and adhere to the right so cannot mitigate his false official statement and carrying of a concealed weapon.

#### 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 relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The evidence shows the applicant committed a series of misconduct (being drunk and disorderly; unauthorized absences, insubordinate conduct, carrying a concealed weapon (brass knuckles), false official statement, failure to obey an order wrongfully used illegal drugs, DUI, GOMOR). As a result, his chain of command separated him with an under other than honorable conditions discharge. The Board found no error or injustice in his 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 Board noted the medical official's finding evidence that supports the applicant had condition or experience that partially mitigated his misconduct. However, such mitigation did not outweigh his misconduct. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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.



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 (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, 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//