

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 July 2024

DOCKET NUMBER: AR20230012972

APPLICANT REQUESTS:

- an upgrade of his characterization of service from under honorable conditions (general) to honorable
- election of Iraq Campaign Medal (ICM)
- upgrade his Army Commendation Medal (ARCOM) to the ARCOM with "V" Device
- award of the Purple Heart

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

- DD Form 149 (Application for Correction of Military Record), 1 September 2023
- DA Form 638 (Recommendation for Award), 7 January 2004
- Army Commendation Medal Award, 1 January 2004
- Permanent Orders 031-14, 31 January 2008
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 14 March 2005
- Department of Veterans Affairs (VA) decision documents, 2 June 2023
- three pictures of scars on his left leg

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, in effect, his discharge was due to his undiagnosed, at the time, post-traumatic stress disorder (PTSD) symptoms which resulted from his service in Iraq. After a series of intense flashbacks, he was sent to see the Chaplain only once. He was not provided with continued medical care which was needed. Had his symptoms been responded to appropriately, his wounds would have healed; instead he was punished and discharged unfairly. He references at least ten other Soldiers from his unit, who were similarly denied medical treatment for their undiagnosed PTSD; they

have since died by suicide. He states his recommendation for award meets criteria showing his recognition for his actions in Iraq for the Army Commendation Medal with "V" Device and his pictures of his scars demonstrate his eligibility for award of the Purple Heart.

3. The applicant enlisted in the Regular Army on 26 February 2002, for a period of 5 years. He was awarded the military occupational specialty of 11B (Infantryman) and the highest rank he attained was specialist/E-4.

4. The applicant was awarded the ARCOM for his achievements while deployed to Kuwait in support of Operation Iraqi Freedom, from 17 April 2003 to 1 January 2004. The DA Form 638 (Recommendation for Award) shows:

a. He participated in the initial seizure of the I Corps Special Republican Guard Headquarters in Tikrit. His tireless dedication contributed significantly to the restoration of order and stability to the Tikrit area. (Achievement #1)

b. As a machine gunner, he was a key participant in over 100 company and platoon raids to capture enemy personnel and weapons caches in and around Tikrit. The individuals and information captured by his squad was crucial to the successful execution of the Coalition Mission in the Salah-Ad-Din-Province. He constantly displayed a high level of aggressiveness and mission-focused attitude during patrols in all conditions. (Achievement #2)

c. On 21 August 2003, he and his squad responded to a rocket-propelled grenade (RPG) attack on a scout High Mobility Multipurpose Wheeled Vehicle that killed four and wounded two on the west side of the Tigris river. During the 36-hour engagement his squad came under numerous small arms attacks through the day and night while tracking the enemy through thick marshes and into several buildings. Due in large part to the applicant's aggressiveness and dedication through the engagement all enemy forces were destroyed. (Achievement #3)

d. On 7 September 2003, the applicant was on quick reaction force when a black hawk was shot down with RPGs. His squad quickly responded to the attack and secured the area preventing loss of equipment and personnel to enemy forces. The applicant was crucial to maintaining and policing up sensitive items throughout the 3 hours that his squad was alone on the site. (Achievement #4)

5. The applicant returned from Iraq on 17 March 2004. Upon his return he was formally counseled on 18 December 2004, stating he went absent without leave (AWOL) on or about 16 December 2004 and remained AWOL until apprehended on or about 18 December 2004. It additionally states it was the third time the applicant went AWOL;

however, given the short length of the AWOL, the Commander was not considering court-martial charges.

6. On 8 February 2005, he was seen for a mental status evaluation and was psychiatrically cleared for administrative action deemed appropriate by the command.

7. On 11 February 2005, the applicant accepted nonjudicial punishment under the provisions of Article 15, of the Uniform Code of Military Justice for going AWOL on or about 17 December 2004 and remaining AWOL until on or about 18 December 2004 and for his wrongful use of amphetamine, methamphetamine, and d-methamphetamine, on or between 15 December 2004 and 18 December 2004. His punishment imposed was reduction to the grade of E-1, forfeiture of \$300.00 pay per month for two months, restriction and extra duty for 45 days.

8. The applicant's immediate commander notified the applicant on 28 February 2005 of his intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c, Commission of a Serious Offense. He noted the specific reasons as the applicant's wrongful use of methamphetamine, amphetamine, and d-methamphetamine. The commander recommended the applicant receive a under honorable conditions (general) discharge.

9. The applicant consulted with counsel on 1 March 2005 and was advised of the basis for the contemplated action to separate him and of the rights available to him. He understood he may encounter substantial prejudice in his civilian life and elected not to submit a statement in his own behalf.

10. The applicant's immediate and intermediate commanders formally recommended the applicant be separated under AR 635-200, Chapter 14, prior to the expiration of his term of service, recommending his characterization of service be under honorable conditions (general).

11. On 4 March 2005, the separation authority directed the applicant be separated under the provisions of AR 635-200, paragraph 14-12c, for commission of a serious offense. He further directed the issuance of a DD Form 257A (General Discharge Certificate).

12. The applicant was discharged accordingly on 14 March 2005. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct, in the grade of E-1. His service was characterized as under honorable conditions (general). He completed 3 years and 19 days of net active service with 11 months and 14 days of foreign service in support of Operation Iraqi Freedom

from 4 April 2003 to 17 March 2004. He was awarded or authorized the following decorations, medals, badges, citations, and campaign ribbons:

- Global War of Terrorism Expeditionary Medal (GWOTEM)
- Global War on Terrorism Service Medal
- National Defense Service Medal
- Army Service Ribbon
- Combat Infantryman Badge

13. The applicant additionally provides his Department of Veterans Affairs (VA) decision document, dated 2 June 2023, showing he received 100 percent (%) disability for service-connected disabilities. Pictures of scars and a summarization stating the pictures illustrate a physical scar he received while serving in Iraq referencing the injury he sustained. He stated during a nighttime small arms and RPG ambush, he became ensnared in concertina wire, ultimately hanging by the skin and muscle of his left calf, he ripped his leg from the wire and rejoined his teammates while still under fire, where they killed two and took six prisoners of war. After, the event a unit medic stitched more than thirty sutures in three places on his left calf and he carried on with his duties. He never was treated for his injuries by Division Medical. His buddy, another Soldier, was shot in the left hand during this engagement and has since been awarded the Purple Heart. He states his unit did not file for award of the Purple Heart on his behalf because they said he was still able to walk, he believes his injuries under enemy fire meets the criteria for award of the Purple Heart.

14. The applicant petitioned the ABCMR and requested his reentry code be changed, the Board determined the overall merits of the case were insufficient as a basis for correction of the record.

15. Regulatory guidance in effect at the time states when an individual is discharged under the provisions of AR 635-200 Chapter 14, for misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

16. AR 600-8-22 (Military Awards) states in order to justify award of the Purple Heart, a wound must be incurred as a result of hostile enemy action, the wound must have required treatment by a medical officer, and the treatment of the wound must be documented in the medical record; a medical officer as defined can be Special Forces medic. The criteria for award of the Purple Heart does not justify award of the Purple Heart for accidental wounding not related to or caused by enemy action.

17. AR 600-8-22 in effect at the time states a "V" device denotes participation in acts of heroism involving conflict with an armed enemy.

18. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

19. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge to honorable. He contends he experienced undiagnosed 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 26 February 2002; 2) The applicant deployed to Iraq from 04 April 2003 to 17 March 2004; 3) On 11 February 2005, the applicant accepted nonjudicial punishment for going AWOL from 17-18 December 2004 and for his wrongful use of amphetamine, methamphetamine, and d-methamphetamine; 4) The applicant was discharged on 14 March 2005, Chapter 14-12c, by reason of misconduct, in the grade of E-1. His service was characterized as under honorable conditions (general).

b. The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) and VA documentation provided by the applicant were also examined. No additional medical documentation was provided by the applicant.

c. The applicant asserts he was experiencing PTSD 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. He was seen for a Mental Status Exam as part of his Chapter proceedings on 08 February 2005, and he was psychiatrically cleared for administrative action deemed appropriate by command.

d. A review of JLV provided sufficient evidence the applicant has been evaluated and diagnosed with service-connected PTSD in 2020 as a result of his experiences in combat. He has been actively engaged in behavioral health treatment at the VA. Currently, the applicant has been found to be 100% disabled due to his service-connected PTSD.

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 sufficient 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 go AWOL, which can be avoidant behavior and natural sequelae to PTSD. In addition, the applicant was found to be using illegal drugs. Again, there is a nexus between PTSD and this avoidant or self-medicating behavior to avoid negative emotion. 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 partial relief is warranted.

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 Board 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.

3. The applicant contends his ARCOM should have been awarded with a "V" Device. The Board found the evidence clearly shows he was recommended for award of the ARCOM for his meritorious service in Iraq and not for any specific valorous act. Based on a preponderance of the evidence, the Board determined there is no basis for amending the applicant's award of the ARCOM to show he received the award for acts of heroism.

4. Regarding the Purple Heart, the Board noted that the applicant was injured during combat action, but the injury was accidental and not the direct result of hostile action. The Board determined the applicant's injury did not meet the criteria for the Purple Heart.

5. The Board concurred with the corrections described in Administrative Note(s) below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 to show his character of service as honorable and to incorporate the corrections described in Administrative Note(s) below.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any relief in excess of that described above.

12/26/2024

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record and Army regulations show he meets the regulatory criteria for additional awards not currently listed on his DD Form 214. As a result, amend his DD Form 214 by:

- Deleting from Item 13 – Global War on Terrorism Expeditionary Medal
- Adding to Item 13 –
 - Iraq Campaign Medal with two bronze service stars
 - Valorous Unit Award
 - Army Commendation Medal

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. Title 10, USC, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

3. AR 600-8-22 prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards.

a. The ARCOM may be awarded to any member of the Armed Forces of the United States who, while serving in any capacity with the Army after 6 December 1941, distinguishes himself or herself by heroism, meritorious achievement, or meritorious service. As with all personal decorations, formal recommendations, approval through the chain of command, and announcement in orders are required. Extreme courage demonstrated in attaining a noble end. Varying levels of documented heroic actions are necessary to substantiate recommendations for the ARCOM with "V" device in

connection with military operations against an armed enemy. This phrase covers all military operations including combat, support, and supply which have a direct bearing on the outcome of an engagement or engagements against armed opposition. To perform duty, or to accomplish an act or achievement in connection with military operations against an armed enemy, the individual must have been subjected to either personal hazard as a result of direct enemy action, or the imminence of such action, or must have had the conditions under which his or her duty or accomplishment took place complicated by enemy action or the imminence of enemy action.

b. The Purple Heart is awarded to any member who, while serving under competent authority in any capacity with one of the Army Services, has been wounded or killed or who has died or may hereafter die after being wounded as a result of hostile enemy action. Substantiating evidence must be provided to verify that the wound was the result of hostile action, the wound must have required treatment by a medical officer, and the medical treatment must have been made a matter of official record.

(1) The Purple Heart may be awarded as a result of friendly fire provided the member was killed or wounded in action by friendly weapon fire while directly engaged in armed conflict, other than the result of an act of an enemy of the United States, unless in the case of a wound, the wound is result of the willful misconduct of the member qualify for award of the Purple Heart.

(2) Accidents, to include explosive, aircraft, vehicular, and other accidental wounding not related to or cause by enemy action do not justify eligibility for the Purple Heart.

(3) The wound must have been of such severity that it required treatment, not merely examination, by a medical officer, a medical officer include Special Forces medics.

4. AR 635-200 sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3, section II (Type of Characterization or Description) provides a description of the states the following types of characterization of service or description of service are authorized: separation with characterization of service as Honorable, General (under honorable conditions), or Under Other Than Honorable Conditions, and Uncharacterized (for entry level status) are authorized. These separation types will be used in appropriate circumstances unless limited by the reason for separation.

(1) Paragraph 3-7a states an honorable discharge is a separation with honor. 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.

(2) Paragraph 3-7b states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

b. Chapter 14 (Separation for Misconduct) establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave.

(1) 14-12c(2) – Soldiers are subject to discharge for Commission of a serious offense. Commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Court-Martial. Specific instances of serious offenses include abuse of illegal drugs or alcohol.

(2) A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; traumatic brain injury; 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.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//