

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 August 2024

DOCKET NUMBER: AR20230013362

APPLICANT REQUESTS:

- Upgrade of his under honorable conditions (general) discharge to honorable
- Correction of his separation code
- Correction of his narrative reason for separation

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

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case, wherein he requested correction of his reentry code, by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20080004731 on 25 June 2008.

2. The applicant states:

a. He is asking for an upgrade of his discharge to an honorable discharge and that his separation code and narrative reason for separation be corrected. He was diagnosed with post-traumatic stress disorder (PTSD) in Kuwait by a medical officer and he was sent back to Fort Hood. His commanding officer at Fort Hood did not help him or allow him to get any help. He was hurting, in pain, and was young. He had no clue how or what to do to get help, so he got into some trouble. He did not get any help and he was left behind. He felt like he was thrown out because they did not help him. Even though we never leave a Soldier behind, he was left behind with no help then thrown out of the military that he loved and still does to this day. Some of the stuff they are stating he did is untrue.

b. When he was sent back to Fort Hood because of his PTSD, he was left behind to fail. He got into trouble because he did not have much medical assistance that was needed. He was pretty much just thrown away like a piece of trash.

c. Some of the crimes they are stating he committed are completely untrue and false. Some of it is true but some is false like flipping off an officer and riding wheelies on his motorcycle are completely untrue. To this day, he still cannot ride a wheelie on his motorcycle. He also did not flip anyone off, ever.

d. We never leave a Soldier behind, but he was left to struggle on his own with PTSD, which he still has to this day, and instead of not leaving him behind, they did. They then threw him out. He thanks the Board for their time. He still loves this great country and no matter the Board's decision may God bless us all.

e. The Department of Veterans Affairs is currently doing medical tests on him and deciding if any help is needed. He was left behind, after being diagnosed with PTSD in Kuwait and sent back to Fort Hood to get barely any help.

f. The Army Review Boards Agency did upgrade his discharge characterization on 19 December 2007 to under honorable conditions (general).

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

a. DD Form 4, shows he enlisted in the Regular Army and entered active duty on 28 March 2005.

b. Report of Mental Status Evaluation, 29 August 2005, states in pertinent part, he had the mental capacity to understand and participate in the proceedings, was mentally responsible, met retention requirements, and needed psychiatric treatment. He was diagnosed with major depressive disorder, severe, without psychotic features. The entire document is available for the Board's review.

c. Memorandum for the applicant, 13 September 2005, states he had been cleared to return to a Continental United States Medical Treatment Facility to receive out patient psychiatric follow-up treatment. The entire memorandum is available for the Board's review.

d. Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ), 13 October 2005, shows he accepted nonjudicial punishment, in the rank of Private/E-2 (PV2) for being disrespectful in deportment toward a warrant officer, being disrespectful in language and action toward a noncommissioned officer (NCO) on two occasions, and for willfully disobeying an NCO on two occasion. His punishment included extra duty and restriction for 45 days. He did not appeal his punishment.

e. Personnel actions show his duty status was changed from:

- present for duty (PDY) to absent without leave (AWOL), 6 December 2005
- AWOL to PDY, 12 December 2005

- PDY to confined by military authority pretrial status, 12 December 2005
- confined by military authority to PDY, 10 January 2006

f. His complete charge sheet is not available for the Board's consideration; however the continuation sheet shows a portion of the charges referred against him which include:

- failing to go to his appointed place of duty on or about 30 November 2005, 1 December 2005 on two occasions, 2 December 2005, 5 December 2005, and 6 December 2005
- being disrespectful to a commissioned officer on or about 25 November 2005
- disobeying a lawful order on or about 25 November 2005
- being disrespectful to a senior NCO on or about 25 November 2005
- breaking restriction on or about 25 November 2005

g. Request for Discharge in lieu of (ILO) Court-Martial, 15 December 2005, shows the applicant consulted with legal counsel and voluntarily requested to be discharged ILO trial by court-martial under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), chapter 10. Legal counsel advised him of the basis for his contemplated trial by court-martial and the maximum permissible punishment authorized under the UCMJ; of the possible effects of a discharge under other than honorable conditions if the request was approved; and of the procedures and rights available to him. The applicant chose not to submit statements in his own behalf.

h. Memorandum from the trial counsel, 4 January 2006, which included the applicant's chain of command's recommendations. The applicant's chain of command recommended approval of his request and recommended a characterization of service of under other than honorable conditions.

i. On 10 January 2006 the appropriate approval authority approved the applicant's request for discharge, dismissed the charges and specifications, reduced him to the rank of private (PVT)/E-1, and directed issuance of an under other than honorable conditions discharge.

j. Orders SJA-MJ-02-06, published by Headquarters, Fort Hood, 10 January 2006 reduced the applicant from PV2 to PVT effective 10 January 2006.

k. On 26 January 2006, the applicant, in the rank PVT, was discharged from the Army. He had completed 9 months and 23 days of service. He had service in Iraq from 17 August 2005 through 15 September 2008 [sic]. He had lost time from 6 December 2005 through 11 December 2005 and from 12 December 2005 through

10 January 2006. He was discharged in lieu of trial by court-martial with an under other than honorable conditions discharge. His separation code was KFS and his reentry code was 4. He was awarded or authorized the National Defense Service Medal, Global War on Terrorism Service Medal and Army Service Ribbon.

I. On 19 December 2007, the Army Discharge Review Board stated they reviewed his case and determined that relief was warranted. Accordingly, they voted to grant partial relief in the form of an upgrade of the characterization of service to under honorable conditions (general). His corrected DD Form 214 was not available for the Board's review.

4. On 24 June 2008, the Board denied his request to upgrade his reentry code in AR200870004731, stating the evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of the case were insufficient as a basis for correction of his records.

5. On 18 July 2024, the Criminal Investigation Division (CID) responded to a request for information regarding the applicant's contention he was a victim of sexual harassment. They stated a search of the Army criminal file indexes utilizing the information provided revealed no harassment records pertaining to the applicant.

6. Based on the applicant's assertion he suffered from PTSD, other mental health issues, and sexual harassment the ARBA Medical Section provided a medical review for the Board's consideration.

7. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under honorable conditions (general) to honorable. He contends he experienced an undiagnosed mental health condition, including PTSD, that mitigates his misconduct.

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:

- The applicant enlisted into the Regular Army on 28 March 2005. His DD 214 showed he had 29 days of foreign service starting on 15 August 2005.
- The applicant he accepted NJP on 13 October 2005 for being disrespectful in deportment toward a warrant officer, being disrespectful in language and action toward a noncommissioned officer (NCO) on two occasions, and for willfully disobeying an NCO on two occasions. A complete charge sheet is not available, but the continuation sheet showed a portion of the charges referred against him were being AWOL on five occasions, being disrespectful to a commissioned

officer, disobeying a lawful order, being disrespectful to a senior NCO, and break restrictions. He voluntarily requested discharge in lieu of court-martial, which was approved.

- The applicant was discharged on 26 January 2006 and completed 9 months and 23 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he had PTSD and was not adequately treated after being returned from theater. A Mental Status Evaluation dated 29 August 2005 showed that the applicant was redeployed due to a Major Depressive Disorder without psychotic features and Anxiety Disorder, but he was determined to meet retention standards and have the capacity to understand and participate in proceedings. The in-theater psychiatrist noted he had been on Zoloft for one week and had a good prognosis, but he needed on-going treatment and weekly therapy. He was placed on a temporary behavioral health profile. Additional documentation indicated the applicant had learned that his pregnant wife had been raped, and he was "severely angered and uncontrollable by the situation." There was sufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed an initial encounter with DoD behavioral health on 23 August 2005 while at Camp Buehring. The applicant was command directed for a psychiatric evaluation due to thoughts of suicide, and his platoon sergeant stating that he had "talked about leaving camp and hurting fellow soldiers." The next encounter was on 10 September 2005, while enroute to CONUS, and noted that the applicant had been evaluated that day by mental health following him learning of his wife having an extramarital affair. The applicant was combative and required physical and chemical restraint, and he was "agitated and belligerent, voicing his desire to return home immediately." Further documentation indicated that the applicant had been placed on a temporary profile and was being evacuated from theater prior to him learning of his wife's infidelity, but this stressor exacerbated his symptoms and prompted more emergent transport. Between 20 September, when he was returned to Fort Hood, and November 2005 he had 14 psychotherapy sessions, and his primary diagnosis went from Adjustment Disorder with anxiety and depressed mood to PTSD. A command directed evaluation was conducted on 17 November 2005, and he was diagnosed with Adjustment Disorder with mixed emotional features and marital problems. Documentation by a prescribing provider on 18 November 2005 discussed multiple trials of medications, including an antipsychotic and antidepressants, and consideration of other diagnoses such as bipolar disorder or borderline personality disorder. He also became angry and belligerent when his request for the provider to intervene with his command on his behalf was denied. He reported to the provider that he was being ordered to stay in the barracks because of being AWOL, but after the provider spoke with command, it was evidenced that there were

inconsistencies in his report of why this was needed. Documentation also indicated that the applicant's wife had been sexually assaulted and was afraid to stay in their home alone. At a psychiatry visit on 5 January 2006, a mood stabilizer was added to his antidepressant, and his mental health treatment through DoD was concluded.

e. The applicant initially engaged mental health treatment at the VA for assistance with opioid and alcohol use and self-reported PTSD on 27 March 2024. An evaluation was conducted on 8 April 2024, and he was referred to the suboxone program. The evaluation primarily consisted of assessment of substance abuse, but the applicant reported symptoms of hypervigilance, irritability, and depressed mood. In April 2024, he engaged with a psychotherapist, and in May 2024, he was evaluated by psychiatry. It was documented that his behavior was erratic, and he was very emotional during intake. The applicant was diagnosed with Alcohol Dependence with alcohol-induced anxiety disorder, Opioid Dependence in remission, Anxiety Disorder, and Unspecified Mood Disorder, and he was continued on a mood stabilizer that had been prescribed by his non-VA provider. He has been seen for psychotherapy bi-weekly to monthly, and the primary goal has been "to improve quality of life for him and his wife." His most recent mental health visit was on 20 August 2024, and there was a dose adjustment in his antipsychotic medication (used for sleep); mood stabilizer remained the same. He has yet to fully engage with the suboxone program due to medication changes and need for lab work.

f. In review of VA documentation, it was noted that an extensive record review, including clinical and non-clinical DoD documentation, was conducted as part of a disability claim for Alcohol Abuse on 12 March 2024. The psychologist's documentation included a self-statement by the applicant's escort who accompanied him out of theater. The staff sergeant's account of the events showed that the applicant was initially being evacuated out of theater because "he had made a threat to kill another soldier, burn the camp down, and leave Camp Buehring. He speaks Arabic and had been told many times to stop talking to the locals," and during their transit "he became very angry when he found out he would have to remain in Kuwait for at least two more weeks." The documentation also quoted the staff sergeant saying, "he had made statements to me throughout all this saying he was going to kill his wife when he got back; how he was going to slit her throat and kill her parents and burn their house down." The documentation concluded "the diagnosis of PTSD is questionable" because the "the veteran does not appear to have an in-service stressor related event that would meet the criteria and reflect a diagnosis of PTSD" and "the veteran was not exposed to combat during his time in Kuwait and the claimed event does not rise to the level of a stressor." It was also recommended that his initial PTSD claim be reassessed.

g. The applicant is 100% service connected for PTSD through the VA. The initial Disability Benefits Questionnaire dated 4 October 2023 showed that the applicant reported "combat related" trauma exposure as well as the rape of his wife while he was

deployed as his primary stressors, and he endorsed the requisite number of symptoms to constitute a PTSD diagnosis. A rating decision letter dated 12 March 2024 stated that the applicant's claim of alcohol abuse, anxiety condition, and stress disorder are rated at 100% disabling as PTSD.

h. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support that the applicant was diagnosed with a mental health condition while on active service. However, it is the opinion of this Advisor that his condition does not mitigate his misconduct. The applicant has received multiple mental health related diagnoses, both by DoD and VA providers, but it is important to note that, per his DD214 and mental health documentation, he was deployed to Kuwait for only 29 days. Additionally, for roughly 20 of those days, he was on a behavioral health profile and being evacuated from theater. The documentation of the applicant's behavior while in Kuwait demonstrated a failure to adjust to a military environment and was intolerable in the deployed setting, and there was no documentation to support the presence of a combat or military related trauma. Based on this Advisor's record review and an extensive record review by a VA psychologist, there is no evidence of a stressor that rises to the severity required to constitute a diagnosis of PTSD, and it is more likely that the applicant was experiencing an Adjustment Disorder, which prompted his command directed evaluation and evacuation, even prior to learning of the infidelity or sexual assault of his wife.

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had a mental health condition, including PTSD, at the time of the misconduct. In-service documentation shows evidence of diagnoses of Major Depressive Disorder, Anxiety Disorder, Adjustment Disorder and PTSD. He is also 100% service connected for PTSD by the VA, and he has been diagnosed with and treated for PTSD as well as Alcohol Dependence and Opioid Dependence.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service and records show he received mental health treatment.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant has a history of multiple diagnoses for various mental health conditions, including PTSD, however, considering his symptom presentation and behaviors that prompted his command directed referral to behavioral health, it is most likely that the applicant met criteria for a diagnosis of adjustment disorder with depressed mood and anxiety while on active service. The pattern of behavior reflecting disregard for authority

manifested within days of being in Kuwait and generated his evacuation from theater and subsequent discharge from the military. The sexual assault or infidelity of his wife, while being a very stressful experience, does not rise to the level of a stressor for a diagnosis of PTSD, but it is significant enough to warrant a diagnosis of Adjustment Disorder.

j. However, the applicant contends he was experiencing mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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 concurred with the advising official finding no evidence of a stressor that rises to the severity required to constitute a diagnosis of PTSD, and it is more likely that the applicant was experiencing an adjustment disorder. The opine noted, there is sufficient evidence to support that the applicant was diagnosed with a mental health condition while on active service. However, it is the opinion of this Advisor that his condition does not mitigate his misconduct.

2. The Board determined under liberal consideration changes to the applicant's narrative reason for separation and RE Code are not warranted. Furthermore, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct. The Board noted, the applicant's discharge was upgrade to under honorable (general) conditions by a previous Board. The Board agreed the 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.

Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

a. 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.

c. 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to AD.

d. A discharge under other than honorable conditions is an administrative separation from the Service under conditions other than honorable. It may be issued in lieu of trial by court martial.

e. A Soldier who requests discharge as prescribed in chapter 10 may be discharged under other than honorable conditions if he/she has been afforded the opportunity (not less than 72 hours) to consult with a consulting counsel.

(1) The Soldier must certify in writing that he/she understands that he/she may receive a discharge under other than honorable conditions.

(2) The Soldier must understand the adverse nature and possible consequences of such a discharge.

(3) The Soldier must personally sign a request for discharge. A conditional request is not permitted.

(4) The consulting counsel will sign as a witness, indicating that he/she is a commissioned officer of The Judge Advocate General's Corps. A Soldier may waive consultation with a consulting counsel. Counsel will prepare a statement to this effect that will be attached to the file; the Soldier will state that the right to counsel has been waived.

f. A Soldier who has committed an offense or offenses, the punishment for which under the UCMJ and the Manual for Courts-Martial includes a bad conduct or

dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial.

3. 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 KFS is used for discharge In Lieu of Trial by Court-Martial. The narrative reason for separation will be entered in block 28 of the DD Form 214 exactly as listed in the tables of this regulation. No deviation is authorized.

4. 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 waiverable.

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

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

5. 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.

6. 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.

7. 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.

8. 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//