

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 July 2024

DOCKET NUMBER: AR20230013717

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

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

- DD Form 293 (Application for the Review of Discharge)
- self-authored letter
- Veterans Affairs (VA) documents
- medical documents
- character reference letters (5)
- unofficial college transcript
- social media image: applicant's apparel company

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20150017338 on 25 May 2017.

2. The applicant states:

a. He has gotten the help that he needed to succeed in life, he is now sober. He is back in school pursuing his certification in occupational therapy. He started his own apparel brand for Veterans called Combat22 Apparel. It focuses on helping Veterans deal with post-traumatic stress disorder (PTSD) and depression. His company has inspirational words on the back of the shirts, to help motivate Veterans to do better and become stronger mentally. He also volunteers in a nonprofit organization that supports the Veteran community.

b. He should have known better when he was in the service. He requests relief for his family as well. He wants them to have the best future he can possibly give. He knows he is not perfect, but he is doing what he should have done while in the service.

3. On his DD Form 293, the applicant notes PTSD issues are related to his request.

4. On 1 April 2009, the applicant enlisted in the Regular Army. Upon completion of training, he was awarded military occupational specialty 11B (Infantryman). He reenlisted on 14 October 2010.
5. The applicant served in Afghanistan from 15 January 2011 until 29 December 2011.
6. On 26 June 2012, the applicant received a General Officer Memorandum of Reprimand for driving under the influence of alcohol on 15 May 2012.
7. On 26 October 2012, the applicant tested positive for marijuana.
8. On 7 March 2013, the applicant tested positive a second time, for marijuana.
9. On 22 March 2013, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
10. The applicant's commander notified the applicant on 11 April 2013, that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, paragraph 14-12c(2) for misconduct-abuse of illegal drugs. He noted the applicant's testing positive for marijuana.
11. On 29 April 2013, the applicant consulted with counsel and was advised of the basis for the contemplated separation action, the possible effects of the discharge, and the rights available to him. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him and he could be ineligible for many or all benefits as a Veteran under Federal and State laws as a result. He declined to submit a statement in his own behalf.
12. The applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c(2).
13. Consistent with the chain of command's recommendations, the separation authority approved the recommended separation action, and directed the applicant's discharge with his service characterized as under honorable conditions (general).
14. The applicant was discharged on 21 May 2013. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c(2). His service was characterized as under honorable conditions (General). He was assigned Separation Code JKK and Reentry Code 4. He completed 4 years, 1 month, and 21 days of active service.

15. Additionally his DD Form 214 shows he was awarded or authorized the: Afghanistan Campaign Medal with Campaign Star, Army Commendation Medal, Army Achievement Medal, Army Good Conduct Medal, National Defense Service Medal, Global War on Terrorism Service Medal, Army Service Ribbon, and Driver and Mechanic Badge with Driver-wheeled Vehicle(s) Clasp.

16. The applicant petitioned the Army Discharge Review Board requesting upgrade of his under honorable conditions (General) discharge. On 9 May 2014, the Board voted to deny relief and determined his discharge was both proper and equitable.

17. The applicant petitioned the ABCMR requesting upgrade of his under honorable conditions (general) discharge. On 25 May 2017, the Board voted to deny relief and determined the overall merits of this case were insufficient as a basis for correction of the records of the applicant.

18. The applicant provides the following (provided in entirety for the Board):

a. VA decision letter that shows he was granted a combined 100% rating evaluation for service connected PTSD with severe alcohol use disorder, depressive disorder and cannabis use disorder.

b. Medical notes that show he entered and completed a substance abuse treatment program.

c. Four character reference letters that collectively attest to the applicant's faith, sobriety, hard work, attention to detail, positive mindset, and moral character.

d. A character reference letter from his father attesting to the applicant's personal growth and character development since serving in the Army.

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

20. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) discharge. The applicant 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:

- The applicant enlisted in the Regular Army on 1 April 2009 and reenlisted on 14 October 2010.
- The applicant served in Afghanistan from 15 January 2011 until 29 December 2011.
- On 26 June 2012, the applicant received a General Officer Memorandum of Reprimand for driving under the influence of alcohol on 15 May 2012.
- On 26 October 2012, the applicant tested positive for marijuana.
- On 7 March 2013, the applicant tested positive a second time, for marijuana.
- The applicant's commander notified the applicant on 11 April 2013, that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, paragraph 14-12c(2) for misconduct-abuse of illegal drugs. He noted the applicant's testing positive for marijuana.
- The applicant was discharged on 21 May 2013. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c(2). His service was characterized as under honorable conditions (general). He was assigned Separation Code JKK and Reentry Code 4. He completed 4 years, 1 month, and 21 days of net active service this period.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, "he has gotten the help that he needed to succeed in life, he is now sober. He is back in school pursuing his certification in occupational therapy. He started his own apparel brand for Veterans called Combat22 Apparel. It focuses on helping Veterans deal with post-traumatic stress disorder (PTSD) and depression. His company has inspirational words on the back of the shirts, to help motivate Veterans to do better and become stronger mentally. He also volunteers in a nonprofit organization that supports the Veteran community. He should have known better when he was in the service. He requests relief for his family as well. He wants them to have the best future he can possibly give. He knows he is not perfect, but he is doing what he should have done while in the service."

d. The active-duty electronic medical record available for review shows on 21 May 2012 the applicant was assessed via ASAP and diagnosed with Alcohol Abuse, he was enrolled in ASAP for treatment. The applicant participated in four sessions before he PCS to Ft. Stewart, GA. On 20 August 2012, the applicant reestablished care with behavioral health services. A note dated 14 September 2012, indicates he actively participated in ASAP and was released as a rehabilitation success. 1 November 2012 the applicant was command-referred to behavioral health due to a positive urine test on 15 October 2012 (THC), he was diagnosed with Cannabis-Related Disorders and Alcohol Abuse. The applicant reported using substances to help him sleep since he was experiencing lower back pain. He was once again enrolled in ASAP and actively

participated in both individual and group therapy until his discharge. He presented for a medication evaluation in December 2012, noting needing help with cravings for alcohol, and was started on treatment with naltrexone.

e. On 22 March 2013, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command. He evidenced no significant mental health condition other than substance use disorder.

f. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected for combat-related PTSD. He initially engaged in behavioral health services via the VA in January 2014, has an extensive behavioral health treatment history via the VA, and participated in specialized PTSD treatment program.

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence the applicant had an experience and subsequent 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 a combat zone, Iraq, and is 100% service-connected for combat-related PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to the use of marijuana. Given the nexus between PTSD and the use of substances to alleviate/cope with the symptoms of his behavioral health condition, the applicant's use of marijuana is mitigated by his diagnosis of PTSD.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was discharged for a positive urinalysis of marijuana. The Board found no error or injustice in the separation proceedings and designated characterization of service. However, the Board reviewed and concurred with the

medical advisor's review finding sufficient evidence to support the applicant was experiencing symptoms consistent with a behavioral health condition. Based on the applicant's contention, the Board granted relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 21 May 2013 to show an honorable characterization of service.

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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. Section 1556 of Title 10, U.S. Code, 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.

2. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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 Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. It states that action will be initiated to separate a Soldier for misconduct when it was clearly established that rehabilitation was impracticable or unlikely to succeed. Paragraph 14-12c (Commission of a Serious Offense) applied to 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. First time offenders below the grade of sergeant, and with less than 3 years of total military service, may be processed for separation as appropriate.

4. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, 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.

5. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, 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 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. 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, 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//

