

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 September 2024

DOCKET NUMBER: AR20230014218

APPLICANT REQUESTS: 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)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Veterans Affairs (VA) documents

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 during his time in service, he was dealing with undiagnosed post-traumatic stress disorder (PTSD) due to deployment to Iraq and Afghanistan. This led to self-medication and his discharge from the Army for substance abuse.
3. The applicant enlisted in the Regular Army on 7 March 2011. Upon completion of initial entry training, he was awarded military occupational specialty 11B (Infantryman). The highest grade he attained was E-5.
4. He served in Afghanistan from 20 January 2013 until 12 September 2013.
5. He reenlisted on 18 December 2014.
6. He served in Iraq from 28 August 2015 until 2 May 2016.
7. He reenlisted on 7 October 2016.
8. The applicant received formal counseling on 5 April 2017 for his increased alcohol consumption, reminder of the alcohol command policy and his actions and behaviors.

9. On 13 April 2017, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice, for failing to go at the time prescribed to his appointed place of duty, on or about 24 February 2017; and being disrespectful in language towards two superior noncommissioned officers, on or about 24 February 2017. His punishment included reduction to E-4, forfeiture of \$1,267.00 pay per month for two months, and 45 days extra duty and restriction.

10. The applicant received additional counseling on 15 May 2017, for being drunk on duty. He was enrolled in the Army Substance Abuse Program (ASAP) by his commander.

11. The applicant received additional counseling on the following dates/for:

- 27 May 2017; being drunk on duty
- 5 June 2017; drinking while enrolled in ASAP
- 12 June 2017; illegal drug use

12. On 19 July 2017, the applicant tested positive for cocaine, d-Amphetamine, and d-Methamphetamine.

13. On 26 July 2017, the applicant underwent a mental status evaluation. He was diagnosed with alcohol dependence, uncomplicated (by history). However, he was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

14. The applicant's commander notified the applicant on 31 July 2017, 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. As the specific reasons, the commander noted the applicant's positive drug test and that he was found drunk on duty.

15. On 1 August 2017, 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 waived the right to personally appear before, and to have his case considered by a board of officers. He declined to submit a statement in his own behalf.

16. The applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 14, prior to his expiration term of service.

17. Consistent with the chain of command's recommendations, the separation authority approved the recommended separation action on 4 August 2017, and directed the applicant's discharge with his service characterized as under honorable conditions (general).

18. The applicant was discharged on 16 August 2017. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c(2) for misconduct (drug abuse). His service was characterized as under honorable conditions (general). He completed 6 years, 5 months, and 10 days of net active service this period.

19. Additionally his DD Form 214 shows he was awarded or authorized the Afghanistan Campaign Medal with 2 Campaign Stars, Army Commendation Medal, Meritorious Unit Commendation, National Defense Service Medal, Global War on Terrorism Service Medal, Noncommissioned Officer Professional Development Ribbon, Army Service Ribbon, North Atlantic Treaty Organization Medal, Combat Infantryman Badge, Ranger Tab, Inherent Resolve Campaign Medal (2nd Award), and Certificate of Achievement.

20. The applicant petitioned the Army Discharge Review Board requesting upgrade of his under honorable conditions (general) discharge. On 13 April 2020, the Board voted to deny relief and determined his discharge was both proper and equitable.

21. The applicant's DD Form 214 does not show his continuous honorable active service period information that is required for members who honorably served their first term of enlistment [see Administrative Notes].

22. The applicant provides his VA rating decision that shows he was granted a 70% rating evaluation for service connected PTSD. Additionally, he provides his Initial PTSD Disability Benefits Questionnaire.

23. 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.

24. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR for an upgrade of his under honorable conditions (general) character of service to honorable. He contends he experienced 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 7 March 2011; 2) The applicant deployed to Afghanistan from 20 January-12 September 2013 and then to Iraq from 28 August 2015- 2 May 2016; 3) The applicant received counseling on 15 May

2017, for being drunk on duty. He was enrolled in the Army Substance Abuse Program (ASAP) by his commander. He went on to receive multiple other counselings for alcohol abuse and substance use; 4) The applicant was discharged on 16 August 2017, Chapter 14-12c(2) for misconduct (drug abuse). 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 and medical records. The VA's Joint Legacy Viewer (JLV) and VA documentation provided by the applicant were also reviewed.

c. The applicant asserts he was experiencing PTSD as a result of his deployments while on active service, which mitigates his misconduct. There is sufficient evidence the applicant was experiencing and reporting PTSD symptoms while on active service. He was Command referred to the Army Substance Abuse Program (ASAP) in May 2017, and he received individual and group substance/alcohol abuse treatment. He was also referred in individual behavioral health treatment after starting substance abuse treatment. He was determined to be experiencing PTSD symptoms and attended individual therapy related to his mental health symptoms. On 26 July 2017, the applicant underwent a mental status evaluation. He was diagnosed with alcohol dependence, uncomplicated (by history). However, he was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

d. A review of JLV provided evidence the applicant began to engage with the VA after his discharge. He has been diagnosed with service-connected PTSD related to his combat deployments. Currently, he continues to be diagnosed with service-connected PTSD (SC 70%) and receives behavioral health and substance abuse treatment through the VA.

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 evidence the applicant has been diagnosed by the VA with service-connected PTSD, and he was reporting PTSD symptoms while on active service.

(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, and there is evidence that he was reporting PTSD symptoms after returning from deployment. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD as a result of his experiences during his deployment.

(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 use illegal drugs and abuse alcohol. This type of avoidant or self-medicating behavior can be a natural sequelae to PTSD. Therefore, per Liberal Consideration, the applicant's misconduct, which led to his discharge is mitigable.

### BOARD DISCUSSION:

1. 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.

2. The Board concurred with the conclusion of the ARBA Behavioral Health Advisor that the applicant had a condition that mitigated his misconduct. Based on a preponderance of the evidence, the Board determined the applicant's character of service should be changed to honorable.

### BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 to show his character of service as honorable.

3/4/2025

XCHAIRPERSON  


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. Title 10, U.S. Code, 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. Army Regulation 635-8 (Separation Processing and Documents) provides: for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable, enter Continuous Honorable Active Service From" (first day of service for which DD Form 214 was not issued) until (date before commencement of current enlistment). Then, enter the specific periods of reenlistment as prescribed above.

4. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) 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. 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.

5. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy 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.

6. 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.

7. 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//