

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 July 2024

DOCKET NUMBER: AR20230014523

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge to under honorable conditions (General)
- amendment to his reentry (RE) code
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Letter, Army Review Boards Agency (ARBA) Settlement Agreement Notification
- Department of Veterans Affairs (VA) Benefits Letter
- VA Veterans Preference Correspondence
- VA Healthcare Enrollment
- Enhanced Advanced Individual Training Diploma
- Certificate of Achievement
- Two Army Achievement Medals
- Army Commendation Medal
- Primary Leadership Development Course Diploma

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 served honorably from 8 August 2001 to 7 August 2004 and his discharge was honorable. While he was in Iraq, he reenlisted. Due to his experience in Iraq, he witnessed and experienced events that altered his state of mind resulting in post-traumatic stress disorder (PTSD) that went undiagnosed for a long time. He did not complete his second term due to fear of his death witnessing more death and fear of traumatic events. He was denied his upgrade request in 2013 and did not reapply until he received the letter pertaining to the class action lawsuit.

3. The applicant provides:

- a. A letter from ARBA informing the applicant that he is eligible to submit a new application, based on *Kennedy v. McCarthy*.
- b. Correspondence from the VA that shows the applicant's entitled benefits, his veterans preference status, and healthcare enrollment.
- c. A Certificate of Achievement for exceptional meritorious achievement while assigned to Battery B, 1st Battalion, 40th Field Artillery on 28 November 2001.
- d. Two Army Achievement Medal certificates for exceptional performance and meritorious achievement on 18 June 2002 and 23 July 2004.
- e. An Army Commendation Medal Certificate for meritorious service during combat in support of Operation Iraqi Freedom, awarded on 20 February 2004.
- f. A Primary Leadership Development Course (PLDC) diploma awarded on 11 August 2004.

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

- a. He enlisted in the Regular Army on 8 August 2001. He reenlisted on 28 September 2003.
- b. On 26 October 2004, his duty status changed from present for duty to absent without leave (AWOL). Additionally, DD Form 553 (Deserter/Absentee Wanted by the Armed Forces) listed him as an absentee wanted by the Armed Forces.
- c. On 24 November 2004, his duty status changed from AWOL to dropped from rolls (DFR).
- d. DD Form 616 (Report of Return of Absentee) shows that the applicant surrendered to military control at Fort Campbell on 25 February 2005.
- e. On 27 April 2005, court-martial charges were preferred against the applicant for violation of Article 86 (AWOL) of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with being AWOL, from on or about 21 September 2004 to on or about 30 September 2004, and on or about 26 October 2004 to on or about 25 February 2005.
- f. He consulted with legal counsel and was advised of the basis for trial by court-martial for an offense punishable by a bad conduct or dishonorable discharge, the

maximum permissible punishment authorized under the UCMJ, the possible effects of a request for discharge, and the procedures and rights available to him. After consulting with legal counsel, he requested discharge for the good of the service in lieu of trial by court-martial under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10.

g. In his request for discharge, he acknowledged he understood if the discharge request were approved, he might be discharged under other than honorable conditions and be furnished an Under Other than Honorable Discharge Certificate. He also acknowledged he understood he might be deprived of many or all Army benefits, he might be ineligible for many or all benefits administered by the VA, he might be deprived of his rights and benefits as a veteran under both Federal and State laws, and he might expect to encounter substantial prejudice in civilian life.

h. On 31 May 2005, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial, and directed he be separated with an under other than honorable characterization of service.

i. He was discharged under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10, for the good of the service in lieu of trial by court-martial with an under other than honorable conditions characterization of service. He completed 3 years, 5 months, and 22 days of active service, with lost time from 21 September 2004 to 29 September 2004 and 26 October 2004 to 24 February 2005. It also shows in:

- Item 26 (Separation Code): KFS
- Item 27 (Reentry Code): 4
- Item 28 (Narrative Reason for Separation): In Lieu of Trial by Court-Martial
- Item 29 (Dates of Time Lost During this Period): 20040921-20040929;
20041026-20050224

5. On 25 September 2013, the Army Discharge Review Board considered the applicant's request for an upgrade. On 26 September 2013, he was informed that his request was denied and it was determined that he was properly and equitably discharged. The board also determined that there was no error or injustice in the applicant's discharge or character of service, or evidence sufficient as a basis for clemency.

6. By regulation (AR 635-200): Chapter 10 provides that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been

preferred. At the time, an Under Other than Honorable Discharge Certificate would normally be furnished to an individual who was discharged for the good of the service.

7. Also, by regulation (AR 635-5):

a. The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

b. For block 24 (Character of Service) the correct entry is vital as it affects a soldiers' eligibility for post-service benefits. Characterization or description of service is determined by directives authorizing separation. The entry must be one of the following: honorable, under honorable conditions (general), under other than honorable conditions, bad conduct, dishonorable, or uncharacterized.

c. For block 27 (Reentry Code): AR 601-210 (Regular Army and Reserve Components Enlistment Program) determines reentry eligibility and provides regulatory guidance on reentry codes. RE-4 applies to persons separated from the last period of service with a nonwaiverable disqualification.

8. 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.

9. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to general. He contends he experienced undiagnosed 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 8 August 2001, and he reenlisted on 28 September 2003. His DD214 shows he deployed to Kuwait/Iraq for 11 months and 7 days.
- The applicant was AWOL in September 2004 and from October 2004 until February 2005. In April 2005 he had court-martial charges preferred against him for being AWOL, and he requested discharge for the good of the service in lieu of trial by court-martial under the provisions of Army Regulation 635-200, Chapter 10, which was approved by the separation authority.

- The applicant was discharged on 10 June 2005 and completed 3 years, 5 months, and 22 days of 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 his misconduct was associated with trauma exposure while in Iraq and fear of losing his own life or witnessing the loss of life of others. The application included a letter from the VA dated 31 August 2023 indicating that he is service connected for PTSD at 30% disabling. There were no medical or mental health records included in the application. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed that the applicant engaged care with VA in September 2022 and was referred to community care. There is one civilian primary care note with a diagnosis of PTSD and depression, but the documentation does not outline symptoms or diagnostic criteria. A Report of Medical History document dated 2 July 2023 notates the applicant's 30% VA service connection for PTSD, but no mental health symptoms were endorsed.

e. A review of the applicant's PTSD Disability Benefits Questionnaire showed that the applicant endorsed experiencing four traumatic events while deployed to Iraq in 2003-2004 (witnessing multiple fatalities; involved in IED blast; retrieval of severely injured service members; friends dying in a helicopter crash). He also endorsed the necessary number of symptoms to warrant a diagnosis of PTSD as well as symptoms of depression and anxiety. He reported a history of excessive alcohol use, volatile relationship history, and some occupational impairment associated with his PTSD symptoms. The report also references a psychological evaluation conducted on 3 January 2022, which indicated a diagnosis of PTSD, Alcohol Dependence, and Bipolar Disorder.

f. 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 had a condition or experience that mitigates his misconduct.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, PTSD, at the time of the misconduct. He is 30% service connected for PTSD, and documentation reflects the requisite number and severity of symptoms to warrant this diagnosis.

(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. There is evidence of the applicant's deployment to Iraq for 11 months in 2003-2004.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. However, VA records show he has a diagnosis of PTSD associated with service-connected traumatic events. The applicant's misconduct of being AWOL can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Given the nexus between trauma exposure and avoidance and in accordance with liberal consideration, the basis for separation is mitigated.

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 partial relief was 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.

a. Discharge upgrade: Grant. The evidence shows the applicant was charged with commission of offenses (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding that the applicant has been diagnosed with a behavioral health condition that mitigates his misconduct. Based on this finding, the Board determined a general, under honorable characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board further determined that such upgrade did not change the underlying reason for separation and thus the narrative reason for separation and corresponding codes should not change.

b. RE Code: The Board noted that enlisted Soldiers separated under the provisions of chapter 10 of AR 635-200 are assigned Separation Code KFS. The Separation Code/RE Code Cross Reference Table in effect at the time of his discharge stated that

Separation Code KFS has a corresponding RE Code of 4. Therefore, the Board determined the RE Code listed on his DD Form 214 is 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:

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 amending the applicant a DD Form 214 for the period ending 10 June 2005 as follows:

- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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 amending his RE Code.

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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. 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 635-5 (Separation Documents) states:

a. The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

b. For block 24 (Character of Service) the correct entry is vital as it affects a soldiers' eligibility for post-service benefits. Characterization or description of service is determined by directives authorizing separation. The entry must be one of the following: honorable, under honorable conditions (general), under other than honorable conditions, bad conduct, dishonorable, or uncharacterized.

3. Army Regulation (AR) 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a Soldier who committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not being coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of

service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. 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 used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

4. 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.

5. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

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//