

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 August 2024

DOCKET NUMBER: AR20240000082

APPLICANT REQUESTS: an upgrade of his characterization of service from Under Honorable Conditions (General) to Honorable.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Permanent Orders #044-44 issued by Headquarters, Multi-National Division (Baghdad), Camp Liberty, Iraq on 13 February 2006
- DA Form 4980-14 (Army Commendation Medal (ARCOM) Certificate)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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, the characterization of his service should be upgraded because he was suffering from an undiagnosed condition of post-traumatic stress disorder (PTSD) stemming from his three deployments to combat in Iraq at the time of his misconduct.
3. The applicant enlisted in the Regular Army on 22 January 2003 for a period of 3 years. He served in a variety of duty positions at Fort Polk, LA and Fort Campbell, KY.
4. The applicant served in Iraq from 1 August 2003 to 3 August 2004.
5. He reenlisted for a period of 2 years on 24 February 2005.
6. He served in Iraq from 1 October 2005 to 16 September 2006. While in Iraq, he reenlisted for a period of 5 years on 21 March 2006.

7. The applicant served in Iraq from 16 October 2007 to 16 November 2008. While in Iraq, he was promoted to sergeant (SGT)/E-5 on 1 January 2008, the highest rank he held.
8. On 29 January 2009, the applicant's immediate commander was informed that the applicant's urine specimen collected on 12 January 2009 tested positive for marijuana.
9. On 3 February 2009, the applicant was counseled regarding his positive urinalysis, the potential consequences of his conduct, and to develop a plan of action for rehabilitation. He was advised that his misconduct could result in punishment under the Uniform Code of Military Justice (UCMJ) and/or administrative separation.
10. On 24 February 2009, field grade nonjudicial punishment (NJP) was imposed upon the applicant under the provisions of Article 15, of the UCMJ for, wrongfully using marijuana between on or about 13 December 2008 and 12 January 2009. His punishment consisted of reduction to specialist (SPC)/E-4, forfeiture of \$1109.00 pay per month for two months, extra duty for 45 days, and restriction for 45 days.
11. The applicant successfully completed the two-day Alcohol and Drug Abuse Prevention Training course on 24 March 2009.
12. On 8 April 2009, the applicant underwent a separation medical examination and was found to be qualified for administrative separation.
13. On 15 April 2009, the applicant underwent a mental status evaluation and was psychiatrically cleared for any administrative action deemed appropriate by command.
14. On 11 May 2009, an administrative flag was imposed upon the applicant to prevent favorable personnel actions while he was pending elimination.
15. On 26 May 2009, the applicant's immediate commander notified the applicant of his intent to initiate action to separate him under the provisions of Army Regulation 635-200 (Active duty Enlisted Administrative Separations), Chapter 14, paragraph 14-12c(2), for commission of a serious offense. The specific reason for this action was the applicant's use of marijuana. He was advised that he was being recommended for a General, Under Honorable Conditions Discharge. The applicant acknowledged receipt of the proposed separation notification on the same date.
16. On 28 May 2009, the applicant acknowledged that he was advised of the reasons for separation and of the rights available to him. He consulted with counsel and submitted a conditional election of rights wherein he elected to waive consideration of his case by an administrative separation board (ASB) conditioned upon his receipt of a general discharge. He elected not to submit statements in his own behalf.

17. On 28 May 2009, the applicant's immediate commander formally recommended his separation prior to the expiration of his term of service, under the provisions of Army Regulation 635-200, Chapter 14, by reason of commission of a serious offense. The intermediate commander concurred with the recommendation.

18. On 3 June 2009, the separation authority approved the conditional request and recommendation. He directed the applicant be discharged with an Under Honorable Conditions (General) characterization of service.

19. Orders and the applicant's DD Form 214 show he was discharged on 12 June 2009, under the provisions of Army Regulation 635-200, paragraph 14-12c(2), by reason of Misconduct (Drug Abuse) with separation code "JKK" and reentry code "4." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 6 years, 4 months, and 21 days of net active service this period. He completed his first full term of service. He was awarded or authorized the:

- Iraq Campaign Medal with three Campaign Stars
- ARCOM (3rd Award)
- Army Achievement Medal
- U.S. Army/U.S. Air Force Presidential Unit Citation
- Army Good Conduct Medal (2nd Award)
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Noncommissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon (3rd Award)
- Combat Action Badge (CAB)
- Air Assault Badge

20. Block 18 (Remarks) of his DD Form 214 shows he had immediate reenlistments this period from 20050224-20060320 (indicating 24 February 2005 to 20 March 2006) and from 20060321-20090612 (indicating from 21 March 2006 to 12 June 2009) but does not identify his period of continuous honorable service.

21. The applicant petitioned the Army Discharge Review Board (ADRB) for relief. On 2 June 2010, the applicant was informed that after careful consideration of his military records and all other available evidence, the ADRB determined that he was properly and equitably discharged and denied his petition.

22. The applicant provides the following documents:

a. Permanent Orders #044-44 issued by Headquarters, Multi-National Division (Baghdad), Camp Liberty, Iraq on 13 February 2006, show the applicant was awarded the CAB for participation in ground combat operations under enemy hostile fire to liberate Iraq in support of Operation Iraqi Freedom.

b. A DA Form 4980-14 commemorating his award of the ARCOM for outstanding achievement while serving as a member of the 2nd Brigade Combat Team. His courage and performance were instrumental in his platoon identifying and eliminating an enemy ambush position on 9 February 2006.

23. On 20 January 2024, a staff member of the Case Management Division, Army Review Boards Agency (ARBA), requested the applicant provide a copy of medical documents that support his issue of PTSD and afforded him a period of 30 days to comply. To date, the applicant has not provided a response.

24. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

25. 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 22 January 2003; 2) The applicant served in Iraq for three combat deployments starting in 2003-2008; 3) On 24 February 2009, field grade nonjudicial punishment was imposed upon the applicant for using marijuana between 13 December 2008 and 12 January 2009; 4) The applicant was discharged on 12 June 2009, Chapter 14-12c(2), by reason of Misconduct (Drug Abuse). His service was characterized as Under Honorable Conditions (General).

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) was 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 insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service. He was Command referred to the Army Substance Abuse Program (ASAP) on 17 February 2009. He reported limited use of marijuana and not abusing alcohol. He was not diagnosed with a substance abuse problem, and he did not meet criteria for the ASAP program. However, he was referred to the ADAPT 2-day class starting on 23 March. The applicant did complete the program. He was seen for a

Mental Status Exam as part of his separation proceedings. He was not diagnosed with a mental health condition and was psychiatrically cleared for any administrative action deemed appropriate by Command.

d. A review of JLV provided evidence the applicant began to engage with the VA in 2016. He has been provided assistance for homelessness and treatment for physical and mental health condition. In 2023, he was diagnosed with service-connected PTSD related to his repeated combat deployments. Currently, he continues to be diagnosed with service-connected PTSD (SC 50%) and receives 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.

(2) Did the condition exist or experience occur during military service? 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 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. 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. 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 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 under liberal consideration acknowledged the advising official opinion of the Agency Behavioral Health Advisor finding that there is sufficient evidence to support the

applicant had a condition or experience that mitigates his misconduct which led to his discharge.

## 2. 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.

(2) Did the condition exist or experience occur during military service? 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 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. 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.

2. The Board carefully considered all available evidence, including the advising official's opinion indicating sufficient evidence under liberal consideration standards to support mitigation of the applicant's General Under Honorable Conditions discharge. However, the Board determined that full relief is not warranted. Although the applicant served honorably during prior periods—including three combat deployments to Iraq from 2003 to 2008—and completed a two-day Alcohol and Drug Abuse Prevention Training course, the applicant did not submit any post-service achievements or character references for the Board to assess clemency. Moreover, the applicant exhibited no remorse for the misconduct in question. The Board noted that while the applicant's behavioral health condition may have been a contributing factor, it does not fully mitigate the misconduct, particularly in the absence of demonstrated rehabilitation or character support.

3. The Board emphasized that many service members endure repeated combat deployments without resorting to drug use as a coping mechanism, underscoring that the applicant's actions deviated from the expectations and standards of honorable service. With that, the Board found that the applicant's DD Form 214 did not accurately reflect his prior periods of honorable service. To rectify this, the Board grants partial relief to amend the DD Form 214 to properly recognize the applicant's continuous honorable service. However, based on the totality of the evidence and absent compelling clemency factors, the Board denies the request for an upgrade from General Under Honorable Conditions to Honorable.

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 DD Form 214 for the period ending 12 June 2009, by adding in item 18 (Remarks): "CONTINUOUS HONORABLE SERVICE FROM 20030122 – 20060320."

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 an upgrade of his characterization of service from Under Honorable Conditions (General) to Honorable.

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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 NOTES: N/A

REFERENCES:

1. Title 10, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-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, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body.
4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.
  - a. Paragraph 3-7a provides that 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. 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.
  - c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. 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 merited by the Soldier's overall record.

5. Army Regulation 635-5 (Personnel Separations – Separation Documents), in effect at the time, prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It establishes the standardized policy for preparing and distributing the DD Form 214. It states the DD Form 214 provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge.

a. Paragraph 1-4b(5) of the regulation in effect at the time stated that a DD Form 214 would not be prepared for enlisted Soldiers discharged for immediate reenlistment in the Regular Army.

b. Paragraph 2-4h(18) of the regulation currently in effect states that item 18 documents the remarks that are pertinent to the proper accounting of the separating Soldier's period of service. Subparagraph (c) states that for enlisted Soldiers with more than one enlistment period during the time covered by the DD Form 214, enter "IMMEDIATE REENLISTMENTS THIS PERIOD" and specify the appropriate dates. For Soldiers who have previously reenlisted without being issued a DD Form 214 and who are later separated with any characterization of service except "honorable," enter "CONTINUOUS HONORABLE ACTIVE SERVICE FROM" (first day of service which DD Form 214 was not issued) UNTIL (date before commencement of current enlistment)." Then, enter the specific periods of reenlistments as prescribed above.

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 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 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 to 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 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//