

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 September 2024

DOCKET NUMBER: AR20240000113

APPLICANT REQUESTS:

- upgrade of his under honorable conditions (general) discharge
- reinstatement of his rank to private/E-2.

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

- DD Form 149 (Application for Correction of Military Record) (2)
- Self-authored letter
- Veterans Affairs (VA) letter
- In-service documents
- Bachelor of Science Degree
- Graduate Certificate
- Disabled American Veterans membership card

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 has learned a lot from his mistakes; he has nothing but regret. He is a disabled Veteran due to service connected injuries. Following his discharge, he received his graduate degree. He joined Veterans' organizations because it is one way for him to support and help other Veterans. He wishes he could do more.
3. On his DD Form 149, the applicant notes post-traumatic stress disorder (PTSD) issues are related to his request.
4. On 26 July 2000, the applicant enlisted in the Regular Army. Upon completion of training, he was awarded military occupational specialty 11B (Infantryman). The highest grade he attained was E-3.

5. On 12 July 2001, the applicant tested positive for Methamphetamines on a urinalysis test. He received formal counseling on 23 July 2001, notifying him that he was being recommended for possible elimination from the service.
6. On 29 August 2001, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice, for wrongfully using Methamphetamines, between on or about 22 June 2001 and on or about 25 June 2001. His punishment included reduction to private/E-1, forfeiture of \$521.00 pay per month for two months, and 45 days restriction and extra duty.
7. On 19 November 2001, the applicant's commander notified him that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 14-12c, for commission of a serious offense. As the specific reasons, his commander cited the applicant's possession and use of drugs.
8. On 21 November 2001, the applicant acknowledged that he had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to him.
  - a. He indicated he understood he could expect to encounter extreme prejudice in civilian life if a general discharge under honorable conditions was issued to him.
  - b. He submitted a statement in his own behalf, apologizing for his wrong decision to use drugs. He asked for a chance to remain in the service so that he could that he could be a better Soldier and serve his country. He acknowledged that he was already punished for his actions; he was reduced to private/E-1.
9. The applicant's commander formally recommended his separation prior to his expiration term of service, under the provisions of Army Regulation 635-200, paragraph 14-12c, for commission of a serious offense.
10. Consistent with the chain of command's recommendations, and following a legal review for legal sufficiency, the separation authority approved the applicant's separation action on 13 December 2001, and directed his discharge with a characterization of service of under honorable conditions (general). The applicant's rank/grade is shown as private/E-2 on this date.
11. The applicant was discharged on 8 January 2002, in the grade of E-1. 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, for misconduct. His service was characterized as under honorable conditions (general). He

was assigned Separation Code JKQ and Reentry Code 3. He completed 1 year, 5 months, and 16 days of net active service this period.

12 The applicant petitioned the Army Discharge Review Board requesting upgrade of his under honorable conditions discharge. On 12 December 2016, the Board voted to deny relief and determined his discharge was both proper and equitable.

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

- VA summary of benefits letter that shows he has one or more service-connected disability with a combined evaluation of 50%.
- Various documents detailing his post service educational accomplishments and Veteran organization affiliations.

14. 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.

15. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from honorable conditions (general) to honorable. He contends he experienced 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 26 July 2000.
- The applicant tested positive for Methamphetamines on 12 July 2001, and he accepted NJP on 29 August 2001 for wrongfully using Methamphetamines. Separation action was initiated against him by his commander for possession and use of drugs, and the separation authority approved the separation action on 13 December 2001.
- The applicant was discharged on 8 January 2002, and he completed 1 year, 5 months, and 16 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 PTSD as a mitigating factor in his misconduct, and he remarked that he has learned from his mistakes and has regret for his decision. The application included a VA summary of benefits letter dated 29 October 2023, which showed he is 50% service connected for one or more disabilities. There were no medical or mental

health records included. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed that the applicant was referred to the VA for substance abuse treatment on 22 August 2001 following a positive drug test for amphetamines. However, there is no documentation of treatment notes. The applicant is 90% service connected for various physical health conditions and 70% for Chronic Adjustment Disorder. An Initial Disability Benefits Questionnaire dated 14 October 2023 showed the applicant reported having witnessed another soldier get shot and killed during a training accident, and he endorsed some symptoms of PTSD but did not meet full criteria. He reported having received psychiatric treatment while in the service following a referral to ASAP, and he indicated he was currently taking antidepressant medication prescribed by a non-VA provider. He reported feelings of shame and guilt related to his discharge. On 31 October 2023 he was seen by Primary Care Mental Health at the VA for worsening depression following the troop removal from Afghanistan, and he discussed the traumatic event that occurred during his time in service. He was diagnosed with Major Depressive Disorder, but he declined treatment, noting receipt of services through a community provider. However, in November 2023 he reengaged and reported discontinuation of mental health treatment and requested transfer of care. He was seen for an intake for psychotherapy on 31 January 2024, and he reported anxiety and depression-related symptoms. He discussed witnessing the loss of life of a fellow soldier during a training accident, but he did not meet criteria for PTSD and was diagnosed with Adjustment Disorder with anxiety and depressed mood. He followed up with monthly individual therapy until July 2024 when he was transitioned to an evidence-based psychotherapy treatment for trauma survivors that is conducted in a group format. His most recent session was on 19 September 2024. He continues with medication management through the community provider.

e. 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.

f. 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 PTSD at the time of the misconduct. Documentation shows a referral to a substance abuse treatment program following a positive drug screen and subsequent ASAP referral, and he is service connected through the VA for Chronic Adjustment Disorder.

(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.

He reported a traumatic event, witnessing the loss of life of a fellow soldier during a training accident.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. A review of military medical and mental health records revealed a referral to ASAP following a positive drug test for methamphetamines. The applicant has been diagnosed, treated, and service connected through the VA for Adjustment Disorder. Substance abuse is a common self-medicating strategy for avoiding uncomfortable emotions and memories related to trauma exposure, and substance use can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Given the nexus between trauma exposure, avoidance of emotion, and substance use and in accordance with liberal consideration, the basis for separation is mitigated.

#### BOARD DISCUSSION:

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 of record shows the applicant committed a serious offense (positive urinalysis for illegal drugs). As a result, his chain of command initiated separation action against him for misconduct, and he was separated with a general, under 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 determination finding sufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. Based on this finding, the Board determined that an 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 his separation and thus the narrative reason for separation and corresponding codes should not change.

b. Grade: Deny. The applicant was not reduced as a result of his separation. The evidence shows the applicant accepted NJP under Article 15 of the UCMJ for wrongfully using illegal drugs and the resultant punishment included his reduction to private/E-1. The Board did not find evidence that his NJP proceedings were in error or unjust. He violated the UCMJ, and he was punished for it. Additionally, he held the rank of private/E-1 at the time of separation. The Board found no evidence that the applicant

was promoted back to private/E-2 between the date of his reduction to E-1 and the date of his discharge.

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 DD Form 214 for the period ending 8 January 2002 as follows:

- Character of Service: Honorable
- 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 restoring his rank to private/E-2.

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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. 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 635-200 (Personnel Separations – 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.
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//