

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 September 2024

DOCKET NUMBER: AR20240000561

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)
- Statement on behalf of applicant
- Character reference letters (2)
- 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, 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's mother states, prior to entering the military her son was a happy vibrant person who worked hard to achieve his goals. He was always willing to help anyone whom he met. Following his discharge from the Army, the applicant has experienced depression and cannot maintain a job. He has been homeless and had to return home. A discharge upgrade will help him regain a sense of normalcy and allow him to apply for jobs that could improve his life.
3. On his DD Form 293, the applicant notes post-traumatic stress disorder (PTSD) issues are related to his request.
4. On 11 May 2015, the applicant enlisted in the Regular Army. Upon completion of training, he was awarded military occupational specialty 92Y (Unit Supply Specialist). The highest grade he attained was E-4.
5. The applicant served in the United Arab Emirates from 28 December 2015, until 14 December 2016.

6. On 13 March 2017, the applicant tested positive for marijuana on a urinalysis test.
7. On 3 April 2017, the applicant tested positive for marijuana, a second time.
8. On 4 April 2017, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice, for wrongfully using marijuana on or about 13 March 2017. His punishment included an oral reprimand, reduction to E-3, forfeiture of \$942.00 pay per month for two months, and 45 days restriction and extra duty.
9. On 19 May 2017, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.
10. On 5 June 2017, the applicant underwent a mental status evaluation. The attending physician diagnosed him with an unspecified cannabis-related disorder; however, he was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
11. On 19 June 2017, the applicant's commander notified him that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, for misconduct – abuse of illegal drugs. As the specific reasons, his commander cited both of the applicant's positive tests for marijuana.
12. On 20 June 2017, 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 substantial prejudice in civilian life if a character of service that is less than honorable was issued to him.
  - b. He declined to submit a statement in his own behalf.
13. On 22 June 2017, the applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, paragraph 14-12c(2), for misconduct – abuse of illegal drugs.
14. Consistent with the chain of command's recommendation, the separation authority approved the applicant's administrative separation action on 27 June 2017, and directed his discharge with a characterization of service of under honorable conditions (general).
15. The applicant was discharged on 7 August 2017. His DD Form 214 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 3. He completed 2 years, 2 months, and 27 days of net active service this period.

16. Additionally his DD Form 214 shows he was awarded or authorized the: Army Achievement Medal, National Defense Service Medal, Global War on Terrorism Expeditionary Medal, Global War on Terrorism Service Medal, Army Service Ribbon, and Overseas Service Ribbon.

17. The applicant petitioned the Army Discharge Review Board requesting upgrade of his under honorable conditions (general) discharge. On 21 May 2021, the Board voted to deny relief and determined his discharge was both proper and equitable.

18. On 15 April 2024, the ABCMR staff requested that the applicant provide medical documents to support his PTSD issues. He was advised that he could contact the doctor that diagnosed him or his Veterans Affairs regional office for assistance. He did not respond.

19. The applicant provides two-character reference letters that collectively attest to the applicant's work ethic, moral character, reliability, volunteerism and the support he provides others in his community. These letters are provided in their entirety for the Board's review within the supporting documents.

20. 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.

#### 21. MEDICAL REVIEW:

1. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service. He contends he experienced Posttraumatic Stress Disorder (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 (RA) on 11 May 2015 as a 92Y (Unit Supply Specialist), 2) the applicant served in the United Arab Emirates (UAE) from 28 December 2015 until 14 December 2016, 3) on 13 March 2017 the applicant tested positive for marijuana on a urinalysis, 4) on 03 April 2017, the applicant tested positive for marijuana a second time, 5) on 04 April 2017 the applicant received an Article 15 for wrongfully using marijuana on or about 13 March 2017, 6) on 19 May 2017, the applicant underwent a medical examination and he was determined to be medically qualified for administrative separation, 7) on 05 June 2017, the applicant underwent a mental status evaluation and the provider diagnosed him with an unspecified cannabis-related disorder. He was psychiatrically cleared to participate in any administrative action deemed appropriate by

command, 8) on 22 June 2017 the applicant's commander formally recommended his separation under the provisions of Army Regulation (AR) 635-200, paragraph 14-12c(2) for misconduct-abuse of illegal drugs. The applicant was discharged on 07 August 2017 under the provisions of AR 635-200, paragraph 14-12c(2). He was awarded several medals and ribbons during his service. 9) the Army Discharge Review Board (ARDB) denied the applicant's previous request for upgrade on 21 May 2021.

2. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

3. Review of the applicant's in-service medical records shows that the applicant was screened for PTSD and depression on several occasions during his medical appointments throughout his service. A post-deployment health assessment dated 16 December 2016 documented that the applicant did not have any psychological issues that required 'new evaluations' and denied experiencing suicidal or homicidal ideation. The applicant marked 'no' to any major life stressor, his AUDIT-C score for alcohol use was negative, and his PTSD and depression screeners were negative. His PULHES was documented as 111111, indicating he was not on a BH profile, and he was not diagnosed with a psychiatric condition nor referred to BH. A follow-up appointment on 24 January 2017 for his Periodic Health Assessment (PHA) documented that he screened negative for PTSD and depression. An in-service Report of Medical Examination dated 19 May 2017 for the purposes of separation documented item number 42, psychiatric, as 'normal' on clinical evaluation. The accompanying Report of Medical History dated 19 May 2017 shows that the applicant marked 'no' to all BH-related items in question 17a.

4. Regarding in-service BH treatment, the applicant was referred to Substance Use Disorder Clinical Care (SUDCC) on 04 April 2017 with the reason for referral documented as 'chapter process.' During the SUDCC intake on 04 April 2017, the applicant reported that he 'decided to smoke after a long time of not smoking' and reported having stress at work and back at home with family. It was documented that the applicant reported never having experienced the following symptoms: anxiousness, overeating/starving, hallucinations, depression, difficulty controlling anger, difficulty concentrating, inducing vomiting/purging, feelings of worthlessness, reduced interest or pleasure in activities, history of violence towards others, phobias/paranoia/delusions, or self-inflicted injuries. Regarding his history of cannabis use, it was documented that he first used cannabis at age 14 years old and used it every day. It was noted that he discontinued use at age 19 when he joined the military and denied any history of any other illicit drug use. At the time of the evaluation the applicant endorsed a history of use on one occasion during the past year on 28 February 2017. The provider noted that the applicant did not meet criteria for THC abuse or dependence and thus was

diagnosed with Cannabis Use Unspecified with unspecified cannabis-induced disorder. He was referred for individual and group counseling and prevention education. At a rehabilitation team meeting (RTM) on 13 April 2017, it was documented that the applicant would be enrolled in outpatient treatment and attend the ADAPT (Prime for Life) classes on 01-02 May 2017. On 16 May 2017, the applicant's ASAP provider noted his diagnosis as Alcohol Dependence, Uncomplicated. During his ASAP appointment on 30 May 2017, the applicant was administered screeners for anxiety, depression, PTSD, and insomnia, to which he endorsed mild symptoms of anxiety and depression (GAD7=8 and PHQ9=9) and his insomnia score fell within the severe range (ISI=24). At the time of the visit he screened negative for PTSD (PCL-5=28, a score of 31-33 is indicative of further evaluation for PTSD). A mental status evaluation (MSE) conducted on 05 June 2017 for the purposes of Chapter 13 due to Poor Performance documented that the applicant was diagnosed with Cannabis Use, Unspecified. It was noted that he could understand and participate in administrative proceedings and appreciate the difference between right and wrong, that he met medical retention standards, that he has not surpassed the medical retention determination point, and that he did not require an IDES referral. The provider further documented that the applicant denied a BH history prior to joining the military and denied any other BH history aside from SUDCC treatment following a positive urinalysis. At the time of the evaluation he endorsed minor depressive symptoms though did not endorse any anxiety symptoms or PTSD symptoms. He also screened negative for Traumatic Brain Injury (TBI) and denied any history of suicidal ideation. A follow-up SUDCC note dated 27 June 2021 documented that the applicant reported he used marijuana to relax and would also use socially/recreationally. Furthermore, it was documented that the applicant indicated he 'understands others have triggers but he does not.' He endorsed minor depressive symptoms (PHQ9=13) and severe insomnia (ISI=24) though screened negative for anxiety and PTSD (GAD7=1, PCL-5=5). On 18 July 2017, it was documented that he screened negative for depression, anxiety, and PTSD. He was discharged from SUDCC on 25 July 2017 due to his pending discharge from the military. At the time of the visit it was noted that the applicant expressed that he would likely continue to smoke marijuana post-discharge as it was legal in many states. His diagnosis at the time of discharge was Cannabis Use, Unspecified with unspecified cannabis-induced disorder.

5. The ADRB findings dated 21 May 2021 included a review and recommendation by an ARBA Medical Advisor. The Advisor opined that the applicant's diagnoses of Cannabis Use and Alcohol Dependence are not mitigating for his Cannabis Use and that his diagnoses were the result of behaviors that sent him to SUDCC and not the cause of the behavior. The applicant's previous self-statement as part of his DD Form 293 application dated 21 March 2019 documented that the applicant reported he believed he had PTSD as a result of his father suiciding when the applicant was one year old.

6. VA records were available for review in JLV from 07 August 2017 through 03 September 2024. Review of JLV shows the applicant is not service-connected for any conditions. On 01 October 2018, the applicant met with a VA social worker during a new patient orientation to the Transition Care Management Program. He was screened for TBI on 07 November 2018 and screened negative. On 01 August 2024, the applicant was seen in the Primary Care Mental Health Integration (PCMHI) clinic for a walk-in appointment. The presenting problem was documented as 'trouble focusing, I'm all over the place, not able to sleep, depression, anxiety, PTSD and financial issues.' It was documented that he smokes marijuana twice per day to clear his mind. He was scheduled for a follow-up appointment in the PCMHI clinic on 04 October 2024. His problem list shows he was diagnosed with Adjustment Disorder, Unspecified on 13 August 2024.

7. The applicant provided a letter from his mother dated 26 October 2023 regarding his ongoing problems since the military. She indicated that prior to his service the applicant was a 'happy and vibrant person.' Since his discharge, she stated that the applicant has experienced depression, has had difficulty maintaining employment, and has been homeless and sleeping in his car.

8. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence that the applicant had a condition or event while in-service as he was diagnosed with Cannabis Use, Unspecified and Alcohol Dependence; however, these are not mitigating conditions. The applicant consistently screened negative for PTSD throughout his time in-service. Post-discharge, the applicant was diagnosed with Adjustment Disorder, Unspecified through the VA in 2024, approximately 7 years after his discharge. Per review of JLV and records provided as part of his application, there is no available evidence that the applicant has been diagnosed with PTSD or any other BH mitigating condition. In the absence of information supporting his assertion of PTSD or any other BH mitigating condition in-service, there is insufficient evidence to recommend an upgrade based on BH mitigation. However, he contends his misconduct was related to PTSD and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

9. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to PTSD.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of in-service records shows the applicant was diagnosed with Cannabis Use,

Unspecified and Alcohol Dependence, which are not BH mitigating conditions. He was screened for PTSD in-service on several occasions and routinely screened negative and has no history of diagnosis of PTSD. Moreover, an MSE conducted as part of the applicant's separation processing psychiatrically cleared the applicant for any administrative action and documented that he met retention standards IAW AR 40-501. Post-discharge, the applicant was diagnosed with Adjustment Disorder, Unspecified through the VA. There is no evidence that the onset of this condition was in-service nor that it fell below retention standards. There is no evidence available that the applicant was diagnosed with PTSD or any other BH mitigating condition in-service or post-discharge and no evidence that he met criteria for a BH mitigating condition in-service. In the absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by PTSD and insufficient evidence to support an upgrade based on BH mitigation.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered counsel's statement, 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 concurred with the advising official finding insufficient evidence to recommend an upgrade based on BH mitigation. The opine noted, the applicant consistently screened negative for PTSD throughout his time in-service.
2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of drug use that supports the applicant's contentions for an upgrade of his under honorable conditions (general) discharge. The Board noted, there is no evidence available that the applicant was diagnosed with PTSD or any other BH mitigating condition in-service or post-discharge and no evidence that he met criteria for a BH mitigating condition in-service. The applicant provided no post service achievements, however, the Board noted, the character letters of support attesting to the applicant's leadership abilities, community engagement, his trustworthiness, loyalty over the past 20 years. The applicant was discharged for misconduct and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Based on this, the Board denied relief.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

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. 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/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.

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//