

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 September 2024

DOCKET NUMBER: AR20240000562

APPLICANT REQUESTS: an 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), 9 November 2023
- Self-Authored Statement
- Six Certificates, from 15 March 2002 to 21 November 2003
- Award of the Army Achievement Medal, 6 February 2003
- Award of the Army Commendation Medal, 3 June 2003
- DA Form 3822-R (Report of Mental Status Evaluation), 12 March 2004
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 22 April 2004
- Four Character Reference Statements, from J.A.M. (Retired First Sergeant), from D.B., from D.L., and from Staff Sergeant D.H. (Recruiter and Retention Noncommissioned Officer)
- Medical Reference, from Licensed Mental Health Counselor M.C.

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 was a squared away Soldier who served as a combat engineer while being deployed in support of Operation Iraqi Freedom. He believes his discharge is inequitable because it was based on an isolated incident and a failed command within his platoon. With his leaders being deployed, he felt his acting platoon leader made it his mission to have him chaptered out of the Army. After his incident, he was recommended to enroll in the Army Substance Abuse Program (ASAP) by mental health providers, however he was never enrolled because his leadership was in a hurry to chapter him out. He states, if he knew then what he knows now, he would have made better decisions for his actions and he wishes the Army would have taken its time and

really saw that he was a Soldier who was battling with post-traumatic stress disorder (PTSD). His single incident was never fully addressed, and he believes it was easier to erase the problem, feeling as the problem was himself.

3. The applicant enlisted in the Regular Army on 2 April 2002, for a 3-year period. He was awarded the military occupational specialty of 21B (Combat Engineer), and the highest rank he attained was private first class/E-3.

4. The applicant's official military personnel record is void of the facts and circumstances which led to his discharge. However, on 12 March 2004, a DA Form 3822-R (Report of Mental Status Evaluation) shows he underwent a mental status evaluation for separation under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14 (Separation for Misconduct).

a. He was found to be mentally capable and responsible to understand and participate in the proceedings.

b. He was recommended to be enrolled in the ASAP, stating "Given that the Soldier is performing well at work and his only problems appear alcohol related and given that he had not received any treatment for alcohol abuse, it was recommended he be enrolled in ASAP." Further adding, if he succeeded within the ASAP, he would be expected to have better future performance.

c. It was recommended that the Chapter 14 separation was delayed pending outcome of the ASAP treatment.

5. The applicant was discharged on 22 April 2004, under the provisions of AR 635-200, paragraph 14-12b, by reason of misconduct, in the grade of E-1. His DD Form 214 shows his characterization of service was under honorable conditions (General) with separation code JKA and reentry code of 3. He completed 2 years and 21 days of active service, with service in an imminent danger area, Iraq, from 28 March 2003 to 6 June 2003. He was awarded or authorized:

- Army Commendation Medal
- Army Achievement Medal
- National Defense Service medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon

6. The applicant provides:

a. Four certificates of training, showing he completed the 12B (Combat Engineer) training, the combat lifesaver course, the mobile electric power operator course, and the combat communication course.

b. One certificate of achievement, for his meritorious service while serving as a Combat Engineer from 8 January 2003 to 7 February 2003, while at the National Training Center, where his commitment, dedication, and hard work were critical to the success of numerous missions. His actions reflected great credit upon himself, the Battalion, the Division, and the U.S. Army.

c. One certificate of appreciation, for his meritorious service in support of Operation Iraqi Freedom II, by providing live mine, demolitions and explosive training to the soldiers and leaders of the Combat Battalion, which was instrumental in the unit's ability to deploy and conduct its wartime mission.

d. His award of the Army Achievement Medal, for his exceptional meritorious achievement during the National Training Center rotation. His dedication to duty, tactical excellence, and stellar performance reflected great credit upon himself, the Battalion, the Regiment, and the Army.

e. His award of the Army Commendation Medal, for his exceptional meritorious achievement, with his personal sacrifices and commitment to mission accomplishment being instrumental in support of the Special Operations Forces. He displayed true professionalism and courage while serving during Operation Iraqi Freedom and his actions brought credit upon himself, the Task Force, and the Army.

f. Four-character reference statements:

(1) From First Sergeant, Retired, J.A.M., stating in effect, he was the applicant's direct supervisor. The applicant was a consistent stellar performer, an integral part of his organization and always brought a positive attitude to work, he was motivated, encouraged others to do their best, he grew and developed his talents to become a productive citizen. He believes the applicant was done a disservice and was a victim of toxic leadership. He personally would hire the applicant in an instant if given an opportunity.

(2) From his employer, Mr. D.B., stating in effect, the applicant is his employee and has talent, work habits, and dedication above all, he treats others exemplary with the highest character, truthfulness, honesty, diligence, and with care. He believes the applicant is a natural leader, protects others, a family man, who takes pride in where he works and lives.

(3) From the Chef Instructor, D.L., stating in effect, the applicant was a wonderful student, he was punctual, prepared, and always strived to become the best chef he could be. The applicant had a lot of raw talent and showed his hard work and dedication, he was a great student and great person.

(4) From Staff Sergeant D.H., stating in effect, the applicant had expressed to him he would like to join the California National Guard and is not eligible for enlistment due to the status of probation. The applicant has shown his desire to serve the country and in order to enlist he must complete all corrective action required.

g. Medical documentation from a Licensed Mental Health Counselor, M.C., stating in effect, the applicant came to his office for an initial consult in October 2012, complaining of his frequent depression and anxiety symptoms, alcohol abuse, trouble sleeping and remaining asleep, social anxiety, and other PTSD related symptoms. His depression and anxiety were intense and long in durations, manifested when he had to interact with others or engage in activities that required expression of thoughts and feelings. The applicant was experiencing frequent nightmares, frequent flashbacks, drinking heavily, to cope with multiple life difficulties. He had sought treatment to alleviate these symptoms and resolve problems with relationships and social interactions. He wanted to remain sober and develop healthier coping mechanisms.

7. Regulatory guidance states when an individual is discharged under the provisions of AR 635-200, Chapter 14, for misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

8. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service. On his DD Form 293, the applicant indicated Posttraumatic Stress Disorder (PTSD) was related to his request. 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 02 April 2002 as a combat engineer, 2) the applicant's records were void of the facts and circumstances that led to his discharge; however, a report of mental status evaluation documented that he underwent a Chapter 14 separation evaluation on 12 March 2004. It was recommended that the applicant enroll in the Army Substance Abuse Treatment Program (ASAP) and that chapter processing be delayed pending the outcome of ASAP treatment, 4) the applicant was discharged

on 22 April 2004 under the provisions of Army Regulation (AR) 635-200, paragraph 14-12b, by reason of misconduct, 5) the applicant's records shows that he served in Iraq from 28 March 2003 to 06 June 2003. He was awarded several awards and Medals during his service.

b. 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.

c. Limited in-service records were available for review through JLV from 15 April 2002 through 07 August 2008, none of which were BH-related. As part of his application, the applicant provided a Report of Mental Status Evaluation (MSE) conducted on 12 March 2004 for the purposes of Chapter 14 Separation. He was diagnosed with occupational problem, and it was documented that the applicant had the mental capacity to understand and participate in the proceedings, was mentally responsible, and met retention standards in accordance with (IAW) AR 40-501. In the remarks section, the provider noted that the applicant was performing well at work and his 'only problems appear alcohol related.' The provider recommended the applicant be enrolled in ASAP and that chapter separation be delayed pending the outcome of treatment. He was cleared for administrative action deemed appropriate by command and noted no access to weapons or ammunition.

d. Review of JLV shows the applicant is 60% service-connected through the VA, 30% for PTSD. The applicant underwent a Compensation and Pension (C&P) examination on 08 March 2023 and was diagnosed with PTSD. The stressor associated with his diagnosis of PTSD was documented as combat-related experiences while deployed to Iraq in 2003 (e.g., taking small arms fire, route clearance with threat of combat, and under threat on post due to attempted breaches and attacks at gate security). The provider documented that the applicant started drinking heavily in 2003 after deployment and that he drank alcohol in the morning to reduce tremors and shakes though stopped drinking alcohol in 2014. It was documented that the applicant reported receiving an Article 15 for drinking underage in the barracks while in-service and was recommended to ASAP but was never enrolled and chaptered out of the military. Regarding BH treatment through the VA, he was referred for BH treatment on 10 January 2017 due to screening positive on a PTSD screener during a primary care visit. It was noted the applicant was previously being treated by BH though no diagnosis was noted. At the time of the visit, he was diagnosed with Generalized Anxiety Disorder and referred to BH. He completed a BH intake on 21 March 2017 with his chief complaints noted as anxiety, depressed mood, insomnia, and difficulty socializing. It was documented that the applicant's emotional and substance abuse problems started after he returned from Iraq in 2003. The applicant reported he sought BH treatment in 2008 for substance abuse, marriage problems, and depression. He reported a history of

suicidal behavior in 2006 and 2009 as well as a significant legal history (e.g., bar fights, domestic abuse, driving while intoxicated, resisting arrest, and false representation). It was documented that the applicant indicated he was discharged due to Article 15's related to drinking problems. At the time of the visit, he was diagnosed with Adjustment Disorder with Anxiety and Depressed Mood, Cannabis Abuse, Alcohol Abuse in Remission, and Cocaine Abuse in Remission. At a follow-up appointment on 09 May 2017, the applicant was diagnosed with PTSD and was referred for individual and group psychotherapy, anger management, and psychiatry for medication management. There was a gap in treatment until 24 July 2018 when he was referred for treatment for Major Depressive Disorder (MDD), Recurrent, Mild and treatment was initiated for sleep problems. It was documented in the record that the applicant was previously trialed on Sertraline in 2019 though discontinued the medication after 3 days. He was prescribed Hydroxyzine in 2019 for anxiety. The applicant continued BH treatment through the VA intermittently through October 2023 when he requested a community-based BH referral due to proximity to his home.

e. The applicant provided a letter from a civilian BH provider documenting his history of treatment with the applicant. It was documented that the applicant sought treatment with the provider in October 2012 due to depression, anxiety, alcohol abuse, insomnia, social anxiety, and other PTSD symptoms. No diagnosis was noted.

f. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service. The applicant indicated PTSD is related to his request. Review of the applicant's in-service BH records are limited to a Chapter 14 separation evaluation. At the time of the evaluation, the applicant was diagnosed with occupational problem. He was administratively cleared for separation and determined to meet retention standards IAW AR 40-501; however, the provider recommended that the applicant enroll in ASAP as it appeared that his only problem at the time of the evaluation was alcohol-related and otherwise was performing well at work. There are no records available indicating that the applicant was enrolled in ASAP and per his self-statement was never enrolled in the program. Post-discharge, the applicant was diagnosed and 30% service-connected with PTSD which was associated with his deployment experiences in Iraq. It was documented that the applicant reported he received an Article 15 in-service due to underage drinking in the barracks and was chaptered out of the military. The applicant's available post-discharge records demonstrate he has been treated on-and-off for depression and anxiety-related concerns since 2012 though primarily started treatment through the VA in 2017. The specific facts and circumstances regarding the applicant's discharge were not available for review. As such, BH mitigation is unclear.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed and is 30% service-connected through the VA for PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed and is 30% service-connected through the VA for PTSD. Service connection establishes that the condition existed during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unclear. The applicant's in-service records were void of any BH diagnosis or treatment history. However, a Chapter 14 separation evaluation documented that the applicant was referred for alcohol-related treatment and it was recommended that the separation process be delayed until after treatment. Post-discharge, the applicant has been diagnosed and 30% service-connected through the VA with PTSD which was associated with his service in Iraq. The applicant has been treated through the VA on-and-off since 2017 due to ongoing problems with PTSD, depression, and anxiety. It was documented in the applicant's C&P examination that he reported being discharged due to underage drinking in the barracks; however, this information is not able to be corroborated with his service records. As self-medicating with alcohol is a common form of coping and indicative of avoidance behavior, there is a nexus between his diagnosis of PTSD and self-report of underage drinking, which would otherwise provide support for BH mitigation. However, as the specific facts and circumstances of his discharge are unavailable for review a nexus cannot be established between his BH condition and reason for discharge. As such, BH mitigation is unclear.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for misconduct. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned by his commander during separation. The Board reviewed and concurred with the medical advisor's review finding despite having the complete facts and circumstances of the applicant's misconduct to analyze the nexus between his behavioral health condition and the misconduct, the Board determined the applicant's post-traumatic stress disorder is sufficient evidence to support an upgrade of his characterization of service to honorable.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 22 April 2004 to show an honorable characterization of service.

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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.

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.

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 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 post-traumatic stress disorder; 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 sexual assault or sexual harassment was unreported, or 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.

5. 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//