

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 August 2024

DOCKET NUMBER: AR20240000633

APPLICANT REQUESTS: in effect -

a. correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show:

- service in support of Operation Iraqi Freedom in 2003
- appropriate awards and decorations

b. an upgrade of his character of service from under honorable conditions (general) to honorable.

c. a personal appearance hearing before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214

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, his DD Form 214 does not reflect his deployment to Iraq in 2003, nor the medals he should have been awarded. He had a tough time upon his return from deployment and did something he would not have done otherwise. He has Post-Traumatic Stress Disorder (PTSD) and believes his character of service should be upgrade based on this medical condition.

3. The applicant enlisted in the Regular Army on 7 January 1999. He served in military occupational specialty 31U (Signal Support Systems Specialist). He served in Korea

from 2000 to 2001, completing 1 year of foreign service. He was promoted to sergeant/E-5 in February 2002 and he reenlisted on 14 March 2002.

4. His records contain DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)), dated 27 June 2003, which shows he received punishment under Article 15, UCMJ for on or about 7 July 2003, wrongfully use marijuana in violation of Article 112a of the UCMJ. Among the punishment imposed was a reduction in rank/grade to specialist (SPC)/E-4.

5. On 1 July 2003, the applicant underwent a mental status evaluation. The applicant met the retention standards prescribed in Army Regulation 40-501 (Standards of Medical Fitness), and there was no psychiatric disease or defect which warranted disposition through medical channels. The applicant was cleared for any administrative actions deemed appropriate by the command to include separation in accordance with Army Regulation 635-200 (Personnel Separations – Enlisted Personnel).

6. On 29 July 2003, the applicant's company commander informed the applicant that he was initiating action to separate him for under the provisions of Army Regulation (AR) 635-200, paragraph 14-12c, commission of a serious offense, with a characterization of service of under honorable (general) conditions. His commander cited the applicant tested positive for marijuana during a battery urinalysis and subsequently received a Field Grade Article 15, for violation of Article 112a, UCMJ.

7. On 30 July 2003, the applicant acknowledged receipt of the commander's intent to separate him. He consulted with legal counsel, and he was advised of the basis for the contemplated separation action for misconduct, the type of discharge he could receive and its effect on further enlistment or reenlistment, the possible effects of this discharge, and of the procedures/rights that were available to him. He acknowledged he understood that he could expect to encounter substantial prejudice in civilian life if an under honorable conditions (general) discharge was issued to him. He did not submit statements in his own behalf.

8. The applicant's immediate commander-initiated separation action against him in accordance with AR 635-200, paragraph 14-12c, for commission of a serious offense.

9. On 30 July 2003, the separation authority directed the applicant be discharged under the provisions of Army Regulation 635-200, chapter 14-12c, with a general under honorable conditions discharge.

10. On 6 August 2003, he was discharged from active duty. His DD Form 214 shows he was discharged in the rank/grade of Specialist (SPC)/E-4, under the provisions of AR 635-200, paragraph 14-12c(2), for misconduct, with an under honorable conditions (general) characterization of service. His DD Form 214 shows he received a separation

code of "JKK" and a reentry code of "4." This form also shows he completed 4 years and 7 months of net active service this period, of which 1 year was credited as foreign service. It further shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) - Army Commendation Medal (2nd Award), Army Achievement Medal (4th Award), Army Good Conduct Medal, NCO Professional Development Ribbon, Army Service Ribbon, Overseas Service Ribbon
- Item 18 (Remarks) - does not include an entry pertaining to service in Iraq.

11. Permanent Orders 135-188, issued by Headquarters, 11th Air Defense Artillery Brigade awarded him the Army Commendation Medal for achievement during combat operations in support of Operation Iraqi Freedom from 1 February 2003 to 15 May 2003.

12. There is no indication he applied to the Army Discharge Review Board for an upgrade of his discharge within that board's 15-year statute of limitations.

13. During the processing of this case, the Defense Finance and Accounting Service (DFAS) reviewed his Master Military Pay Account. DFAS verified his deployed service in Kuwait from 3 February 2003 to 24 May 2003 (a period of 3 months and 22 days). Note: DFAS only verifies receipt of hostile fire/imminent danger pay. DFAS does not verify inclusive dates of deployed service or deployment locations beyond the first qualifying country (e.g., Kuwait versus Iraq). DFAS pay records are not considered "source documents," but may be considered as supporting documents leading to a preponderance of the evidence. A second source document is required.

13. The Board should consider the evidence and the applicant's statements in accordance with the 25 July 2018, Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and BCM/NRs regarding equity, injustice, or clemency determinations.

14. 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 7 January 1999; 2) The applicant received an Article 15 on 27 July 2003 for wrongfully using marijuana on 7 July 2003; 3) The applicant was discharged on 6 August 2003, Chapter 14-12c(2), for misconduct, with an under honorable conditions (general) characterization of service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also reviewed. The applicant asserts he was experiencing PTSD as a result of his reported deployment to Iraq while on active service, which mitigates his misconduct. There is evidence the applicant had previously served in Korea, and there is evidence he was deployed to Kuwait for just under four months with returning May 2003. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service. On 1 July 2003, the applicant underwent a mental status evaluation. The applicant met the retention standards, and there was no psychiatric disease or defect which warranted disposition through medical channels. The applicant was cleared for any administrative actions deemed appropriate by the command.

c. A review of JLV provided evidence the applicant began to engage with the VA in 2004 initially for physical concerns and some mental health symptoms. Initially, the applicant reported a long history of significant mental health symptoms, which started during childhood due to reported childhood abuse. He was initially diagnosed with Major Depression and prescribed psychiatric medication due to his primary report of depression and difficulty managing current life stressors. Later, the applicant also reported a history of mental health symptoms, which started during his deployment to Kuwait. He also began to report PTSD symptoms, which originated during this deployment. He consistently reported only being deployed to Kuwait, but he reported nightmares and hypervigilance as a result of this experience. Specifically, he reported the Air Force base where he was stationed received an incoming missile attack. Later in 2005, the applicant was diagnosed with service-connected PTSD, and he has been in various forms of behavioral health treatment primarily focused on poly-substance dependence along with treatment for PTSD and Depression. Currently, he continues to be diagnosed with service-connected PTSD (SC 70%).

d. 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. 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 relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. Discharge upgrade: Grant. The evidence shows the applicant committed a serious misconduct in the form of wrongfully using illegal drugs. As a result, his chain of command initiated separation action against him for misconduct and he received a general 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 the applicant had a condition or experience that mitigates his misconduct which led to his discharge. Based on this finding, the Board determined 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. Service in support of Operation Iraqi Freedom in 2003: Grant. The Board noted that the applicant was awarded the Army Commendation Medal for achievement during combat operations in support of Operation Iraqi Freedom. Additionally, DFAS verified the applicant's service in Kuwait from 3 February 2003 to 24 May 2003 (a period of 3 months and 22 days). Therefore, the Board determined his DD Form 214 should list this deployment to Kuwait/Iraq.

c. Awards: Grant. Based on the applicant's deployment to Kuwait/Iraq from 3 February 2003 to 24 May 2003, he qualifies for award of the Iraq Campaign Medal with

one bronze service star. Additionally, the applicant qualifies for additional awards which are not listed on his DD Form 214.

BOARD VOTE:

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| █ | █ | █ | GRANT FULL RELIEF |
| : | : | : | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| : | : | : | DENY APPLICATION |

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for 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 6 August 2033, as follows:

- Block 12f, delete existing entry and add 0001-03-15
- Block 13: Add the Iraq campaign Medal with 1 bronze service star, Korea Defense Service Medal, Global War on Terrorism Service Medal, National Defense Service Medal
- Block 18, add Service in Kuwait/Iraq from 3 February 2003 to 24 May 2003
- Block 24, Character of Service: Honorable
- Block 25, Separation Authority: No Change
- Block 26, Separation Code: No Change
- Block 27, Reentry Code: No Change
- Block 28, Narrative Reason for Separation: No Change

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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 600-8-22 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards.

a. The Korea Defense Service Medal is authorized for award to members of the Armed Forces of the United States who have served on active duty in support of the defense of the Republic of Korea. The period of eligibility is 28 July 1954 to a date to be determined by the Secretary of Defense.

b. The Global War on Terrorism Service Medal is authorized for award to members of the Armed Forces of the United States who participated in Global War on Terrorism operations outside of the areas of eligibility designated for award of the Global War on Terrorism Expeditionary Medal, Afghanistan Campaign Medal, or Iraq Campaign Medal. All Soldiers on active duty on or after 11 September 2001 to a date to be determined having served 30 consecutive or 60 nonconsecutive days are authorized the Global War on Terrorism Service Medal .

c. The Global War on Terrorism Expeditionary Medal is authorized for award to members of the Armed Forces of the United States who deployed abroad for service in Global War on Terrorism operations on or after 11 September 2001 to a date to be determined. The general area of eligibility (AOE) encompasses all foreign land, water, and air spaces outside the fifty states of the United States and outside 200 nautical miles of the shores of the United States in operations approved by the Secretary of Defense. Under no conditions will units or personnel within the United States or the general region excluded above be deemed eligible for the Global War on Terrorism Expeditionary Medal . Service members must be assigned, attached, or mobilized to a unit participating in designated operations for 30 consecutive days or 60 nonconsecutive days in the AOE, or meet other, specified criteria. Initial award of the Global War on Terrorism Expeditionary Medal was limited to service members deployed abroad in Operation Enduring Freedom and Iraqi Freedom in a designated specific geographic AOE. Effective 30 April 2005, the Global War on Terrorism Expeditionary Medal is no longer authorized to be awarded for service in Afghanistan or Iraq. Soldiers are only authorized award of the Afghanistan Campaign Medal and Iraq Campaign Medal (ICM) after this date.

d. Soldiers that elect to receive the Global War on Terrorism Expeditionary Medal in lieu of the ICM are not authorized bronze service stars for those campaigns in which the Global War on Terrorism Expeditionary Medal is awarded. No Soldier will be entitled to both medals for the same act, achievement, or period of service.

3. Army Regulation 635-8 (Separation and Processing and Documents), establishes the standardized policy for preparing and distributing the DD Form 214. Chapter 5 contains guidance on the preparation of the DD Form 214. It states for:

- block 12f enter the total amount of foreign service completed during the period covered by the DD Form 214
- block 18 for an active duty Soldier deployed with their unit during their continuous period of active service, the statement "Service in (Name of Country Deployed) From YYYYMMDD - YYYYMMDD)"

4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or absence without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Army policy states that an under other than honorable conditions discharge is normally considered appropriate for a Soldier discharged for misconduct. However, a discharge under honorable conditions (general) or an honorable discharge may be granted.

b. 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.

c. Paragraph 3-7b provides that 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.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards 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, BCM/NRs 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.

6. Army Regulation 15-185 prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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.

7. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.

//NOTHING FOLLOWS//