

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 October 2024

DOCKET NUMBER: AR20240000984

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 8 August 2004, to show:

- upgrade of his under other than honorable conditions (UOTHC) characterization of service
- a change to his narrative reason for separation and corresponding separation code, presumably more favorable
- and a change to his reentry code

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 4980-18 (Army Achievement Medal Certificate), dated 13 May 2002
- DD Form 214, for the period ending 30 May 2004
- DD Form 214, for the period ending 8 August 2004
- Service Treatment Records (36 pages), dated 2 April 2001 to 2 April 2004
- Department of Veterans Affairs (VA) Form 21-0781 (Statement in Support of Claim for Service Connection for Post-traumatic Stress Disorder (PTSD)), dated 6 December 2023
- VA Form 21-0781a (Statement in Support of Claim for Service Connection for PTSD Secondary to Personal Assault), dated 6 December 2023
- three statements of support, dated 29 November 2023 to 6 December 2023

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 suffered from undiagnosed, untreated mental health conditions, to include PTSD. He was discharged for reasons related to these conditions. He wants to receive proper health benefits and compensation so he can move forward and take care of his wife and children. On the date of his application, he was in

treatment at the Tuscaloosa VA hospital. He is doing what it takes to be sober and to better understand his addiction and problems. He knows he did wrong, but he is now being responsible for himself and his children.

3. The applicant enlisted in the Regular Army on 31 May 2000, for a 4-year period. Upon completion of initial entry training, he was awarded military occupational specialty 35E (Radio and Communication Security Repairer). The highest rank he attained was specialist/E-4.

4. On 13 May 2002, the applicant was awarded the Army Achievement Medal for his exceptionally meritorious service as a Communications Security Radio Repairmen for the 532nd Military Intelligence Battalion from 2 July 2001 to 1 July 2002.

5. The applicant served in Kuwait/Iraq from 26 February 2003 to 5 July 2003.

6. The applicant received a Memorandum of Reprimand (MOR) from the Commanding General (CG), Headquarters, 3rd Infantry Division, Fort Stewart, GA, on 29 April 2004 for speeding, driving on a suspended license, and driving under the influence of alcohol on 16 March 2004. The CG informed the applicant the reprimand was administrative in nature; the CG intended to file the reprimand in the applicant's Official Military Personnel File (OMPF); however, he would carefully consider any matters submitted by the applicant prior to making a final filing decision. The applicant acknowledged receipt of the MOR and elected not to submit a statement.

7. A DA Form 4187 (Personnel Action) shows the applicant was reported absent without leave on 4 May 2004.

8. On 13 May 2004, the applicant's immediate and intermediate commanders recommended the MOR be filed in the applicant's OMPF. The commanders noted the applicant's performance was below average; he was currently AWOL; he was in trouble numerous times; and corrective training was ineffective.

9. Orders Number 092-0023, issued by Headquarters, 3rd Infantry Division, Fort Stewart, GA, dated 1 April 2004, and a DD Form 214 show the applicant was released from active duty on 30 May 2004, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 4, by reason of completion of required active service. His character of service was honorable, with separation code LBK and reentry code RE-3. He completed 4 years of net active service. He was awarded or authorized the following:

- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon

- Overseas Service Ribbon
- Army Lapel Button

10. The applicant was dropped from the rolls on 3 June 2004. He was subsequently returned to duty on 4 June 2004.

11. On that same date, the applicant was command directed to be administered a urinalysis following his period of AWOL. The specimen collected tested positive for tetrahydrocannabinol.

12. Court-martial charges were preferred against the applicant on 16 July 2004 for violations of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows the applicant was charged with being AWOL, on or about 4 May 2004 until on or about 4 June 2004, and for the wrongful use of marijuana, between on or about 4 May 2004 and 4 June 2004.

13. A memorandum from the Office of the Staff Judge Advocate, 3rd Infantry Division, Fort Stewart, GA, dated 19 July 2004 shows a request was submitted to extend the applicant pending the resolution of the legal action against him.

14. Orders Number 201-0032, issued by Headquarters, 3rd Infantry Division, Fort Stewart, GA, dated 19 July 2004 revoked Order Number 090-0023, from the same command, dated 1 April 2004, which pertained to the applicant's release from active duty.

15. The applicant consulted with legal counsel on 21 July 2004.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a UOTHC discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge, in lieu of trial by court-martial, under the provisions of Army Regulation 635-200, Chapter 10. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He acknowledged making this request free of coercion. He further acknowledged understanding if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

c. He was advised he could submit any statements he desired in his behalf. He elected not to submit a statement.

16. The applicant's immediate and intermediate commanders recommended approval of the applicant's request and further recommended the issuance of an under other than honorable conditions discharge. The Staff Judge Advocate concurred with the recommendations.

17. The separation authority approved the recommended discharge on 22 July 2004 and directed the issuance of a UOTHC discharge and reduction to the lowest enlisted grade.

18. On 27 July 2004, the applicant's DD Form 214, for the period ending 30 May 2004 was voided due to administrative error.

19. The applicant was discharged on 4 August 2004, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. He completed 4 years, 1 month, and 3 days of net active service, with lost time from 4 May 2004 to 3 June 2004. He was awarded or authorized the Presidential Unit Citation (Army), Global War on Terrorism Expeditionary Medal, Global War on Terrorism Service Medal, and the Army Service Ribbon. His DD Form 214 further shows:

- Item 24 (Character of Service) – Under Other Than Honorable Conditions
- Item 26 (Separation Code) – KFS
- Item 27 (Reentry Code) – 4
- Item 28 (Narrative Reason for Separation) – In Lieu of Trial by Court-Martial

20. A memorandum from Headquarters, 3rd Infantry Division, Fort Stewart, GA, dated 6 August 2004, shows the CG directed the MOR be filed in the applicant's OMPF.

21. The applicant provides:

a. 36 pages of Service Treatment Records, dated 2 April 2001 to 2 April 2004, will be reviewed and summarized in the "Medical Review" portion of this Record of Proceedings (ROP).

b. In a VA Form 21-0781 and the corresponding VA Form 21-0781a, dated 6 December 2023, the applicant describes an incident that took place while he was stationed in South Korea. Following an altercation inside a club, the applicant was "blindsided" by several perpetrators and hit with a "champagne flute type glass." He was bleeding profusely. He remembers waking up in emergency department where he received treatment for lacerations. He received 36 stitches. The incident caused him

trauma and pain. He felt publicly humiliated. He believes this incident is part of the reason he has PTSD and memory loss.

c. In three statements of support, dated 29 November 2023 to 6 December 2023, the authors attest to the applicant's behavior which they attribute to PTSD. He is a sweet, loving, and charismatic, and would do anything to make ends meet for his family. However, he will go from "0 to 100" in a second. It seems like another person takes over, and he blows up. He has dreams and talks crazy like he is still in Kuwait. He was paranoid, easily angered and physically and mentally abusive to his ex-wife after he was discharged. She encouraged him to get help at the VA. He speaks extensively about the war and being assaulted. He is now taking the first steps in getting the help he needs.

22. Administrative separations under the provisions of Army Regulation 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of trial by court-martial. An UOTHC character of service is normally considered appropriate. Regulatory guidance provides when an individual is discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial, "KFS" is the appropriate separation code.

23. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

24. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade of his Under Other than Honorable characterization of service. Additionally, he would like a change to his narrative reason for separation, separation code, and reentry code. He contends his discharge should be upgraded as he was experiencing PTSD.

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 31 May 2000.
- The applicant served in Kuwait/Iraq from 26 February to 05 July 2003.
- On 29 April 2004, he received a MOR for speeding, driving on a suspended license, and driving under the influence of alcohol on 16 March 2004.
- On 16 July 2004, Court Martial charges were preferred for being AWOL from 04 May to 04 June 2004 and wrongfully using marijuana.
- The applicant requested a Chapter 10 which was approved.
- On 04 August 2004, the applicant was discharged from service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. There was no additional, pertinent information to include in this advisory.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed.

(1) In February 2010, the applicant requested help with substance abuse. He reported increased drinking while deployed which worsened upon return. He did not return.

(2) In October 2012, the applicant was referred to behavioral health by primary care. The applicant reported attending at the encouragement of his family and friends. He did not feel he had any behavioral health condition endorsing minimal and minor symptoms. He was diagnosed with Alcohol Dependence and declined treatment.

(3) In November 2023, the applicant requested help with alcohol and depression. He was enrolled into residential substance treatment. The applicant completed the program in January 2024, declining after care. He held diagnoses of combat related PTSD, Unspecified Depressive Disorder, and Alcohol Use Disorder.

(4) In March 2024, he reported relapse with ongoing trauma, depressive, and anxiety symptoms. He enrolled into the COSAT program, attending through August. He continues with sporadic follow ups for sobriety support.

e. The applicant submitted medical records supporting an August 2001 assault with related injuries. The other medical records were reviewed but not pertinent to a behavioral health advisory.

f. The applicant submitted letters from his wife and ex-wife outlining changes after deployment which he continues to struggle with.

g. 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 more likely than not had a condition mitigating the misconduct. Specifically, the applicant had combat related trauma symptoms prior to the misconduct. Given trauma can lead to substance use and avoidance, the AWOL and marijuana use are mitigated.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant was experiencing trauma symptoms at the time of the misconduct. Given trauma is associated with avoidance and substance use, the AWOL and marijuana use are mitigated.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Based on liberal consideration, trauma and related symptoms existing prior to the misconduct, and nexus between trauma, avoidance, and substance use, the AWOL and marijuana use are mitigated.

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 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 sufficient evidence to support that the applicant more likely than not had a condition mitigating the misconduct. Specifically, the applicant had combat related trauma symptoms prior to the misconduct. The Board determined under liberal consideration changes to the applicant's narrative reason, separation code and RE Code are not warranted.

2. The Board determined there is sufficient evidence of in-service mitigating factors to overcome the misconduct of AWOL and illegal drug use. The Board noted the applicant's character letters of support attesting to the applicant's behavior which they attribute to PTSD. They noted the applicant is a sweet, loving, and charismatic, and would do anything to make ends meet for his family. The Board agreed, based on the medical opine, upgrade of the applicant's characterization of service to under honorable (general) conditions is warranted. Therefore, the Board granted partial relief to correct his records.

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 reissuing the applicant a DD Form 214 showing his characterization of service as General Under Honorable Conditions.

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 a change to the applicant's narrative reason for separation and corresponding separation code, presumably more favorable and a change to his reentry code.

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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 (USC), 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 Army Board for the Correction of Military Records (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. Section 1556 of Title 10, USC, 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 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, advisory opinions, and reviews to ABCMR applicants and/or their counsel prior to adjudication.

3. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of Reentry (RE) codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable – they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification

4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. The regulation states that SPD Code "KFS" is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of court-martial.

5. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have

been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. 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. 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.

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 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. 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//