

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 October 2024

DOCKET NUMBER: AR20240001612

APPLICANT REQUESTS: reconsideration of his earlier request for upgrade of his general, under honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 18 December 2003
- Counsel Statement, 18 December 2023
- Self-Authored Statement, undated
- DD Forms 214 (Certificate of Release or Discharge from Active Duty), dated 22 April 2000 and 23 August 2002
- Military Awards
- Request for Discharge, 24 July 2002
- Letters of Support, dated 24 October 2003, 30 October 2023, and 6 November 2023 (three)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR2003088421 on 25 September 2003.

2. The applicant indicates on his DD form 149, that mental health issues or conditions are related to his request. He states through counsel:

a. The applicant is a decorated Veteran of the U.S. Marine Corps (USMC) and of the U.S. Army. He completed 4-years of honorable service in the USMC.

b. He had an exemplary service record as the result of the demise of his marriage when his wife was pregnant with another man's child. He suffered from symptoms of depression and began self-medicating by drinking heavily. He spiraled while maintaining a façade as a successful Soldier until he made the mistake of becoming intimately involved with a superior officer. Up to this point he was a capable service member with no limitations on his ability to continue service.

c. An investigation into fraternization and adultery followed and he chose to be discharged in lieu of trial by court-martial.

d. He requests the Board consider his:

- quality of service and capability were excellent, and his discharge does not reflect the true character of his service to the Army
- discharge was at least in part the result of a commanding officer's error of discretion and does not reflect the circumstances surrounding his misconduct and discharge
- struggles with mental health at the time require liberal consideration of his application in accordance with the Kurta memorandum

e. He joined the USMC in 1996 when he was 22 years old. He attained the rank of corporal, he received the Navy and Marine Corps Achievement Medal, and three driver awards.

f. He reenlisted in the Army at the rank of specialist. Nine months later he was promoted to sergeant. In January 2001, he was married to his second wife. She decided to leave him two months later and return to Indiana. He returned to Indiana during the summer to try to bring his wife back with him to Fort Drum, but she wanted their relationship to be over. He later found out she was pregnant with another man's child.

g. His mental health declined as a result of the issues he was experiencing in his personal life. He began self-medicating by drinking heavily during this time. He moved back into the barracks in November 2001. In December 2001 he became intimate with a superior officer. She became pregnant with his child.

h. He was placed on funeral detail and on 27 February 2002, while enroute to a funeral detail, he was injured in a single vehicle accident as a passenger while another Soldier was driving at night in hazardous snow conditions.

i. He was charged with fraternization and adultery on 20 June 2002. The officer involved with him was given a letter of admonishment, which stated the fraternization allegations were unsubstantiated. He requested discharge in lieu of trial by court martial. She, the senior of the two, was able to resign her commission without a mark of a less than honorable discharge.

j. Following his divorce, he married the officer involved and his child's mother, and they raised their child together. Since his discharge he has lived a life dedicated to civic duty and honoring his community. He worked on a presidential campaign and went on to become a public school system social studies teacher. He had dedicated years

teaching and founded a girls' soccer program in his district. He has helped six students join the military.

k. In 2021, he was diagnosed with post-traumatic stress disorder (PTSD) and general anxiety disorder. His PTSD stems in part from his van accident while on funeral detail in 2002. It was exacerbated by his work as a teacher as his school was experiencing instances of violence between students.

3. The applicant chronicled his military experiences and his post-military achievements, in a 10-page statement, which is available to the Board for review.

- he went through one of the biggest struggles of his life 20 years ago, he does not believe all the consequences that were handed out were warranted, and the actions and consequences were not equal.
- he is responsible for the unprofessional relationship that occurred between he and an officer, but the doctors and his company commander agreed with him at the time that the consequences were too extreme
- his marriage with his wife after he first joined the Army did not work out, they discussed separation, and it was a huge psychological problem for him
- she told him she was pregnant, and he was not the father
- during this time he began drinking
- in September 2001, he completed Platoon Leadership Development Course (PLDC) and was promoted to sergeant in November 2001
- in December 2001 he met an officer and later she became pregnant
- he was involved in a vehicle accident in February 2002 and suffered an injury to his neck and shoulder
- he later continued to carry on as a Soldier, leading Physical Training formations, continuing to help the overweight Soldier program he initially started, and continued as a platoon sergeant
- he attempted to stay on active duty
- in August 2002, he left Fort Drum and was discharged
- he underwent surgery at the Veterans Administration (VA) and was told he had waited too long for his rotator cuff surgery
- his neck would not become a problem until about a decade after his accident when he developed arthritis
- afterward he got married to his child's mother, and moved back to Indiana
- he was accepted into college through the VA program and earned a bachelor's degree
- he moved to Virginia, became a teacher, taught middle and high school, and he created a girls' soccer program
- today he suffers from PTSD and is getting treatment

4. The applicant provides:

a. Six-pages of service awards and decorations he received while he was in the USMC and Army.

b. His statement given at the time of his request for discharge, outlining his reasons for requesting that he be retained in service and admitting his part leading up to his request for a discharge in lieu of trial by court-martial.

c. A letter of support from SNB____, 24 October 2023, a retired sergeant first class who worked as a sexual assault response coordinator. It was her opinion that he was unjustly and excessively punished by his chain of command.

d. A letter of support from (redacted)____, 30 October 2023, who served with the applicant and was married to him and felt he should have been honorably discharged based upon the circumstances and options given to her.

e. A letter of support from LN____, 6 November 2023, who has known the applicant for several decades and felt his offense was not so egregious as to warrant the discharge in his permanent record.

5. A review of the applicant's service records shows:

a. On 17 January 2001, he enlisted in the Regular Army for 3 years beginning at pay grade E-4, following prior service in the USMC. He completed PLDC and was promoted to the rank of sergeant.

b. On 29 October 2001, he was divorced. A court order reflects his divorce was approved.

c. A memorandum, Commanding Officer, 57th Transportation Company, dated 9 January 2002, subject: Findings and Recommendation for 15-6 Investigation (Name redacted), reflects the findings of an informal investigation of an officer (second lieutenant) who was in the applicant's chain of command. This memorandum shows the commanding officer recommended a letter of admonition be filed in her local file and a flagging action be lifted with subsequent promotion to first lieutenant once officer professional development was completed.

d. Medical records dated between February 2002 and May 2002, show treatment at the Wilcox/Guthrie Army Health Clinic for a motor vehicle accident on 27 February 2002, in which the applicant was a passenger in a government van.

e. A DA Form 1574 (Report of Proceedings by Investigating Officer/Board of Officers), dated 2 May 2002, reflects the applicant was found in violation of Article 134 (adultery) of the Uniform Code of Military Justice (UCMJ); and in violation of violation of Article 90 (disobedience of a superior commissioned officer) of the UCMJ. The recommendation of the investigating officer was to initiate court-martial proceedings for the charges of Article 134 and Article 90.

f. On 30 May 2002, he was given a temporary physical profile for 30 days (temporary expiration date 30 June 2002) for upper region injuries, C5 traction injury, and right shoulder dislocation.

g. On 20 June 2002, court-martial charges were preferred against him. A DD Form 458 (Charge Sheet) shows he was charged with:

(1) Charge I, Specification 1: in that (Applicant), having received a lawful command from his superior commissioned officer Lieutenant Colonel (LTC) (name redacted), to discontinue any dealings that would lead to a perceived personal relationship or fraternization with 1LT (name redacted), on or between 10 January 2002 and on or about 9 May 2002, did willfully disobey the same.

(2) Charge I, Specification 2: in that (Applicant) having received a lawful command from his superior commissioned officer Captain (CPT) (name redacted), to discontinue any dealings that would lead to a perceived personal relationship or fraternization with 1LT (name redacted), on or between 10 January 2002 and on or about 9 May 2002, did willfully disobey the same.

(3) Charge II, Specification 1: in that (Applicant), did at or near Fort Drum, NY, between 15 December 2001 and on or about 9 May 2002, violated a lawful general regulation by wrongfully maintaining a close, personal relationship and engaged in sexual intercourse with 1LT (Name redacted), supervisor of (Applicant).

h. On 16 July 2002, the Staff Judge Advocate, Headquarters, 10th Mountain Division, recommended the applicant be tried by Special Court-Martial empowered to adjudge a bad conduct discharge.

i. On 18 July 2002, the line of duty investigation into the government vehicle traffic accident was completed. A (company) hospital report reflects the applicant was ejected from a one vehicle rollover no head trauma with serious injury to his right shoulder. He was treated and released.

j. After consulting with legal counsel on 24 July 2002, he voluntarily requested discharge in lieu of trial by court-martial, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10, in lieu of trial by

court-martial. In doing so, he acknowledged that the charges preferred against him under the UCMJ, authorized the imposition of a bad conduct discharge or dishonorable discharge. He further acknowledged:

- he had not been subjected to coercion with respect to his request for discharge
- he had been advised of the implications that were attached to it
- by submitting the request, he was acknowledging he was guilty of the charges against him or of (a) lesser included offenses therein contained which also authorized imposition of a bad conduct or dishonorable discharge
- he could be discharged under other than honorable conditions and he could be ineligible for many or all benefits administered by VA
- he could be deprived of many or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he could expect to encounter substantial prejudice in civilian life by reason of an under other than honorable conditions discharge
- there was no automatic upgrading of or automatic review of a less than honorable discharge by any Government agency or the Army Board for the Correction of Military Records and that he must apply to either the Army Discharge Review Board or the Army Board for Correction of Military Records
- an act of consideration by either Board does not imply that his discharge would be upgraded
- he was advised he could submit any statements he desired in his own behalf, and elected to do so
- he was advised he could request a physical evaluation prior to separation and he elected not to do so

k. In his written statement, he admitted to being guilty of the charges brought upon him. He described his honorable service in the USMC. He explained his difficulties with his marriage, and the stress it placed upon him in making the choices he made. He continued with his Army service completing PLDC and getting a promotion to sergeant. He was looking for any chance to remain in the Army. His company commander had been helping him to remain in the Army.

l. On 29 July 2002, he company commander recommended approval of his request with a general, under honorable conditions characterization of service.

m. On 13 August 2002, his intermediate commander recommended approval of his request with an under other than honorable conditions characterization of service.

n. On 15 August 202, the separation authority approved his request for discharge, in lieu of court-martial. He directed the applicant's discharge with a general, under honorable conditions discharge.

o. On 23 August 2002, he was discharged. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial, with a characterization of service of under honorable conditions (general). He was credited with completing 1 year, 7 months, and 7 days of net active service. His DD Form 214 shows in:

- block 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) –
 - Navy Achievement Medal
 - Meritorious Unit Commendation (Second Award)
 - Marine Corps Good Conduct Medal
 - National Defense Service Medal
 - Noncommissioned Officer's Professional Development Ribbon
 - Army Service Ribbon
- block 26 (Separation Code) – KFS
- block 26 (Reentry Code) – 3

6. On 25 September 2003, in ABCMR Docket Number AR2003088421, the Board found no basis to grant his request for a medical discharge and denied his requested relief.

7. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request for upgrade of his general, under honorable conditions discharge. He contends he experienced a mental health condition 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 17 January 2001 after serving in the USMC; 2) Court martial charges were preferred against the applicant on 20 June 2002 for two specifications of disobeying lawful commands from his leadership to discontinue dealings with a commissioned officer that would lead to a perceived personal relationship or fraternization and one specification of maintaining a close personal relationship and engaging in sexual intercourse with a commissioned officer, who was the supervisor of the applicant; 3) The applicant was discharged on 23 August 2002, Chapter 10, in lieu of trial by court-martial, with a characterization of service of under honorable (general) conditions .

b. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined.

c. The applicant asserts he experienced mental health conditions, which mitigates his misconduct. There is insufficient evidence the applicant was diagnosed with a mental health condition while on active service. There is sufficient evidence the applicant was in a significant car accident while on active service. He reports experiencing mental health symptoms as a result of this injury, and they were compounded by previous marital problems as well.

d. A review of JLV sufficient evidence the applicant has been diagnosed with service-connected PTSD (SC 30%). He has been engaged in treatment for this condition till present.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced a mental health condition while on active service that mitigates his misconduct. The applicant was diagnosed with service-connected PTSD by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced a mental health condition while on active service that mitigates his misconduct. The applicant was diagnosed with service-connected PTSD by the VA.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is sufficient evidence beyond self-report the applicant experiencing PTSD and potentially other mental health conditions related to his marital problems, while on active service. However, there is no nexus between PTSD and mental health conditions related to marital problems and his misconduct of fraternization in that: 1) this type of misconduct are not a part of the natural history or sequelae of PTSD and mental health conditions related to marital problems; 2) PTSD and mental health conditions related to marital problems do not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record, and published DoD guidance for consideration of discharge upgrade requests, the Board found that relief was warranted.

2. The Board carefully considered the applicant's request, his record and length of service, his prior service, the frequency and nature of his misconduct, his involvement in a motor vehicle accident, the charges brought against him, his request for discharge and the reason for his separation. The Board considered the review by the ARBA medical advisor to include the applicant's VA service-connected PTSD. The Board considered the medical advisor's conclusion that while the applicant has a condition that warrants liberal consideration by the Board and the precipitating incident occurred During service, there is no nexus between PTSD and mental health conditions related to marital problems and his misconduct of fraternization. Based on a preponderance of evidence, to include the applicant's statement, the Board determined that the character of service the applicant received warranted an upgrade as a matter of liberal consideration.

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 23 August 2002 to show in item 24 (Character of Service): Honorable

[REDACTED]

[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. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3-7 provides:

(1) An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. Only the honorable characterization may be awarded a Soldier upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty training or where required under specific reasons for separation unless an entry level status separation (uncharacterized) is warranted.

(2) 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

b. Chapter 10 provided, that a member who has committed an offense or offenses for which the authorized punishment included a punitive discharge may submit a request for discharge 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.

2. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator "KFS" corresponded to "In Lieu of Trial by Court-Martial," and the authority, Army Regulation 635-200, chapter 10.

3. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/Ns) to carefully consider the revised post-traumatic stress disorder (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.

4. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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.

6. Section 1556 of Title 10, U.S. 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//