

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 November 2024

DOCKET NUMBER: AR20240002233

APPLICANT REQUESTS:

- reversal of the recoupment of his Reenlistment Bonus (REB) plus interest and fees
- reinstate his rank to staff sergeant (SSG)/E6, the highest rank held
- change the narrative reason for separation
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) letter, 31 December 2012
- VA rating decision
- Army Discharge Review Board (ADRB) Docket Number AR20200008150
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- DD Form 256A (Honorable Discharge Certificate)
- Excelsior University academic plan
- 4th Brigade, 1st Cavalry Division Order of the Spur certificate

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 the ADRB upgraded his discharge from under other than honorable conditions to honorable, changed the narrative reason for separation from in lieu of trial by court-martial to minor infractions misconduct, and changed the separation authority under the provisions of Army Regulation (AR) 635-200 (Enlisted Active Duty Administrative Separations), chapter 10 (in lieu of trial by court-martial) to AR 635-200, paragraph 14-12a (minor infractions misconduct). He served honorably for 9-years and 4-months and did everything a Soldier was expected to do and advanced through the ranks. He attended many professional military education courses and planned to

continue service in the Army. At the time of his separation from active duty, he was suffering from survivor's guilt and Post-Traumatic Stress Disorder (PTSD). The symptoms that he had included hearing voices, hallucinations and suicidal ideations. He reached out to his chain of command for assistance only to receive a cold response. He turned to illegal substances to numb his emotional pain; this decision cost him his career. Since his discharge, he has turned his life around, going to school at Excelsior University, working full time and caring for his wife who suffers from breast cancer. The Defense Finance and Accounting Service continues to charge him even though his discharge was upgraded.

3. A review of the applicant's service record shows:

a. On 16 January 2001, the applicant enlisted in the Regular Army (RA) and served as a Supply specialist. He served continuously through reenlistments.

b. Enlisted Record Brief shows the applicant served in Iraq during the periods of 9 April 2003 through 8 April 2004 and 5 December 2005 through 28 November 2006 and was awarded the Combat Action Badge. The applicant was suspended from favorable personnel actions on 5 August 2009 and 14 January 2010.

c. On 22 February 2007, the applicant accepted non-judicial punishment for wrongful use of cocaine. His punishment included reduction to the rank/grade of sergeant (SGT)/ E-5, forfeiture of pay, 45-days extra duty and restriction. The applicant appealed his punishment requesting the reduction in rank be suspended as he had become accustomed to earning the base pay of a SSG. The applicant's appeal was denied.

d. On 3 November 2007, when he reenlisted for 6-years he agreed to fulfill the service obligation for a lump sum REB. The DA Form 4789 (Statement of Entitlement to Selective Reenlistment Bonus) stated the applicant understood if he did not complete the full period of service or if he did not remain technically qualified in his military occupational specialty he would have to repay as much of the REB he received for the unexpired portion of his obligated service.

e. On 2 May 2009, the applicant was considered for non-judicial punishment for violating a lawful order: General Orders Number 1 by consuming alcoholic beverages while serving in Iraq. The applicant demanded trial by court-martial. The DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice) shows the applicant's rank was SSG/E6.

f. On 9 September 2009, the applicant received a mental status evaluation for a chapter 14 discharge. The applicant denied suicidal and homicidal ideation and met retention standards. He was screened for PTSD and traumatic brain injury which was

unremarkable. The evaluation revealed no mental health disorders that would be so severe to preclude him from participating in a chapter process. Medical Command (MEDCOM) Form 699-R (Report of Mental Status Evaluation) shows the applicant's rank as SGT/E5. His record is void of evidence of his reduction in rank.

g. On 9 November 2009, the applicant received a mental status evaluation for misconduct separation. He was diagnosed with major depressive disorder, recurrent, moderate; PTSD and alcohol dependence. The applicant met retention standards and there was no psychiatric disease or defect that would warrant disposition through medical channels. Though he met the criteria for major depression and PTSD, it did not rise to the level that would render him unfit for continued service. It was recommended the administrative separation be postponed pending a trial of mental health treatment to address this diagnosis.

h. On 14 January 2010, the applicant was considered for non-judicial punishment for one specification of wrongful use of cocaine and seven specifications of failure to go to his appointed place of duty. The applicant demanded trial by court-martial. DA form 2627 shows the applicant's rank as SGT/E5.

i. On 29 April 2010, the applicant's request for discharge in lieu of trial by court-martial was approved and the separation authority directed he be issued an under other than honorable conditions discharge and reduced to the grade of private (PVT) E-1.

j. On 13 May 2010, the applicant was discharged under the provisions of AR 635-200, chapter 10 with an under other than honorable conditions discharge. DD Form 214 shows the applicant completed 9-years, 3-months, and 28-days of active service. It also shows in items:

- 4a (Grade, Rate or Rank): PV1
- 4b (Pay Grade): E1
- 12i (Effective Date of Pay Grade): 29 April 2010
- 18 (Remarks): the applicant served in Iraq during the periods of 9 April 2003 through 8 April 2004, 5 December 2005 through 28 November 2006 and 11 June 2008 through 15 September 2009
- 24 (Character of Service): Under Other Than Honorable Conditions
- 25 (Separation Authority): AR 635-200, chapter 10
- 26 (Separation Code): KFS
- 28 (Narrative Reason for Separation): In lieu of trial by court-martial

k. On 24 April 2023, the ADRB notified the applicant pertaining to his request for a discharge upgrade. The ADRB determined relief was warranted and the Board voted to upgrade his character of service to honorable and changed the narrative reason for separation to misconduct (minor infractions). The reason for the Board's decision was

his discharge was inequitable based on his PTSD and major depressive disorder which mitigated his cocaine use and failures to report for duty.

I. On 26 April 2023, the Army Review Boards Agency, voided the applicant's original DD Form 214 and issued a corrected DD Form 214 to reflect the applicant was honorably discharged from active duty effective 13 May 2010. It also shows the applicant completed 9-years, 3-months, and 28-days of active service. It shows in items:

- 4a (Grade, Rate or Rank): PV1
- 4b (Pay Grade): E1
- 12i (Effective Date of Pay Grade): 29 April 2010
- 18 (Remarks): the applicant served in Iraq during the periods of 9 April 2003 through 8 April 2004, 5 December 2005 through 28 November 2006 and 11 June 2008 through 15 September 2009 and service characterization was upgraded per ADRB AR20200008150 on 10 April 2023
- 24 (Character of Service): Honorable
- 25 (Separation Authority): AR 635-200, paragraph 14-12a
- 26 (Separation Code): JKN
- 28 (Narrative Reason for Separation): misconduct (minor infractions)

4. The applicant provides:

a. VA letter dated 31 December 2012 which shows the applicant was notified the VA determined his service during the period of 16 January 2001 through 13 May 2010 was honorable for VA purposes which makes him eligible to apply for any of the VA benefits available. He received a post deployment examination on 3 June 2009 where he was diagnosed with PTSD. Additionally, on 9 November 2009, he was not medically cleared by reason of PTSD, major depressive disorder, recurrent, moderate and alcohol dependence. The psychiatry department recommended him for a Medical Evaluation Board.

b. VA rating decision dated 18 April 2018, determined his PTSD was 100 percent disabling. The VA assigned the 100 percent evaluation for his PTSD based on:

- suspiciousness
- depressed mood
- disturbances of motivation and mood
- chronic sleep impairment
- near continuous panic affecting the ability to function independently, appropriately and effectively
- panic attacks more than once a week
- obsessional rituals which interfere with routine activities
- total occupational and social impairment

- difficulty in adapting to stressful circumstances
- inability to establish and maintain effective relationships
- impairment of short and long term memory
- flattened affect
- circumstantial, circumlocutory or stereotyped speech
- anxiety

c. DD Form 256A shows the applicant was honorably discharged from the RA, effective 13 May 2010.

d. Excelsior University academic plan shows the applicant was pursuing a Bachelor of Science in Information Technology. The plan shows which courses the applicant received credit for and which courses he needed to successfully complete towards his degree.

e. 4th Brigade, 1st Cavalry Division Order of the Spur certificate shows the applicant was entered onto the rolls of the Orders of the Spur, effective 4 June 2009.

5. On 24 September 2024, in the processing of this case, the Defense Finance and Accounting Service (DFAS) provided information regarding the applicant's indebtedness. The DFAS official stated the applicant's indebtedness was for the recoupment for unearned portion of his REB. He also had an indebtedness for a forfeiture of pay in the amount of \$1,161.00 per month effective 13 March 2007 that was not fully collected or posted to his account prior to his separation. An additional debt was for an adjustment to his pay and allowances from his demotion from E-5 to E-1 effective 29 April 2010 which was not fully collected prior to his separation. The original debt was \$24,493.47 plus interest, penalties and administrative fees in the amount of \$417.96. The applicant paid \$3,355.40 towards his debt. A debt adjustment lowered his debt by \$1,668.31. An amount of \$19,686.24 of the debt and \$201.48 of the interest, penalties and administrative fees were written off which brought his indebtedness to a balance of \$0.00. The applicant may owe more than \$740.50 as the collection agency may charge additional fees.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's available military records, the Board made the following recommendations:

a. Reversal of the recoupment of his REB. Deny. The Board found the applicant was discharged prior to his contractual obligation being fulfilled on 13 May 2010. The applicant voluntarily accepted a reenlistment bonus predicated on the completion of a specific term of service. The record clearly indicates that the full term of service obligation tied to the bonus was not met. As such, the retention of the full payment is not warranted.

b. Reinstatement of his rank to SSG. Deny. The Board noted the applicant's contention that the Army Discharge Review Board amended his discharge; however, found the applicant did not serve honorably in the rank of SSG and therefore denied relief to reinstate his rank to SSG, his highest rank held.

c. Change the narrative reason for separation. Deny. The Board found no error or injustice in the amended narrative reason for separation as amended by the Army Discharge Review Board and therefore found no relief was warranted for an additional amendment.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

■ ■ ■ DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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



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, 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 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 (AR) 15-185 (ABCMR) 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.

3. AR 600-4 (Remission or Cancellation of Indebtedness) in accordance with the authority of Title 10 USC, section 4837, the Secretary of the Army may remit or cancel a Soldier's debt to the U.S. Army if such action is in the best interests of the United States. Indebtedness to the U.S. Army that may not be canceled under Title 10 USC, section 4837 when the debt is incurred while not on active duty or in an active status.

4. Title 37 USC, section 308 (Reenlistment Bonus), (d) A member who does not complete the term of enlistment for which a bonus was paid to the member under this section, or a member who is not technically qualified in the skill for which a bonus was paid to the member under this section, shall be subject to the repayment.

5. Title 37 USC, section 331 (General bonus authority for enlisted members), (a) The Secretary concerned may pay a bonus under this section to a person, including a member of the armed forces, who:

- enlists in an armed force
- enlists in or affiliates with a reserve component of an armed force
- reenlists, voluntarily extends an enlistment, or otherwise agrees to serve
- for a specified period in a designated career field, skill, or unit of an armed force
- under other conditions of service in an armed force

(g) (Repayment), a person or member who receives a bonus under this section and who fails to complete the period of service, or meet the conditions of service, for which the bonus is paid, as specified in the written agreement under subsection (d), shall be subject to the repayment.

6. AR 600-8-19 (Enlisted Promotions and Reductions), in effect at the time, prescribes the enlisted promotions and reductions function of the military personnel system.

Paragraph 10-15, approved for discharge from the service under other than honorable conditions a. When the separation authority determines that a Soldier is to be discharged from the Service under other than honorable conditions, the Soldier will be reduced to the lowest enlisted grade. Further board action is not required for this reduction.

7. AR 27-10 (Military Justice), in effect at the time, prescribes the policies and procedures pertaining to the administration of military justice and implements the Manual for Courts-Martial (MCM), United States, 2005, hereafter referred to as the MCM and the Rules for Courts-Martial (R.C.M.) contained in the MCM. Paragraph 3-19(6) (d) (Void reduction), any portion of a reduction under Article 15 beyond the imposing commander's authority to reduce is void and must be set aside. Where a commander reduces a Soldier below a grade to which the commander is authorized to reduce and if the circumstances of the case indicate that the commander was authorized and intended to reduce the Soldier at least one grade, a one-grade reduction may be approved. Also, if a reduction is to a lower specialist grade when reduction should have been to a lower NCO grade (or vice versa), administrative action will be taken to place the offender in the proper rank for the MOS held in the reduced pay grade. All rights, privileges, and property, including pay and allowances, of which a Soldier was deprived by a reduction that has been set aside must be restored.

8. AR 635-200 (Active Duty Enlisted Administrative Separations) in effect at the time, sets 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. Readiness is promoted by maintaining high standards of conduct and performance.

a. Paragraph 1-13 (Reduction in grade), when a Soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade per AR 600-8-19, chapter 10.

b. Paragraph 5-3 (Secretarial plenary authority), a. Separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums.

c. Paragraph 14-3 (Characterization of service or description of separation), 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 such is merited by the Soldier's overall record. When a Soldier has

completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate. (1) A characterization of honorable may be approved only by the commander exercising general court-martial jurisdiction, or higher authority, unless authority is delegated. (2) A commander exercising general court-martial jurisdiction may delegate authority to the special court-martial convening authority to approve separation with service characterized as honorable when the sole evidence of misconduct is urinalysis results, which cannot be used for characterization of service or when an administrative discharge board has recommended separation with an honorable discharge.

d. Paragraph 14-4 (Authority for discharge or retention), the separation authority is authorized to order discharge or direct retention in military service when disposition of a Soldier has been made by a domestic court of the United States or its territorial possessions. Upon determination that a Soldier is to be separated with a discharge under other than honorable conditions, the separation authority will direct reduction to the lowest enlisted grade by the reduction authority.

//NOTHING FOLLOWS//