

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 November 2024

DOCKET NUMBER: AR20240002593

APPLICANT REQUESTS:

- Upgrade his under other than honorable conditions discharge
- Revise item 28 (Narrative Reason for Separation) on his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show "Secretarial Authority"

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

- DD Form 149 (Application for Correction of Military Record)
- Exhibit A – Applicant's Declaration
- Exhibit B – DA Form 3822-R (Report of Mental Status Evaluation)
- Exhibit C – Standard Form 600 (Chronological Record of Medical Care), Physician's Assistant Check-In Sheet
- Exhibit D – Department of Veterans Affairs (VA) Administrative Decision
- Exhibit E – DD Form 214
- Exhibit F – Letter of Support from Mr. E__ W__
- Exhibit G – Letter of Support from Ms. L__ K. M__
- Exhibit H – Redacted Record of Proceedings for Army Board for Correction of Military Records (ABCMR) Docket Number AR20210007058
- Exhibit I – Commander's Separation Recommendation Memorandum
- Exhibit J – "Hagel Memo"
- Exhibit K – "Carson Memo"
- Exhibit L – "Kurta Memo"
- Exhibit M – "Wilkie Memo"

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's counsel states the Board must view the applicant's requests within the context of liberal consideration and, given that the Army diagnosed this condition while he was still on active duty, the Board should determine his PTSD is mitigating,.

a. Counsel summarizes the applicant's background and describes his deployments, marriage deterioration, drug use, and ultimate adverse separation. In addition, counsel addresses the applicant accomplishments while in the Army, as well as his post-service achievements. After arguing the Board should find the applicant's petition was timely and that his requests warrant liberal consideration, counsel contends the following:

(1) The "Kurta Memo's" four-question framework supports the Board's granting of an upgrade:

- The applicant had a mitigating condition: PTSD; however, even without a PTSD diagnosis, the "Kurta Memo" instructs the Board to give "liberal consideration of evidence that may support the existence of such a condition"
- The condition existed while the applicant was on active duty
- The applicant's PTSD excuses or mitigates the conduct that led to his discharge, and his marijuana use, the basis for his separation, is directly related to his PTSD
- The applicant's PTSD outweighs the discharge he received; the "Kurta Memo" states, "substance-seeking behavior and efforts to self-medicate symptoms of a mental health condition may warrant consideration"; also, unlike in 2008, recreational marijuana use is now legal in 24 states

(2) Counsel goes on to contend that the requirements outlined in the "Wilkie Memo" also support an upgraded character of service.

(a) First, the applicant's positive post-service conduct strongly supports an upgrade. "Over 15 years have passed since (applicant's) separation from the military, and since then, he has undergone significant personal growth personally and professionally."

(b) Second, the applicant's character and reputation supports granting relief. In support, the applicant offers letters of support, attesting to his "honesty, commitment, and generosity."

(c) Third, the Board should give weight to the applicant's candor and acceptance of responsibility for his actions.

(d) Lastly, "the requested relief is necessary. His 'other than honorable conditions' discharge characterization – which, as explained above, is strongly

connected to his PTSD from his back-to-back tours in Iraq – has prevented him from receiving the disability benefits he needs and deserves for his military service."

b. Counsel concludes by stating, "[applicant's] service-related PTSD led him to use marijuana to cope with his symptoms, which led to his discharge. Fifteen years later, his post-discharge life has been overwhelmingly positive, as corroborated by character reference letters submitted in support of this application. Based on the totality of the facts detailed above, upgrading his discharge is necessary to 'remove an injustice.'"

3. Counsel provides the following documents:

a. A self-authored letter, which states:

(1) The applicant states he grew up in a military family. His father, uncles, and grandfather all served, and he was eager to follow in their footsteps, so he joined Junior Reserve Officers' Training Corps while still in high school and enlisted in the U.S. Army Delayed Entry Program, in June 2001; in June 2002, he entered active duty at 18 years of age.

(2) The applicant first deployed to Iraq as a military policeman in March 2004, and while deployed, he performed duties as a security guard at a prison that housed enemy combatants; he was constantly aware of how dangerous the prisoners were, and, when he sat in on interrogations, he heard the detailed and horrific plans made by suicide bombers. Additionally, his base was a consistent target for the insurgents, and they often launched rocket-propelled grenades (RPG) over the base's perimeter. In one case, an RPG landed right next to his trailer; fortunately, no one was injured, but this event reinforced how random the attacks could be, and that uncertainty hung over the applicant like a dark cloud.

(3) The applicant redeployed in March 2005, and soon after, he began to have post-traumatic stress disorder (PTSD) symptoms. Although he tried to minimize what he was experiencing, he nonetheless felt paranoid and anxious and became terrified to have his back to the door. He also started to have recurring nightmares and loud noises would trigger memories of improvised explosive device (IED) detonations.

(4) In July 2006, he married another Soldier, and shortly thereafter, in October 2006, he deployed again to Iraq. Initially his wife joined him on the deployment, but within 3 weeks of their arrival, they learned she was pregnant, so the Army sent her home.

(5) As with his first deployment, the applicant again served as a security guard for prisoners. This time, the prisoners had been found guilty of violent crimes and, again, he feared for his safety and the well-being of his fellow Soldiers. When they went on missions outside the prison, the applicant was typically in the gunner position of the

truck and had the responsibility of being the "eyes" of security for the passengers. He found that being constantly surrounded by threats made him even more paranoid.

(6) In June 2007, the applicant was able to briefly return home for the birth of his first child; upon returning to Iraq, he learned a fellow Soldier had taken his own life, and seeing his body being carried away has remained forever burned into his mind.

(7) The applicant completed his second deployment in December 2007 and his PTSD symptoms worsened; he had nightmares and uncomfortable jerking motions while sleeping; he also was becoming hyper vigilant and increasingly angry, and this, in turn, led to relationship problems with his wife. In 2008, doctors diagnosed him with PTSD, and they prescribed anti-depressants to help manage his symptoms. Unfortunately, he continued to have anger issues and, on a night in May 2008, he and his wife argued about their child; their quarreling escalated into a physical confrontation and the military police were called and both he and his wife were charged with assault. The applicant received nonjudicial punishment (NJP), under Article 15, Uniform Code of Military Justice (UCMJ) and was demoted to private first class (PFC)/E-3. He still regrets the way he acted that night.

(8) Between July and September 2008, he tested positive for marijuana four times; this resulted in his further demotion to private (PV1)/E-1. Due to his marijuana use and behavioral health issues, he attended marital, anger management, and PTSD counseling. In light of all that had occurred, his command recommended him for separation. He requested a conditional waiver, but the command denied his request and he went before an administrative separation board; the board recommended his separation with an under other than honorable conditions character of service. In December 2008, the Army separated him for "Misconduct (Drug Abuse)."

(9) The applicant notes that, even though he ended up with an adverse separation, his previous command recognized him with numerous awards, to include an Army Commendation Medal, two Army Achievement Medals, and the Army Good Conduct Medal. He regrets the misconduct that ultimately led to his discharge, and he accepts full responsibility for his actions. Since leaving the Army, he has worked hard to be a contributing member of society; he had earned a bachelor's degree and currently works as an office manager for a provider of infrastructure solutions for energy utilities/telecommunications businesses. Additionally, he is active in his church and helps to lead the children's choir.

(10) The applicant has applied for and been denied VA benefits twice; on his last attempt, a VA representative suggested he request an upgrade. He was able to obtain legal assistance for the preparation of this application.

(11) The applicant provides documents from his service record, which include

proof that Army physicians diagnosed him with PTSD while on active duty; in addition, he submits a VA administrative decision denying him access to VA benefits.

b. Counsel additionally offers copies of the DOD memoranda that outline guidance for Correction of Military Records Boards when considering upgrades of adverse discharges.

c. The two letters of support submitted by the applicant affirm that he is a person of "remarkable ability to overcome challenges and emerge stronger on the other side." The letters further reflect that the applicant actions post-service have demonstrated his strong character and an unwavering commitment to self-improvement and making a positive impact on his community.

d. An Administrative Decision, by the VA, undated, which stated the applicant's claim was administratively denied due to his Other Than Honorable Conditions Discharge.

e. ABCMR Docket Number AR20210007058, 23 November 2021, which is another Soldier's case who had PTSD and their request for an upgrade to their characterization of service was favorably granted by the Board.

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

a. On 7 June 2002, the applicant enlisted into the Regular Army for 5 years; upon his entry on active duty, he was 18 years old. After completing initial entry training and being awarded military occupational specialty 31B (Military Police (MP)), orders assigned him to a military police company at Fort Hood, TX (now renamed Fort Cavazos); he arrived at his first duty station, on or about 24 October 2002.

b. On 6 March 2004, the applicant deployed to Iraq; he redeployed, on 8 March 2005. He deployed a second time to Iraq, on 23 October 2006. On 1 July 2007, the applicant's leadership promoted him to specialist (SPC)/E-4. On 8 November 2007, while still deployed, the applicant immediately reenlisted for 3 years. As part of his reenlistment, the applicant requested reassignment to Fort Rucker, AL. He redeployed to Fort Hood, on 24 December 2007.

c. On or about 10 April 2008, permanent change of station orders transferred the applicant to a military police unit at Fort Rucker. On three occasions within a 15-day period (respectively, on 21 July, 26 July, and 4 August 2008), the applicant submitted urine samples for urinalysis testing and, in each case, the results were positive for THC (Tetrahydrocannabinol, the active main psychoactive ingredient in marijuana).

d. On 21 August 2008, a licensed psychologist provided a report mental status evaluation (DA Form 3822-R) pertaining to the applicant. The report stated:

(1) "Relevant History. This Soldier has tested positive for marijuana use while working as a Military Police. He has attended ASAP (Army Substance Abuse Program) classes and states he has stopped using the drug. This Soldier has also been diagnosed with PTSD related to combat experiences in Iraq."

(2) "Diagnosis: Axis I: 305.20 Cannabis Abuse; 309.81 PTSD, combat related, mild." "Axis II: V71-09 No Diagnosis."

(3) "Findings: This Soldier meets the medical retention standards prescribed in AR (Army Regulation) 40-501 (Standards of Medical Fitness), chapter 3 (Medical Fitness Standards for Retention and Separation, Including Retirement). There is no psychiatric disease or defect on Axis I, above, that warrants disposition by a Medical Evaluation Board (MEB). Any Axis I condition noted above does not render this Soldier unfit or is not severe enough to warrant a MEB."

e. On 26 August 2008 (18 days after his last urinalysis), the applicant submitted another urine sample and the results were positive for THC. On 17 September 2008, and consistent with the applicant's pleas, a summary court-martial found the applicant guilty of three specifications of wrongful marijuana use (Article 112a, Uniform Code of Military Justice (UCMJ)). The court sentenced the applicant to 14-days' confinement and reduction to private (PV1)/E-1. On 24 September 2008, the summary court-martial convening authority approved the sentence and ordered its execution.

f. On 1 October 2008, the applicant's company commander informed him, via memorandum, that he was initiating separation action against the applicant, under the provisions of paragraph 14-12c (2) (Acts or Patterns of Misconduct – Commission of a Serious Offense – Abuse of Illegal Drugs), chapter 14 (Separation for Misconduct), AR 635-200 (Active Duty Enlisted Administrative Separations).

(1) The commander based this action on the applicant's four positive urinalysis tests (21 July, 26 July, 4 August, and 26 August 2008).

(2) The commander additionally stated he would be recommending the applicant for an under other than honorable conditions character of service, but the final decision rested with the separation authority.

g. Also, on 1 October 2008, the applicant's commander prepared his separation recommendation, wherein the commander reported that, on 22 July 2008, the applicant had accepted NJP for violating Article 128 (Assault), UCMJ; the punishment included

reduction to private first class (PFC)/E-3. The commander additionally noted the applicant's awards and that he had been referred to ASAP.

h. On 2 October 2008, after consulting with counsel, the applicant affirmed that counsel had advised him of the basis for his pending separation action and had informed him of his rights and the effect of waiving those rights.

(1) The applicant further acknowledged he was entitled to have his case heard by an administrative separation board, and he offered to voluntarily waive the board if the separation authority agreed to give him a character of service no less favorable than under honorable conditions (general).

(2) In the event the separation authority did not approve his offer, the applicant requested to personally appear with counsel before an administrative separation board.

(3) At some point prior to 17 November 2008, the separation authority disapproved the applicant's conditional waiver and directed the convening of an administrative separation board.

i. On 17 November 2008, the applicant appeared with counsel before the board. After reviewing documentary evidence and hearing testimony from noncommissioned officers and the applicant's father, board found the applicant had tested positive for marijuana on four occasions and, as such, had committed a serious offense, per paragraph 14-12c (2), AR 635-200. The board recommended the applicant's separation under other than honorable conditions.

j. On 11 December 2008, the separation authority approved the board's findings and recommendations and directed the applicant's under other than honorable conditions discharge; on 17 December 2008, orders separated the applicant accordingly.

k. The applicant's DD Form 214 shows he completed 6 years, 6 months, and 11 days of net active duty service, of which 1 year, 1 month, and 10 days were served on his immediate reenlistment contract. The report additionally reflects the following:

(1) Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized):

- Army Commendation Medal
- Army Achievement Medal (2nd Award)
- Army Good Conduct Medal (1st Award)
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal

- Humanitarian Service Medal
- Iraq Campaign Medal with three bronze service stars
- Army Service Ribbon
- Overseas Service Ribbon with Numeral "2"

(2) Item 18 (Remarks) does not show the applicant's continuous honorable service, from 20020607 until 20071107.

(3) Special Additional Information:

- Item 25 (Separation Authority) – AR 635-200, paragraph 14-12c (2)
- Item 26 (Separation (Separation Program Designator (SPD) Code) – "JKK"
- Item 27 (Reentry (RE) Code) – RE-3
- Item 28 (Narrative Reason for Separation) – Misconduct (Drug Abuse)

6. There is no indication the applicant applied to the Army Discharge Review Board for an upgraded character of service within the 15-year statute of limitations.

7. Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Commanders could initiate separation action when they determined a Soldier had committed serious misconduct and could clearly establish rehabilitation was impracticable or unlikely to succeed. Paragraph 14-12c (Commission of a Serious Offense) applied to Soldiers who committed a serious military or civilian offense, for which the Uniform Code of Military Justice (UCMJ) authorized a punitive discharge for the same or similar offense.

8. Based on the counsel's claim that the applicant has PTSD, this case will be reviewed and discussed by the Behavior Health Staff at the Army Review Boards Agency.

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions discharge and to revise the narrative reason for separation on his DD Form 214 to show "Secretarial Authority." On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD) is related to his request. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) the applicant enlisted in the Regular Army (RA) on 07 June 2002 as a 31B (Military Police (MP)), 2) the applicant was deployed to Iraq from 06 March 2004 to 08 March 2005. He deployed to Iraq a second time from 23 October 2006 to 24 December 2007, 3) the applicant submitted three urinalysis samples on different dates (21 July, 26 July, and 4 August 2008) and each of the samples were positive for THC, 4) the applicant underwent a Mental Status Evaluation (MSE) on 21 August 2008 and it was noted that he tested

positive for marijuana use, attended the Army Substance Abuse Program (ASAP) classes, and had since stopped using the drug. It was also noted that he had been diagnosed with PTSD related to combat experiences in Iraq. The provider noted the applicant met medical retention standards IAW AR 40-501 and did not warrant disposition through medical channels, 5) on 26 August 2008, the applicant submitted another urine sample which was positive for THC. On 17 September 2008, a summary court-martial found the applicant guilty of three specifications of wrongful marijuana use, 6) on 01 October 2008, the applicant's commander notified him that he was initiating a separation action against him under the provisions of Army Regulation (AR) 635-200, paragraph 14-12c (Acts of Misconduct-Commission of a Serious Offense-Abuse of Illegal Drugs) and based this action on the applicant's four positive urinalysis tests. The applicant was discharged on 17 December 2008 under the provisions of AR 635-200, paragraph 14-12c, a separation program designator code of JDD, reentry code of 'RE-3,' and narrative reason for separation as Misconduct (Drug Abuse), 7) the applicant's DD Form 214 shows he received numerous Medals and Awards during his service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. In-service medical records were available for review via JLV from 18 August 2005 through 03 November 2008. A Social Work Care Management note dated 31 August 2006 shows he was seen as part of a Post-Deployment Health Reassessment (PDHRA); however, the provider did not note any symptoms or diagnosis in the note though did indicate he was to follow-up in the ADAPCP clinic. A referral reviewed on 01 October 2006 shows the applicant reported daily use of alcohol with an inability to stop drinking and desired treatment for alcohol abuse. His next BH note was dated 02 May 2008 through the Family Advocacy Program (FAP) as the alleged victim/offender of intimate partner abuse. FAP records show a diagnosis of Other Specified Family Circumstances. Records show that he successfully completed anger management group on 12 August 2008 and continued to meet with his FAP provider until 03 November 2008. The applicant presented to BH on 30 May 2008 for a PTSD screening. It was noted that the applicant reported serving two tours in Iraq guarding Iraqi prisoners and providing convoy security. He endorsed experiencing symptoms of avoidance, hyperarousal, and re-experiencing which the provider noted to be mild. The provider diagnosed with applicant with Posttraumatic Stress Disorder (PTSD) with a plan to follow-up with BH and to discuss possible medications. At the time of follow-up on 03 June 2008, it was noted that the applicant was interested in attending the CPT Group (Cognitive Processing Therapy). His diagnosis of PTSD was continued, and he was referred to psychiatry to discuss medication management of his symptoms. There is an initial evaluation report by an MD dated 02 July 2008 scanned into his record [*Advisor's Note: the provider's specialty not specified though presumed to be psychiatry given*

previous referral]. It was noted that the applicant reported having problems with alcohol in the past and has had problems with irritability since his first deployment as well as with sleep, increasing anxiety, and 'rage episodes at times in his interactions with his wife.' It was noted there had been another episode recently and has not had anything to drink since June. The provider diagnosed the applicant with Adjustment Disorder with Depressed Mood, Rule out PTSD, Partner Relationship Problem, and Phase of Life Problem. He was started on Celexa (antidepressant) and Desyrel (also known as Trazodone, typically used for sleep). The prescribing physician added PTSD to the applicant's diagnoses on 25 August 2008 and noted he would continue use of Desyrel at night. On 09 July 2008, it was documented that he started CPT for PTSD and it appears he was able to complete 3 of 12 sessions prior to his discharge. On 21 August 2008, the applicant underwent an MSE for Chapter separation [*Advisor's Note:* it was documented as Chapter 13 but presumed to be a typo as he was discharged under Chapter 14]. The domains of the MSE were within normal limits (WNL). The provider diagnosed the applicant with Cannabis Abuse and PTSD, combat related, mild. It was noted that he met medical retention standards IAW AR 40-501 and did not warrant disposition through medical channels. Furthermore, it was noted that any Axis I condition (i.e., PTSD) noted on the evaluation did not render the Soldier unfit or is not severe enough to warrant a Medical Evaluation Board (MEB). It was further indicated that he was mentally sound, was able to appreciate the wrongfulness of his conduct, and had the capacity to understand and participate in any administrative proceedings. He was seen in the Substance Abuse Rehabilitation clinic on 24 September 2008 and was provided psychoeducation about alcohol use.

d. A review of JLV shows the applicant is not service-connected through the VA for any conditions. As part of his application, the applicant provided a letter from the VA dated 28 February 2012 showing that his claim for compensation had been denied as his service from 07 June 2002 to 17 December 2008 was not honorable for VA purposes.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence that the applicant had a BH condition in service that is potentially mitigating. Records show that he was diagnosed with PTSD in service. His in-service diagnosis of Adjustment Disorder with Depressed Mood is subsumed by his diagnosis of PTSD. His diagnoses of Partner Relationship Problem, Phase of Life Problem, and Other Specified Family Circumstances are not constituted as mitigating conditions. As there is an association between self-medicating with substances and avoidance behaviors, there is a nexus between his misconduct of marijuana use and diagnosis of PTSD. As such, BH mitigation is supported.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with PTSD in-service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with PTSD in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Review of the applicant's in-service medical records shows that he was diagnosed with PTSD which was attributed to his service to his service in Iraq. Substance use is often a self-medicating behavior, used to avoid and mask symptoms, and can be associated with the natural history and sequelae of numerous disorders, to include trauma. As there is an association between substance use and avoidance behaviors, there is a nexus between his misconduct of marijuana use and diagnosis of PTSD. As such, BH mitigation is supported.

BOARD DISCUSSION:

After reviewing the application and to all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. One potential outcome discussed was to grant relief by upgrading the applicant's characterization of service to Honorable based upon the lengthy period of honorable service completed and the mitigation for the misconduct found by the medical advisor. However, based upon the misconduct involved and the mitigation found by the medical advisor, the Board concluded a more fair and equitable outcome was to upgrade the characterization of service to General, Under Honorable Conditions.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	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 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:

- Characterization of Service: Under Honorable Conditions (General)
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

2. Prior to closing the case, the Board noted the administrative note below from the analyst of record and recommended that change also be completed to more accurately reflect the military service of the applicant.

[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.

ADMINISTRATIVE NOTE(S):

Add the following comment to Item 18 (Remarks) of the applicant's DD Form 214, ending 17 December 2008: "CONTINUOUS HONORABLE SERVICE FROM 20020607 UNTIL 20071107."

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Title 10, USC, section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

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

a. Paragraph 3-7a (Honorable Discharge) stated an honorable discharge was separation with honor.

(1) Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense.

(2) Separation authorities could furnish an honorable discharge when subsequent honest and faithful service over a greater period outweighed disqualifying entries in the Soldier's military record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 3-7b (General Discharge) stated a general discharge was a separation from the Army under honorable conditions. When authorized, separation authorities issued general discharges to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 5-3 (Secretarial Plenary Authority). 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.

d. Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Commanders could initiate separation action when they determined a Soldier had committed serious misconduct

and could clearly establish rehabilitation was impracticable or unlikely to succeed. Paragraph 14-12c (Commission of a Serious Offense) applied to Soldiers who committed a serious military or civilian offense, for which the Uniform Code of Military Justice (UCMJ) authorized a punitive discharge for the same or similar offense.

(1) The regulation deemed the abuse of illegal drugs as a serious offense, and the UCMJ authorized a punitive discharge for the wrongful use of controlled substances (to include marijuana). However, the regulation stated relevant facts might mitigate the nature of the offense. As such, commanders could combine a single drug offense with one or more minor disciplinary infractions or incidents of other misconduct.

(2) The regulation required the separation processing of all Soldiers against whom charges were not referred to a court-martial authorized to impose a punitive discharge, or for whom separation action under chapter 9 (Alcohol or Other Drug Abuse Rehabilitation Failure) was not contemplated.

(3) An under other than honorable conditions character of service was normally appropriate for chapter 14 discharges, but the separation authority could direct a general discharge under honorable conditions, if warranted by the Soldier's overall service record.

4. The Manual for Courts-Martial, in effect at the time, showed Article 112a (Wrongful Use, Possession, etc. of Controlled Substances) included a punitive discharge among its maximum punishments.

5. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation. In paragraph 2-4 (Completing the DD Form 214), the regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD) Codes) for the appropriate entries in item 28 (Narrative Reason for Separation). For item 27 (Reenlistment Code), the regulation referred preparers to AR 601-210 (Active and Reserve Components Enlistment Program).

6. AR 635-5-1, in effect at the time, defined separation codes and narrative reasons for separation to be entered on the DD Form 214. For Soldiers separated pursuant to paragraph 14-12c (2), AR 635-200, the assigned SPD code is "JKK" and the narrative reason for separation was, "Misconduct (Drug Abuse)."

7. AR 601-210 covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army and Reserve Components.

a. Table 3-1 (U.S. Army RE Codes) lists the following:

- RE-1 applies to Soldiers completing their term of active service who are considered qualified to reenter the U.S. Army; they are qualified for enlistment if all other criteria are met
- RE-3 issued to Soldiers show are not fully qualified for reentry, but the disqualification(s) may be waived

b. Paragraph 4-13 (Prior Military Service) stated any prior service applicant enlisting into the Regular Army could not have a waiver processed until 24 months had elapsed from his/her separation date when the Soldier had been separated for misconduct.

c. Paragraph 4-25 (Nonwaiver Disqualifying Separations or Discharges). Persons with prior service who were discharged from any component of the Armed Forces for drug abuse were deemed to have a nonwaivable disqualification.

8. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised 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.

9. 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 (DRBs) and Board for Correction of Military/Naval Records (BCM/NRs) 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 (PTSD); Traumatic Brain Injury (TBI); sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to 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.

10. 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, 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.

/NOTHING FOLLOWS//