

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 November 2024

DOCKET NUMBER: AR20240003183

APPLICANT REQUESTS: mother of deceased former service member (SM), requests restoration of her late son's rank and grade to specialist (SPC)/E-4. restoration of her deceased son's rank,

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant Personal Statement
- Newspaper Article
- SM's Death Certificate
- SM's Voided DD Form 214 (certificate of Release or Discharge from Active Duty)
- Army Discharge Review Board Grant Decision
- SM's Reissued DD Form 214 and Honorable Discharge Certificate
- SM's Department of Veterans Affairs Rating Decisions
- Report of Investigation – Coroner Report, Summary of Investigation, and Autopsy
- Applicant's Driver License
- Letters of Authority for Personal Representative, Estate of SM

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 for purposes of her application for rank restoration, she would like to note that the Army Discharge Review Board's (ADRB) decision confirms that her deceased son was reduced in rank from E-4 to E-2 in conjunction with the misconduct that led to his discharge (page 2, para. h); and that the ADRB already found that all four Kurta Memo factors apply such that the misconduct is mitigated by his in- service mental health conditions (page 6, para. a). The ADRB granted the relief that was in its power (upgrade to Honorable, change to narrative reason) but did not have the legal power to restore rank, which is why one has to apply to the Army Board for Correction of Military Records. She asks the Board to consider the above helpful portions of the

ADRB's decision which I am hoping will be equally persuasive for the ABCMR. [Note: The applicant marked PTSD (post-traumatic stress disorder), TBI (traumatic brain injury) and Other Mental Health on her application].

3. The SM enlisted in the Regular Army on 24 September 2008 in the rank/grade of private/E-1. He was trained in and held military occupational specialty 91D, Power Generation Equipment Repairer.

a. The SM served in Iraq from 15 October 2009 to 24 July 2010. He reenlisted on 1 March 2010. He also served in Afghanistan from 22 June 2011 to 20 June 2012.

b. The SM's Enlisted Record Brief shows in Section III, Service Data, his date of rank (DOR) for various promotions or reductions:

- Private/E-1 DOR, 7 May 2010 (implying reduction)
- Private/E-2 DOR, 29 January 2013 (implying reduction)
- Private First Class/E-3 DOR, 1 April 2011 (implying reduction)
- Specialist/E-4 DOR, 1 October 2011 (implying reduction)

c. According to the SM's Enlisted Record Brief, he had been reduced to PV2 (29 January 2013) prior to the initiation of separation action against him [implying nonjudicial punishment]

d. The SM's complete separation packet is not available for review. However, two documents are available. They show:

(1) Memorandum, 8 March 2013, from the Brigade Judge Advocate to the Commander, 8th Military Police Brigade, 8th Theater Sustainment Command, Schofield Barracks, Hawaii, Subject: Separation Under Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-I2c, Commission of a Serious Offense, [SM, PV2, 58th Military Police Company, 728th Military Police Battalion, Schofield Barracks, Hawaii. It states: The Brigade Judge Advocate reviewed the enclosed separation packet on the SM and found the separation is legally sufficient. The chain of command recommends a general, under honorable conditions characterization of service. The separation authority may take one of the following actions:

- Approve the separation with a General, Under Honorable Conditions characterization service.
- Approve and suspend the execution up to 12 months.
- Disapprove the separation action and direct retention.
- Disapprove the separation action and direct reassignment to another unit.

(2) Memorandum, 8 March 2013, from the separation authority, 8th Military Police Brigade, Subject: Separation Under AR 635-200, Chapter 14-12c, Commission of a Serious Offense, [SM, PV2, 58th Military Police Company, 728th Military Police Battalion, Schofield Barracks, Hawaii]. It states the separation authority reviewed the enclosed separation packet on [SM]. After careful consideration of all matters, the separation authority directed this Soldier be discharged from the Army and furnished a General, Under Honorable Conditions Discharge Certificate.

e. On 12 March 2013, U.S. Army Garrison, Schofield Barracks, published Orders 071-0007 reassigning the SM to the U.S. Army transition point shown for transition processing on 15 March 2013. The separation orders listed his grade as PV2.

f. The SM was discharged from active duty on 15 March 2013. His DD Form 214 shows he was discharged in accordance with chapter 14-12c (serious offense) of AR 635-200 with a general, under honorable conditions character of service (Separation Code JKN and Reentry Code 3). He completed 4 years, 5 months, and 22 days of active service. His DD Form 214 shows in:

- Block 4a (Grade, Rate or Rank) and 4b (Pay Grade) PV2 and E-2
- Block 12i (Effective Date of Pay Grade) 2013-01-29

4. On 11 December 2023, the Army Discharge Review Board (ADRB) determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury, Anxiety, and Cyclothymic Disorder outweighing the applicant's basis of separation (drug abuse). Therefore, the ADRB voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions) with a corresponding separation code of JKN. The ADRB determined the reentry code is proper and equitable and voted not to change it.

5. As a result, the SM's DD Form 214 was voided. The SM was reissued a new DD Form 214 that shows he was discharged in accordance with chapter 14-12a (minor infractions) of AR 635-200 with an honorable character of service (Separation Code JKN and Reentry Code 3). His DD Form 214 shows in:

- Block 4a (Grade, Rate or Rank) and 4b (Pay Grade) PV2 and E-2
- Block 12i (Effective Date of Pay Grade) 2013-01-29

5. The applicant provides the SM's VA Rating Decisions as well as his death certificate and summary of an investigation related to his death.

6. MEDICAL REVIEW:

a. The applicant, mother of deceased former service member (FSM), is applying to the ABCMR requesting restoration of the FSM's rank and grade to specialist (SPC)/E-4. She contends the FSM's experience of traumatic brain injury (TBI) and mental health conditions including PTSD are related to her 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 FSM enlisted in the Regular Army on 24 September 2008; 2) The FSM served in Iraq from 15 October 2009 to 24 July 2010. He also served in Afghanistan from 22 June 2011 to 20 June 2012; 3) The FSM's complete separation packet is not available for review. However, there is evidence he was promoted to SPC on 01 October 2011 and was reduced to PV2 on 29 January 2013 prior to the initiation of separation action against him; 4) The FSM was discharged from active duty on 15 March 2013, Chapter 14-12c (serious offense) of AR 635-200 with a general, under honorable conditions character of service; 5) On 11 December 2023, the Army Discharge Review Board (ADRB) determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury, Anxiety, and Cyclothymic Disorder outweighing the FSM's basis of separation (drug abuse). Therefore, the ADRB voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions) with a corresponding separation code of JKN. The ADRB determined the reentry code is proper and equitable and voted not to change it.

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

c. The applicant asserts the FSM was experiencing TBI and other mental health conditions including PTSD while on active service. There is evidence the applicant was first seen by behavioral health services during a Mental Status Evaluation, on 10 May 2010, while deployed to Iraq as part of Chapter separation proceedings. The specific nature of the Chapter proceeding was not provided in the medical or military record. The FSM was diagnosed with an occupational problem and an adjustment disorder, and he was cleared to participate in administrative proceedings. The FSM also requested to continue to attend follow-up individual therapy appointments, and he was seen for a few individual sessions before redeploying home. The FSM also reported symptoms of PTSD during his PDHRA after returning from this initial deployment. At the FSM's next duty station, he continued to seek behavioral health treatment and was diagnosed with an anxiety disorder in April 2011 and was treated predominately with psychiatric medication. The FSM then deployed again to Afghanistan. After returning from this deployment, the FSM was continuing to report anxiety and depression. He also reported

difficulties related to a concussion. He continued to attend psychiatric medication management appointments, and he started individual and group therapy. Later, he was also referred to substance abuse treatment in January 2013 and diagnosed with cannabis dependence. In March 2013, the FSM was seen as an emergency appointment due to his delusional thinking, and he was diagnosed with psychosis and delusional disorder. The FSM admitted to continued use of illicit drugs and having difficult time maintaining sobriety after returning from his second deployment. The FSM's command was engaged in efforts to administratively separate him for patterns of misconduct. The FSM was admitted into inpatient psychiatric treatment where he was recommended and cleared from a psychiatric perspective for an administrative separation. The FSM was again admitted into a military psychiatric inpatient treatment program after his discharge on an emergency basis, and he was discharged to the Honolulu International Airport on 31 March 2013.

d. A review of JLV provided evidence the FSM began to engage with the VA immediately upon discharge. He was provided assistance for homelessness and mental health, substance abuse, and medical treatment. He was diagnosed service-connected PTSD (100%SC) and migraine headaches (50%SC). The FSM was actively engaged in treatment till he passed on 16 July 2021.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence to support the FSM had a condition or experience that mitigates his drug use.

f. Kurta Questions:

(1) Did the FSM have a condition or experience that may excuse or mitigate the discharge? Yes, the FSM was diagnosed with a TBI during his active service and an anxiety disorder, psychosis, and delusional disorder. After his discharge, he was diagnosed with service-connected PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the FSM was diagnosed with a TBI during his active service and an anxiety disorder, psychosis, and delusional disorder. After his discharge, he was diagnosed with service-connected PTSD.

(3) Does the condition/experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the FSM was experiencing a TBI and mental health conditions including PTSD while on active service. The FSM did use illegal drugs. This type of avoidant or self-medicating behavior can be a natural sequelae to TBI and the FSM's diagnosed mental health conditions including PTSD. Therefore, per Liberal Consideration, the applicant's drug use, which in part led to his discharge is mitigable.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct leading to the applicant's separation, the findings of mitigation by the medical advisor, and the previous decision of the Army Discharge Review Board, the Board concluded there was sufficient evidence warranting the restoration of the Former Service Member's rank as requested.

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 a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by amending the FSM's DD Form 214 by changing:

- block 4a (Grade, Rate or Rank): to read "SPC"
- block 4b (Pay Grade): to read "E04"

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

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

2. Army Regulation 635 – 8, Personnel Separations, Separation Processing and Documents states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of REFRAD, retirement, or discharge. The DD Form 214 is not intended to have any legal effect on termination of a Soldier's service. Paragraph 5-6 provides detailed instructions for data required in each block of the DD Form 214.

a. Block 4: Grade, Rate, or Rank. Verify that active duty grade or rank and pay grade are accurate at time of separation.

b. Block 12i, Effective Date of Pay Grade. From the most recent promotion document (or reduction instrument), enter the effective date of promotion or reduction to the current pay grade. Do not confuse with date of rank.

//NOTHING FOLLOWS//