

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 November 2024

DOCKET NUMBER: AR20240003472

APPLICANT REQUESTS: upgrade of his under honorable conditions discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Letter, 22 January 2022

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 since his separation from the military, he has been diagnosed with post-traumatic stress disorder (PTSD). He is seeking a discharge upgrade, as he believes the undiagnosed PTSD contributed to his inability to effectively communicate the challenges he was facing during his service. Additionally, due to the characterization of his service, it has become difficult for him to access adequate resources, in order to receive proper care. This disorder has and continues to affect his health and the daily aspects of his life such as relationships and employment.
3. The applicant provides a letter issued by the VA, dated 22 January 2022, which shows a summary of benefits he is currently receiving. This document further shows his combined service-connected evaluation is rated at 70%.
4. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 31 July 2001. He served in Southwest Asia from 14 January 2003 to 6 July 2003.
  - b. The applicant accepted nonjudicial punishment on/for:
    - 25 March 2002; for failing to go at the time prescribed to his appointed place of duty, guard; his punishment consisted of 7 days restriction and extra duty

- 19 February 2003; for failure to obey a lawful order to load up the vehicle and to perform corrective training; his punishment consisted of reduction to private (PVT)/E-2, forfeiture of \$301 per month for 1 month (suspended), and extra duty for a period of 14 days
- 29 January 2004; for failing to go at the time prescribed to his appointed place of duty, to wit: class and disrespect in language toward a noncommissioned officer; his punishment consisted of reduction to private first class (PFC)/E-3, forfeiture of \$348 (suspended), and extra duty for a period of 14 days

c. DA Form 3822-R (Report of Mental Status Evaluation), dated 6 February 2004, shows his chain of command requested he underwent a mental status evaluation, as part of his discharge process, due to misconduct. The report reflects his mental status was within normal limits. There was no evidence of a major psychiatric disorder that would excuse him of the responsibility for his actions. He was mentally responsible, able to distinguish right from wrong, and had the mental capacity to understand and participate in the chapter proceedings. He is psychiatrically cleared for any action deemed appropriate by command. This document further shows the following:

- Had normal behavior; he was fully alert;
- He was fully oriented; His mood or affect was unremarkable
- His thinking process was clear; His thought content was normal
- His memory was good

d. On 23 February 2004, his immediate commander notified him of his intent to initiate separation for patterns of misconduct under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 14-12b. The reasons for his proposed action are: the applicant received two company grade Article 15s for disobeying a lawful order and failure to report, one summarized Article 15 for failure to report, and negative counseling. He was recommended an under honorable conditions (General) characterization of service.

e. Also on 23 February 2004:

- (1) The applicant acknowledged receipt of the separation proceedings.
- (2) The applicant was advised by his commander of the basis for the contemplated action to separate him for patterns of misconduct under AR 635-200, chapter 14, paragraph 12b, and its effects; of the rights available to him; and the effect of any action taken by him in waiving his rights. He understood that he had 6 years of total active and reserve military service at the time of separation, he was entitled to have his case considered by an administrative separation board. He understood if he had less than 6 years of total active and reserve time at the time of separation and is being considered for separation for reasons of misconduct, he is not entitled to have his

case heard by an administrative separation board unless he is being considered for a discharge under other than honorable conditions.

- he waived consideration of his case by an administrative separation board
- he had been advised of his right to submit a conditional waiver of his right to have his case considered by an administrative separation board
- he waived a personal appearance before an administrative separation board
- a statement in his behalf is submitted herewith
- he waived consulting counsel and representation by military counsel or civilian counsel at no expense of the Government
- he understood his willful failure to appear before the administrative separation board by absenting himself without leave will constitute a waiver of his rights to personal appearance before the board
- he understood he may encounter substantial prejudice in civilian life is an under honorable conditions (General) discharge is issued to him
- he may be ineligible for many or all benefits as a veteran under both Federal and State laws

(3) He understood that he was being separated under chapter 14, paragraph 12b and had been notified he was being recommended for an under honorable conditions (General) discharge. He fully understood his rights and benefits upon separation from the Army. He waived his right to speak with Trial Defense Services concerning his separation action.

(4) He submitted a statement, which states he had been in the Army for 3 years at his first duty station. He had four different first sergeants and three different commanders and summarizes his nonjudicial punishment history. He worked hard to be the best Soldier that he could in every aspect. His physical fitness score was 300 and he was a knowledgeable mechanic. He is in agreement with the discharge out of the Army, but feels as though he deserves an honorable discharge and requests a Chapter 13 for unsatisfactory performance.

(5) His immediate commander recommended to the separation approval authority the applicant be separated from the Army prior to the expiration of his current term of service. His recommendation summarized his service record and history.

f. On 27 February 2004, the separation authority approved the applicant's administrative separation with an under honorable conditions characterization of service

g. On 18 March 2004, he was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, Chapter 14-12b. He received a separation code of "JKA" and a reentry code of

"RE-3". He completed 2 years, 7 months, and 18 days of active service. He was awarded or authorized National Defense Service Medal and the Army Service Ribbon.

5. On 3 June 2011, the Army Review Discharge Board (ADRB) denied the applicant's request for an upgrade to his characterization. The ADRB found that the reason for his discharge and the characterization were both proper and equitable.
6. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

#### **7. MEDICAL REVIEW:**

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge. He contends he experienced PTSD 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 31 July 2001; 2) The applicant accepted nonjudicial punishment (NJP) on 15 March 2002, for failing to go at the time prescribed to his appointed place of duty; 3) The applicant accepted two NJPs on 02 December 2002 and then 07 February 2003 for failing to follow lawful orders; 4) The applicant served in Kuwait and then Iraq from 14 January-6 July 2003; 5) The applicant accepted NJP on 29 January 2004 for failing to go at the time prescribed to his appointed place of duty on 5-8 January 2004 and on 15 January 2004, using disrespectful language toward his NCO; 6) The applicant was discharged on 18 March 2004, Chapter 14-12b (Misconduct) with under honorable conditions (General) characterization of service. The Army Review Board 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) and hardcopy VA documentation provided by the applicant were also reviewed.

b. The applicant asserts he was experiencing PTSD as a result of his deployment, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service. He underwent a mental status evaluation as part of his administrative separation proceedings on 06 February 2004. He was not diagnosed with a mental health condition, and he was psychiatrically cleared for any action deemed appropriate by command.

c. A review of JLV provided evidence the applicant began to engage with the VA for behavioral health care in 2024. He underwent a Compensation and Pension evaluation for mental health conditions on 01 December 2021. He reported initially experiencing behavioral health symptoms after returning from his deployment. The applicant was diagnosed with service-connected PTSD (70%SC). He is currently in treatment for this condition at the VA. Based on the available information, it is the opinion of the Agency

Behavioral Health Advisor that there is sufficient evidence to support the applicant had a condition or experience that partially mitigates his misconduct which led to his discharge.

d. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct. There is evidence the applicant had been diagnosed by the VA with service-connected PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD while on active service. There is evidence the applicant had been diagnosed by the VA with service-connected PTSD.

(3) Does the condition/experience actually excuse or mitigate the discharge? Partially, there is sufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. However, the applicant reported his PTSD is a result of his experiences during his seven-month deployment, and he was not experiencing behavioral health symptoms till he returned from Iraq. The applicant had a history of misconduct prior to his deployment and shortly after leaving for his deployment. This misconduct is likely unrelated to his diagnosis of PTSD, and therefore, not mitigatable. The applicant's misconduct after his deployment could be defined as erratic behavior, which could be a natural sequela to PTSD. Therefore, this misconduct, per Liberal Consideration is mitigatable.

BOARD DISCUSSION:

Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a condition or experience that partially mitigates his misconduct which led to his discharge.

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant exhibited a pattern of misconduct as evidenced by him receiving two company grade Article 15s for disobeying a lawful order and failure to report, one summarized Article 15 for failure to report, and negative counseling. As a result, his chain of command initiated separation against him. He was discharged with a general, under honorable conditions discharge. The Board found no error or injustice in his separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The

Board concurred with the medical official's finding sufficient evidence to support the applicant had a condition or experience that partially mitigates his misconduct which led to his discharge. Based on this mitigation, the Board determined an honorable characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board determined that such upgrade did not change the underlying reason for separation and thus the narrative reason for separation and corresponding codes should not change.

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 the Army records of the individual concerned be corrected by amending the applicant a DD Form 214 for the period ending 18 March 2004, as follows:

- Character of Service: Honorable
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change

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 (Armed Forces), 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 15-185 (Army Board for Correction of Military Records), currently in effect, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
3. Army Regulation 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. The separation policies in this regulation promote the readiness of the U.S. Army.
  - a. Honorable discharge. 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 (AD) or active duty training (ADT).
  - b. General discharge. 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 AD.
  - c. Chapter 14 Separation for Misconduct. This chapter establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave. Paragraph 14-12b, further states that Soldiers are subject to action, per this section for the following:

(1) Discreditable involvement with civil or military authorities.

(2) Discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

4. Army Regulation 635-5-1 (Separation Program Designator Codes) states that the Separation Program Designator (SPD) codes are three-character alphabetic combinations which identify reasons for, and types of separation from active duty. SPD code "JKA" and RE code 3 are the appropriate codes to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200, Chapter 14-12b, based on Misconduct.

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

- RE code "1" applies to personnel who have completed their obligated term of active service and are considered qualified to reenter the U.S. Army if all other criteria are met
- RE code "2" Applies to persons not eligible for immediate reenlistment
- RE code "3" applies to personnel who are not considered fully qualified for reentry or continuous service at time of separation, but whose disqualification is waivable. They are ineligible unless a waiver is granted
- RE code "4" applies to personnel separated from last period of active-duty service with a nonwaivable disqualification

6. Army Regulation 635-5 (Personnel Separations Separation Documents). 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 REFRA, retirement, or discharge. The DD Form 214 is not intended to have any legal effect on termination of a Soldier's service.

7. 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.

8. 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.
9. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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. 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 based on 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. 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.
10. Title 10 (Armed Forces), U.S. Code, 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.

//NOTHING FOLLOWS//