

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 November 2024

DOCKET NUMBER: AR20240003592

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General).

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) letter
- DA Form 638 (Recommendation for Award)
- VA Rating Decision
- VA Explanation of Benefits

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 he served in Iraq where he was wounded by an Improvised Explosive Device (IED) and he was sent home without his unit. He spent time in multiple hospitals recovering from his combat related injuries. At the time, he was not aware he was suffering from post-traumatic stress disorder (PTSD) and had a lapse in judgement which caused him to fail a drug test. He did not receive any help or guidance to help him recover but was given a discharged which has negatively affected his life and mental state. In 2005, help for PTSD was not prevalent; however, it is not front and center in the eyes of the military. If the help he is currently receiving was available when he was still in the Army National Guard (ARNG), he would have been able to continue his military service.
3. A review of the applicant's service record shows:
 - a. On 23 September 2002, the applicant enlisted in the ARNG and served as a Combat Engineer.

b. He served in Iraq from 1 January 2005 to 29 July 2005.

c. On 3 August 2005, Permanent Orders Number 215-01, issued by Headquarters (HQs), 3rd Infantry Division, the applicant was awarded the Purple Heart for wounds received as a result of hostile enemy action on 29 July 2005 when he was on a combat patrol and an IED detonated while he was directing traffic as the gunner at an intersection. He received shrapnel in his neck as a result of the detonation. He underwent surgery to remove the shrapnel at Camp Liberty, Iraq.

d. On 19 October 2006, Orders Number 292-005, issued by OH ARNG, HQs, 37th Brigade Special Troops Battalion, the applicant was reduced in rank to private first class effective 1 October 2006 for misconduct.

e. The complete facts and circumstances surrounding the applicant's discharge from the ARNG are unavailable for the Board to review.

f. On 30 March 2007, the applicant was discharged from the ARNG due to patterns of misconduct with an under honorable conditions (General). National Guard Bureau (NGB) Form 22 (NGB Report of Separation and Record of Service) shows the applicant completed 4 years, 6 months, and 8 days.

i. On 24 January 2008, the HQs, 16th Engineer Brigade Memorandum, Subject: Valorous Unit Award for 612th Engineer Battalion, the unit was awarded the Valorous Unit Awarded for service in Iraq during the period of 10 November 2004 through 23 December 2005 which the applicant was a part of.

4. The applicant provides:

a. VA letter dated 20 February 2024 from J-P-, therapist at the Columbus OH VA states he has treated the applicant for PTSD since 2019. He believes the applicant service his country honorably and was wounded in Iraq on 29 July 2005. When he was evacuated from Iraq, he did not have the support of his unit during which time he self-medicated with cocaine. He was still in the ARNG and failed a urinalysis. Since beginning his treatment, the applicant has dedicated himself to healing from the PTSD symptoms. The military has changed its mindset over the years since his service, if someone would test positive today, there would be support in place through the chain of command.

b. DA Form 638 which shows the applicant was awarded the Army Commendation Medal for his dedicated service and hard work as a gunner in Iraq where his vehicle was struck by an IED. While taking shrapnel to his neck, he was able to maintain his weapon until his vehicle was able to clear the danger area which ensured Soldiers did not sustain further injuries.

c. VA rating decision dated 17 June 2024 shows the applicant was evaluated for PTSD and his disability rating was increased to 70 percent and his disability for neck strain post shrapnel was increased to 40 percent. His PTSD evaluation was based on:

- anxiety
- chronic sleep impairment
- depressed mood
- difficulty in establishing and maintaining work and social relationships
- disturbances of motivation and mood
- flattened affect
- forgetfulness
- mild memory loss
- suicidal ideations
- suspiciousness

d. VA explanation of benefits dated 19 June 2024 states the applicant has a combined disability rating of 100 percent for:

- Evaluation of posttraumatic stress disorder (PTSD), which is currently 50 percent disabling, is increased to 70 percent effective January 24, 2024
- Evaluation of chronic neck strain status post shrapnel wound right side, which is currently 10 percent disabling, is increased to 40 percent effective January 24, 2024
- Service connection for left upper radiculopathy is granted with an evaluation of 20 percent effective January 24, 2024
- Service connection for right upper radiculopathy is granted with an evaluation of 20 percent effective January 24, 2024
- Basic eligibility to Dependents' Educational Assistance based on permanent and total disability status is established from January 24, 2024
- Evaluation of right ankle lateral collateral ligament sprain (chronic/recurrent) (previously rated as right ankle condition), which is currently 10 percent disabling, is continued
- Evaluation of status post right neck surgery with shrapnel removal (previously rated right neck and jaw line scars, numbness s/p shrapnel wound to neck claimed as facial numbness right side), which is currently 10 percent disabling, is continued
- The claim for service connection for back condition remains denied because the evidence submitted is not new and relevant
- The claim for service connection for left ankle condition remains denied because the evidence submitted is not new and relevant
- The claim for service connection for left knee condition remains denied because the evidence submitted is not new and relevant

- The claim for service connection for right knee condition remains denied because evidence submitted was not new and relevant

5. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his general under honorable conditions discharge. He contends he experienced mental health conditions including PTSD and a traumatic brain injury (TBI) 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) On 23 September 2002, the applicant enlisted in the ARNG; 2) One of his DD Form 214 shows the applicant was ordered to active duty in support of Operation Iraqi Freedom effective 10 November 2004. He was honorably released from active duty on 10 September 2005 after completion of 10-months and 1-day of active service. It also shows he served in Iraq during the period of 1 January through 29 July 2005 and was awarded the Purple Heart; 3) The applicant's service record is void of his separation packet from the ARNG; 4) On 30 March 2007, the applicant was discharged from the ARNG due to patterns of misconduct with a general under honorable conditions.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service records. The VA's Joint Legacy Viewer (JLV) and VA documentation provided by the applicant were also examined.

c. The applicant asserts he experienced mental health conditions including PTSD and TBI that mitigate his misconduct while on active service. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service. However, there is sufficient evidence that he was exposed to an IED blast.

d. A review of JLV provided sufficient evidence the applicant has been diagnosed with service-connected migraines, depression, PTSD, and head injury. He has also been awarded VA disability for PTSD (70%SC) and migraine headaches (30%SC). He is actively engaged in treatment till present.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence beyond self-report the applicant was experiencing mental health conditions including PTSD and TBI while on active service. However, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of his mental health condition, TBI, or experience.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No. There is sufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD and TBI while on active service. However, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of his mental health condition, TBI, or experience. However, the applicant contends he experienced mental health condition while on active service, which mitigates his misconduct and discharge. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for patterns of misconduct. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant's contention of PTSD and the medical advisor's review finding insufficient evidence based on the unknown discharge circumstances. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

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.

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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. National Guard Regulation 600-200 (Enlisted Personnel Management) establishes standards, policies and procedures for the management of Army National Guard (ARNG) enlisted Soldiers in the functional area of discharge.

a. Paragraph 6-15a (Honorable discharge) is issued to a Soldier who is concurrently discharged from the ARNG and as a Reserve of the Army with honor. Character of discharge and service is honorably, it is given by administrative action.

b. Paragraph 6-15b (General Discharge) is issued to a Soldier who is concurrently discharged from the ARNG and as a Reserve of the Army and whose discharged from such service is under honorably conditions, but whose military record is not sufficiently meritorious to warrant an honorably discharge. Character of discharge and service is under honorably conditions, it is given by administrative action.

c. Paragraph 6-35i (1) (Acts or patterns of misconduct under the Uniform Code of Military Justice or similar laws), this includes abuse of illegal drugs to include testing positive, two serious incidents of alcohol related misconduct within a 12-months period. All Soldier identified as abusers of illegal drugs will be referred for treatment as appropriate regardless of the commander's intent to take administrative, non-judicial or judicial actions.

3. Army Regulation (AR) 135-178 (Army National Guard and Army Reserve Enlisted Administrative Separations) in effect at the time, sets policies, standards, and procedures to ensure the readiness and competency of the U.S. Army while providing for the orderly administrative separation of Army National Guard of the United States (ARNGUS) and U.S. Army Reserve (USAR) enlisted Soldiers for a variety of reasons.

a. Paragraph 11-2 (Characterization) when a Soldier is discharged under this chapter, characterization of service as honorable or general under honorable conditions is authorized except when service is uncharacterized for Soldiers in entry level status.

b. Paragraph 12-1 (Misconduct) b (Pattern of misconduct), a pattern of misconduct consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline include conduct which violates the accepted standards of personal conduct.

c. Paragraph 12-8 (Characterization of service), characterization of service normally will be Under Other Than Honorable Conditions, but characterization as General (under honorable conditions) may be warranted.

4. AR 600-8-22 (Military Awards) prescribes Department of the Army (DA) policy, criteria, and procedures for individual and unit military awards and foreign decorations and badges. Paragraph 8-8 (Combat Action Badge) will not be retroactive prior to 18 September 2001, recognition to Soldiers who personally engaged or are engaged by the enemy. Award of the Combat Action Badge is not automatic and will not be awarded solely based on award of the Purple Heart. The requirement for award of the Combat Action Badge, (2) A Soldier must be personally present and under hostile fire while performing satisfactorily in accordance with the prescribed rules of engagement in an area where hostile fire pay or imminent danger pay is authorized. A Soldier must also be executing an offensive or defensive act while participating in combat operations, engaging, or being engaged by the enemy. A Soldier must be performing their assigned duties associated with the unit's combat mission in an area where hostile fire pay or imminent danger pay is authorized. The requirement for hostile fire pay or imminent danger pay does not apply to cases determined to be eligible.

//NOTHING FOLLOWS//