

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 January 2025

DOCKET NUMBER: AR20240003716

APPLICANT AND HIS COUNSEL REQUEST:

- an upgrade of his general, under honorable conditions discharge to honorable
- change in narrative reason for separation with corresponding separation code
- change in reentry code

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's Petition
- Self-Authored Statement, 6 March 2024
- The Veteran's Consortium Agreement
- A Center for Mental Wellness letter, 30 April 2018
- Medical Record, March 2001 to November 2003
- DD Form 2707 (Confinement Order), 7 November 2003
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Email, 29 September 2017
- Dover Counseling Services Letter, 30 December 2021
- Character letter, 14 March 2024
- Professional Medical Associates Letter, 1 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's counsel states, on his behalf:

a. The applicant served four and a half months in Kuwait. In fall 2003, he was on a mission for eighteen hours straight when a noncommissioned officer (NCO) confronted him and physically assaulted him. In response, the applicant shoved the NCO and

displayed behaviors consistent with his undiagnosed post-traumatic stress disorder (PTSD) and intermittent explosive disorder (IED). For this single incident, he was convicted at a summary court martial, confined for one month, and ultimately received an other than honorable discharge. The applicant has since been receiving treatment for his service-related PTSD and IED.

b. The applicant exhibited physical signs of stress very early on. He was often sick with regular nausea, light headedness, and heart palpitations. He had nightmares and sleeplessness that persist to this day. He attempted to meet with a psychiatrist but was diverted to a chaplain. Other attempts to seek medical help were similarly unsuccessful.

c. His camp was locked down for threats on at least three different occasions. His friend died two days after getting a field promotion. This affected him deeply. While on a mission, his group was threatened by a white sports utility vehicle (SUV) that drove up on his caravan. They were instructed to “lock and load” and aim their weapons at the SUV. The SUV eventually drove away, but the incident was a major event that has stuck with him to this day.

d. On the day that led to his discharge, the applicant was on missions for eighteen hours straight. He ended one mission only to be put immediately on another to deliver meals ready to eat (MRE) to another camp alongside five other Soldiers. When they returned from the delivery, Sergeant (SGT) H____, said to applicant, “come here.” He [applicant] walked over to SGT H____, who grabbed his shirt collar and started twisting it. The applicant said, “What’s happening? Please stop,” but SGT H____ kept twisting. Eventually the pain got to be so much that [applicant] yelled, “Damn it, you are hurting me!” and pushed SGT H____ off.

e. The applicant has reflected on his altercation with his superiors and acknowledges that his actions were wrong. He understands that his actions were influenced by mental illnesses, for which he is now receiving medication and other treatment. The applicant was discharged for actions that were results of and mitigated by his service-caused mental health disorders. Under new directives on liberal consideration and clemency, the Board should upgrade his general, under honorable conditions discharge, change his narrative reason for separation to “Secretarial Authority,” with corresponding separation code, and remove stigmatizing information from his reasons for discharge.

3. The applicant states:

a. While stationed at Fort Benning, GA he believes there was a lot of racial discrimination being displayed. While at Fort Benning, GA he accidentally wore the wrong beanie cap to formation. His NCO drilled him nose to nose while yelling and cursing at him in front of the battalion. This was an extremely scary and embarrassing

moment for him. He spoke up about feeling that he was harassed and targeted because of his race. The NCO became even more aggressive towards him after that. He believes the psychological effects of the harassment and abuse during training caused symptoms of PTSD to begin. He developed insomnia, feeling the need to be on guard, and began displaying self-destructive behavior. With the actions he was displaying, the Army sent him to anger management. He tried to explain to them that he needed further help and his NCO's would tell him to talk with a chaplain.

b. His company battalion deployed to Kuwait on 1 April 2003. At this time the fear and stress for him were at the highest point ever. He felt like he was working in a toxic workplace while being deployed over in Kuwait. Everyone was under a lot of stress, to include his upper command. While he was not directly involved in active combat, he faced closely related situations that have deeply impacted him. For instance, as a mechanic he was tasked cleaning vehicles that had blood on them. He also experienced lockdowns on his camp from threats of attack by the enemy.

c. He first started talking with a nurse practitioner at his doctor's office in N.C. about his PTSD in 2008. At that time, he was put on medications to improve his sleep pattern (to help with the nightmares) and the acute episodes of anxiety and panic attacks. He is currently undergoing treatment for his PTSD, which includes both medication and therapy. These combined approaches are helping him effectively cope with his symptoms and continue work towards healing and recovery.

d. Part of the delay in getting treatment was because the Veteran's Affairs (VA) turned him away because of his discharge. If the VA aided with his PTSD, he would have had access to therapy and medications. They could have helped him manage his symptoms earlier, improving his overall quality of life and potentially prevent some of the challenges he faced after discharge.

4. The applicant provides:

a. A letter issued by A Center for Mental Wellness, 30 April 2018, which shows:

(1) While in a combat zone he began having sleepless nights as a result of his nightmares. He also experienced hypervigilance. He has secondarily exposure to horror stories from other Soldiers. As a result of the bullying, he had anxiety and social phobia. He was diagnosed with PTSD by a psychiatrist at Fort Benning, GA. He saw this particular twice weekly for a period of eight months. He continued treatment with various other practitioners until the present. His personal life has been chaotic since he left the service.

(2) The applicant went back to another skill that he learned in the Army. He has been employed as a welder at times. However, he lost a number of jobs, as a result of

his need for continual debriefing and an inability to cope with his symptoms of PTSD. His family life suffered as a result of unstable employment. During his visits he was administered UCLA PTSD rating scale which indicated moderate to severe symptomology which appeared to occur while in the military. He continues to suffer from social anxiety.

b. Medical Records for the period March 2001 to November 2003.

c. A DD Form 2707 (Confinement Order) 7 November 2003, which shows the following:

(1) The applicant was assigned to 104th Transportation Company, 13th Combat Sustainment Support Battalion, Fort Benning GA.

(2) On 7 November 2003, a special court martial convened. The applicant was tried and convicted of Article 89, disrespect to an officer; Article 90, disobeying an NCO; Article 91 by 7, disrespect to an NCO; Article 128, assault on an NCO.

(3) The court sentenced him to reduction to private/E-1, forfeiture of \$767.00 pay per month for one month, and confinement for one month.

(4) His case was adjudicated on 7 November 2003.

d. A letter issued by Dover Counseling Services, Incorporated 30 December 2021, which shows the applicant has been diagnosed with PTSD and IED. The symptoms and negative physical reactions can occur when applicant is placed in an anxiety producing or stress provoking situations. The applicant is not able to perform within occupational expectations safely and consistently for any consistent amount of time.

e. A Character letter issued by C____ L____ the applicant's sister which shows:

(1) The applicant was an enthusiastic Soldier. Then it seemed as if one day all started to change. He would tell her how his supervisors were singling him out so much that it made his career/life hell. He felt as if they were attempting to make an example of him and it seemed racially driven. He felt like his actions were constantly being monitored, and anything and everything he did was punishable. He was afraid of reprisals, so he did not report the harassment, and it continued to get worse.

(2) He deployed to Kuwait and upon his return it was almost as if he came back a totally different man. He was reclusive and would get agitated much easier. He never wanted to be out amongst everyone anymore. When he spoke, he cried and was unable to be around large crowds. He has to be medicated and some of the treatments have caused him to be rendered suicidal and depressed.

f. A letter issued by Professional Medical Associate, 1 January 2022, which shows the applicant has been a patient with IED. He has had numerous emotional outbursts over the years, and per his reports this has led to termination of employment in many of his jobs over the years. He has exhibited behaviors consistent with his diagnosis of IED on several occasions in the clinic. He is currently under a treatment plan with both himself and psychiatry.

6. A review of the applicant's records shows

a. He enlisted in the Regular Army on 13 March 2001.

b. The available service record is void of the facts and circumstances surrounding the applicant's discharge processing.

b. On 15 January 2004, he was discharged under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c (2), by reason of misconduct with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 2 years, 10 months, and 3 days of active service with no lost time. He was assigned separation code JKQ and the narrative reason for separation listed as "Misconduct," with reentry code 3. It also shows he was awarded or authorized:

- National Defense Service Medal
- Army Service Ribbon.

7. There is no indication he petitioned the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

8. By regulation, action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

9. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

10. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his other than honorable conditions discharge. His contention is that the circumstances leading to his

discharge were attributable to his experience of racism and mental health disorders including Post-traumatic stress disorder (PTSD) during his time in service. 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 13 March 2001; 2) The applicant deployed to Kuwait from 01 April 2003 to 13 August 2003; 3) The applicant's full service documentation leading to the applicant's discharge was not available to view. The applicant reported engaging in a physical fight with his noncommissioned officer (NCO) following a confrontation while deployed to Kuwait; 4) According to the provided confinement order following his summary court-martial, dated 07 November 2003, the applicant's record of punitive actions from his fight with his NCO included an Article 89, Article 90, 7 Article 91s, and an Article 128. This resulted in a reduction in rank to (E-1) and forfeiture of \$767 and confinement for one month; 5) The applicant was discharged under AR 635-200, paragraph 14-12C on 15 January 2004. He completed 2 years, 10 months, and 3 days net active service. His narrative reason for separation was misconduct, and his service was characterized as other than honorable.

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 hardcopy civilian and military medical documentation provided by the applicant were also reviewed.

c. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service. On 22 October 2003, the applicant underwent a mental health status exam as part of his administrative separation. The applicant was not diagnosed with a mental health condition, and he was cleared from a psychiatric perspective to participate in administrative proceedings.

d. The VA's Joint Legacy Viewer (JLV) was examined and no relevant results were found. The applicant has not been diagnosed with a service-connected mental health condition, and he does not receive service-connected disability for a mental health condition at this time. The applicant provided a hardcopy psychological assessment completed by a clinical psychologist dated 30 April 2018. The provider attributed the applicant's PTSD symptoms to his experiences during his time in military service. The assessing psychologist reported a history of the PTSD diagnosis and stated the applicant described receiving eight months of treatment by a psychiatrist at Fort Benning, GA at an unknown date. No substantiating documentation was available or provided regarding these reported military mental health encounters. The applicant also provided memorandums from his two current mental health providers who reaffirmed the applicant's engagement in care since March 2021 for the diagnoses of PTSD and

Intermittent explosive disorder. Neither clinician provided a direct link between his current symptoms and his previous military service.

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 has been diagnosed with symptoms consistent with service-connected PTSD that partially mitigate the applicant's verbal confrontation and otherwise erratic behavior in a deployed environment. However, there was insufficient evidence available regarding the surrounding the events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of his mental health condition or experience.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant contends he was experiencing racism and mental health conditions including PTSD at the time of his active service which mitigates his misconduct. The applicant was diagnosed with PTSD in 2018 related to his combat experiences, and the provider concurred the applicant was experiencing PTSD at the time of his active service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing racism and mental health conditions including PTSD at the time of his active service which mitigates his misconduct. The applicant was diagnosed with PTSD in 2018 related to his combat experiences, and the provider concurred the applicant was experiencing PTSD at the time of his active service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Partially. The applicant contends he experienced racism while on active service along with mental health conditions including PTSD. There is sufficient evidence beyond self-report the applicant was diagnosed with PTSD in 2018 related to his combat experiences. In addition, the applicant and a civilian psychologist surmised the applicant was experiencing PTSD at the time of his active service. While there is limited evidence concerning the surrounding events which resulted in the applicant's discharge, there is evidence the applicant did receive punishment for engaging in a verbal altercation with his leadership while deployed. This type of erratic behavior can a natural sequelae to PTSD. However, there is no nexus between the applicant's PTSD and his assault of an NCO while deployed in that: 1) This manner of misconduct is not a part of the diagnosis or natural sequelae of PTSD; 2) PTSD does not impact one's ability to distinguish right from wrong nor does it increase an individual's penchant for violent behavior towards others. Yet, the applicant contends he experienced mental health condition or

experience while on active service, which mitigates his misconduct. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record, and published Department of Defense guidance for consideration of discharge upgrade requests, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's contentions, evidence in his military record, the frequency and nature of his misconduct, the conviction by a special court-martial, the reason for his separation and the character of service he received upon discharge. The Board considered his statement regarding PTSD, document he provided from civilian healthcare providers and the review and conclusions of the Agency Medical advisor. The Board found: (1) The applicant contends he was experiencing racism and mental health conditions including PTSD at the time of his active service which mitigates his misconduct and he was diagnosed with PTSD in 2018 related to his combat experiences; (2) the applicant contends he was experiencing racism and mental health conditions including PTSD at the time of his active service, he was diagnosed with PTSD in 2018, and the provider concurred the applicant was experiencing PTSD at the time of his active service; (3) there is sufficient evidence beyond self-report the applicant was diagnosed with PTSD in 2018 related to his combat experiences. However, the Board concurs that there is no nexus between the applicant's PTSD and his assault of an NCO while deployed in that this manner of misconduct is not a part of the diagnosis or natural sequelae of PTSD. Based on a preponderance of evidence, the Board determined that the character of service the applicant received was not in error or unjust and a change was not warranted as a matter of liberal consideration.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

[REDACTED]

[REDACTED] [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.

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 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - a. Paragraph 3-7a provides that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member'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.
 - b. Paragraph 3-7b states 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.
 - c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of

misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

3. 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.

4. 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 (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

5. 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, Boards 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.

6. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army (RA) and the Reserve Components.

a. Chapter 3 prescribes basic eligibility for prior service applicants for enlistment and includes a list of Armed Forces Reentry (RE) Codes, including RA RE Codes.

- Re Code of "1" (RE-1) applies to persons qualified for enlistment if all other criteria are met
- RE-3 applies to persons ineligible for reentry unless a waiver is granted
- RE-4 applies to persons who have a nonwaiverable disqualification and are ineligible for enlistment

b. Chapter 4 states recruiting personnel have the responsibility for initially determining whether an individual meets current enlistment criteria and are responsible for processing waivers.

7. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The SPD code JKQ is to be used for RA Soldiers discharged for misconduct – commission of a serious offense under the provisions of Army Regulation 635-200, chapter 14-12c.

8. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross reference table shows the SPD code and a corresponding RE Code. The table in effect at the time of his discharge shows the SPD code JKQ has a corresponding RE Code of "3."

9. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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 applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//