

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 December 2024

DOCKET NUMBER: AR20240004105

APPLICANT REQUESTS:

- an upgrade of his general under honorable conditions discharge to honorable
- a change to the narrative reason for separation to reflect medical

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

- DD Form 149 (Application for Correction of Military Record)
- Letter addressed to the Board
- Copy of Spouse's Letter to Congressman
- Two (2) Character Statements
- Medical documents

FACTS:

1. The applicant states, via letter addressed to the Board:

a. Upon returning from Iraq, he encountered significant challenges at home that were directly related to combat exposure in Iraq. He was suffering from insomnia, recurring nightmares, flashbacks, and extreme hypervigilance. He knew something was wrong and sought mental health treatment at the request of his wife. He was placed on a non-deployable profile and told that he was being med-boarded out of the Army for acute stress syndrome.

b. He turned his profile into his company commander; however, the commander determined that he was fine and was deployed to Iraq for the second time. Further combat exposure only exacerbated his declining mental health. When returned from deployment the second time, he was diagnosed with post-traumatic stress disorder (PTSD).

c. His wife sought answers from the Inspector General (IG) as to why and how his non-deployable profile was dismissed by a captain (CPT). After meeting with the IG, his wife filed a Congressional against his unit. His entire chain of command was angry, which caused his life at work to become very difficult. He felt alone and started abusing

drugs to self-medicate the symptoms of his PTSD, now coupled with the feeling of abandonment by people he once considered family.

d. Since he has undergone extensive treatment and therapy, resulting in his current status as a sober and responsible member of society. His commitment to growth and rehabilitation is evident in his graduation from Camp Valor and completion of college level academics at Texas A&M University. He believes that an honorable discharge he is seeking will better reflect his true character and the unjust circumstances that surround his initial discharge.

e. He served in Operation Iraqi Freedom with honor, courage, and commitment to his country, and those that he served with. He believes his current discharge status does not accurately reflect his time in service.

2. The applicant provides:

a. Copy of spouse's letter to Congressman, dated 20 April 2005, alerts the Congressman of the applicant's ongoing situation with deploying with a non-deployable profile, his ongoing mental health struggles, the medical noncommissioned officer who took it upon himself to alter the applicant's profile, the runaround she got from the IG, and the total lack of interest and support from the chain of command (platoon sergeant, first sergeant, company commander, and command sergeant major).

b. Two (2) character statements, dated 8 May 2018 and 30 December 2023, authored by Mr. A.D.L., former colleague, and Ms. S.N., Founder & Director of Sunny Creek Ranch Horses for Heroes.

c. Medical documents, dated between 18 December 2014 and 13 January 2024, are as follows:

(1) Veterans Affairs (VA) decision letter, dated 18 December 2014, which reflects that it was decided that the applicant's Army service dated 24 January 2003 through 18 July 2006 was honorable for VA purposes. It did not, however, reflect he percentage(s) awarded for service-connection (if any).

(2) Certificate of Completion that reflects he completed the 17th Cohort of the Pharma PTSD Intensive Outpatient Program (IOP) on 12 January 2017.

(3) The Birdwell Foundation for PTSD letter, dated 25 January 2023, that informs the applicant he completed a six month course at Camp Valor, a PTSD Counseling Facility inpatient facility for veterans with combat related PTSD.

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

- a. He enlisted in the Regular Army on 24 January 2003 for a period of four years.
- b. DA Form 3947 (Medical Evaluation Board Proceedings), dated 2 September 2005, reflects the applicant's diagnosis as follows:
 - Axis I: PTSD, Severe, incurred while entitled to base pay, Major Depression, Single Episode, incurred while entitled to base pay
 - Axis II: None
 - Axis III: Hearing Loss Right Ear with Tinnitus, incurred while entitled to base pay
- c. On 9 September 2005, the applicant accepted nonjudicial punishment (NJP) under Article 15 for wrongful use of D-methamphetamine on or about 7 June 2005 and 14 June 2005. The punishment consisted of a reduction to private (E-2).
- d. DA Form 4430 (Department of the Army Report of Result of Trial) reflects the applicant stood trial by Summary Court-Martial on 2 December 2005 as follows. The court sentenced him to reduction to E-1, forfeiture of \$400 pay per month, and to be confined for 30 days:
 - Charge I, three specifications of failing to go at the time prescribed to his appointed place of duty
 - Charge II, one specification of wrongfully using amphetamine and two specifications of wrongfully using methamphetamine (
 - Charge III, one specification of breaking restriction
- e. On 7 December 2005, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c(2), commission of a serious offense. Specifically for wrongfully used D-methamphetamine on or between 7 June 2005 and 14 June 2005, Amphetamine on or between 28 September 2005 and 4 October 2005, D-methamphetamines on or between 28 September 2005 and 4 October 2005, D-methamphetamines on or between 26 October 2005 and 1 November 2005 and failed to report to his place of duty on 15 August 2005, 22 August 2005, 15 September 2005, 16 September 2005, 7 November 2005, and broke restriction on 19 September 2005
- f. The applicant acknowledged receipt of the commander's intent to separate him and consulted with legal counsel. He was advised of the basis for the contemplated action to separate him for Commission of a Serious Offense under AR 635-200, Chapter 14-12c(2) and its effects; of the rights available to him; and of the effect of any

action taken by him in waiving my rights. He understood that if he has less than 6 years of total active and reserve military service on the date of initiation of recommendation for separation, he is not entitled to have his case heard by an administrative separation board unless he is being considered under Other Than Honorable conditions. He acknowledged he:

- understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him
- understood he could be ineligible for many or all benefits as a veteran under Federal and State laws as a result of the issuance of a discharge under other than honorable conditions
- understood if he received a discharge characterization of less than honorable, he could make an application to the Army Discharge Review Board (ADRB) or the ABCMR for an upgrade, but he understood that an act of consideration by either board did not imply his discharge would be upgraded

g. DA Form 1574 (Report of Proceedings by Investigating Officer / Board of Officers) reflects the Investigating Board of Officers commenced at Legal Assistance Building on 6 June 2006 and, having carefully considered the evidence, found the applicant did wrongfully use illicit drugs on numerous occasions, fail to report on numerous occasions and broke restriction. In view of the findings, the board recommended the applicant be separated from the service with an Under Other Than Honorable Conditions discharge certificate. The findings and recommendations of the board were approved by the separation approving authority on 21 June 2006.

h. On 21 June 2006, the separation authority approved the applicant's discharge under the provisions of Army Regulation 635-200, paragraph 14-12(c)(2), with his service characterized as under other than honorable conditions.

i. His DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects he was discharged on 18 July 2006, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 14-12c(2), misconduct (drug abuse), with a characterization of service of under other than honorable conditions (Separation Code JKK and Reentry Code 4). He served 2 years and 11 months of net active service this period.

4. On 4 October 2017, the ADRB determined the discharge is inequitable. Accordingly, the ADRB voted to grant partial relief in the form of an upgrade of the characterization of service to general under honorable conditions. The ADRB determined the narrative reason, SPD code and RE code were proper and equitable and voted not to change them. As a result, the applicant's DD Form 214 was voided and he was issued a new DD Form 214 that shows he was discharged on 18 July 2006, under the provisions of Army Regulation 635-200, chapter 14-12c(2), misconduct (drug abuse), with a

characterization of service of under honorable conditions (general) (Separation Code JKK and Reentry Code 4).

5. On 29 August 2023, the ADRB again considered his request and determined the discharge is inequitable. The ADRB found the overall length and quality of the applicant's service, to include combat service, and the circumstances surrounding the discharge (i.e. in-service and 90% VA post-service diagnosis of PTSD) mitigated the discrediting entry in the service record. Accordingly, the ADRB voted to grant relief in the form of an upgrade of the characterization of service to general under honorable conditions. The Board determined the narrative reason, SPD code and RE code were proper and equitable and voted not to change them. As a result, the applicant's reissued DD Form 214 was also voided and he was again issued a new DD Form 214 that shows he was discharged on 18 July 2006, under the provisions of Army Regulation 635-200, chapter 14-12a, misconduct (minor infraction), with an honorable characterization of service (Separation Code JKN and Reentry Code 3).

5. By regulation (AR 635-200), action will be taken to separate a member for misconduct such as drug abuse. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

6. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

7. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his (general) under honorable conditions discharge to honorable and a change in the narrative reason for separation to medical disability retirement. On 29 August 2023, the ADRB determined the applicant's separation packet included evidence warranting an upgrade to honorable. Accordingly, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable, change the reason for discharge to misconduct (minor infractions), SPD code to JKN, and RE code to RE-3. As of the date of this writing, a new DD Form 214 that reflects the relief granted by the Board was not found in the applicant's service record of the Interact Personnel Electronic Records Management System (iPERMS). This report will focus on the applicant's request for disability since his characterization upgrade was previously granted.

b. 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:

- The applicant enlisted into the Regular Army on 24 January 2003.

- The applicant accepted nonjudicial punishment (NJP) on 9 September 2005, Company Grade (CG) Article 15 for wrongful use of D-methamphetamine on or about 7 June 2005 and 14 June 2005.
- On 7 December 2005, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c(2), commission of a serious offense.
- DA Form 1574 (Report of Proceedings by Investigating Officer / Board of Officers) reflects the Investigating Board of Officers commenced at Legal Assistance Building on 6 June 2006 and having carefully considered the evidence, found the applicant did wrongfully use illicit drugs on numerous occasions, fail to report on numerous occasions and broke restriction. In view of the findings, the Board recommended the applicant be separated from the service with an Under Other Than Honorable Conditions discharge certificate. The findings and recommendations of the Board were approved by the separation approving authority on 21 June 2006.
- His DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects he was discharged on 18 July 2006, under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 14-12c(2), misconduct (drug abuse), with a characterization of service of general under honorable conditions. He served 2 years and 11 months of net active service this period. Item 18 (Remarks) reflects the applicant's service characterization was upgraded per ADRB proceedings AR20160014186 on 13 October 2017.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, "upon returning from Iraq, he encountered significant challenges at home that were directly related to combat exposure in Iraq. He was suffering from insomnia, recurring nightmares, flashbacks, and extreme hypervigilance. He knew something was wrong and sought mental health treatment at the request of his wife. He was placed on a non-deployable profile and told that he was being med-boarded out of the Army for acute stress syndrome. He turned his profile into his company commander; however, the commander determined that he was fine and was deployed to Iraq for the second time. Further combat exposure only exacerbated his declining mental health. When returned from deployment the second time, he was diagnosed with posttraumatic stress disorder (PTSD). His wife sought answers from the Inspector General (IG) as to why and how his non-deployable profile was dismissed by a captain (CPT). After meeting with the IG, his wife filed a Congressional against his unit. His entire chain of command was angry, which caused his life at work to become very difficult. He felt alone and started abusing drugs to self-medicate the symptoms of his PTSD, now coupled with the feeling of abandonment by people he once considered family."

d. Active-duty electronic medical records available for review show the applicant had an extensive history of behavioral health services while in service. A Physical Profile, dated 9 May 2005, indicates the applicant was on a permanent "3" profile for the following conditions: PTSD, Major Depression, and Hearing Loss Right Ear with Tinnitus. A Report of Medical Evaluation Board, dated 15 August 2005, details the applicant's behavioral health history, and diagnoses him with Posttraumatic Stress Disorder, Severe, (over 1 year) and Major Depression, Single episode (over 1 year). The report further indicates the applicant failed to meet the retention standards in accordance with AR 40- 50I, chapter 3-31, and recommended a Medical Board. Medical Evaluation Board Proceedings, dated 2 September 2005, show the applicant was diagnosed with PTSD, Severe, (incurred while entitled to base pay) and Major Depression, Single Episode, (incurred while entitled to base pay) and recommended referral to a Physical Evaluation Board (PEB).

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected for PTSD. In addition, the applicant provides a certificate of completion that reflects he completed the 17th Cohort of the Pharma PTSD Intensive Outpatient Program (IOP) on 12 January 2017. He further provides a letter from the Birdwell Foundation for PTSD, dated 25 January 2023, that shows the applicant completed a six-month course at Camp Valor, a PTSD inpatient facility for veterans with combat related PTSD.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support a referral to the IDES process. The applicant is 100% service connected for PTSD. His in-service diagnoses of PTSD and Major Depression were found to fail retention standards in accordance with AR 40- 50I, chapter 3-31, and he participated in a Medical Board and was referred for a Physical Evaluation Board (PEB). Based on the documentation available for review, there is evidence the applicant warrants a referral to the IDES process.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate discharge? Not applicable.

(2) Did the condition exist or experience occur during military service? Not applicable.

(3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The available evidence shows the applicant committed serious misconduct (abuse of illegal drugs). As a result, his chain of command initiated separation action against him. He was discharged due to misconduct (drug abuse) with an under other than honorable conditions discharge. The ADRB initially upgraded his character of service to general, and later to honorable with the later change also changing the reason to minor infractions with a corresponding separation and RE Codes. The Board reviewed and agreed with the medical reviewer's determination that there is sufficient evidence to support a referral to the integrated disability evaluation system (IDES). The applicant's in-service diagnoses of PTSD and Major Depression were found to fail retention standards in accordance with AR 40-501, chapter 3-31, and he participated in a medical board and was referred for a physical evaluation board (PEB). Based on the documentation available for review, the Board agreed that there is evidence the applicant warrants a referral to the IDES process.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined that the evidence presented was sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by directing the applicant be entered into the Integrate Disability Evaluation System (IDES) and a Medical Evaluation Board (MEB) convened to determine whether the applicant's condition(s), to include PTSD and Major Depression met medical retention standards at the time of service separation.

a. In the event that a formal physical evaluation board (PEB) becomes necessary, the individual concerned will be issued invitational travel orders to prepare for and participate in consideration of their case by a formal PEB. All required reviews and approvals will be made subsequent to completion of the formal PEB.

b. Should a determination be made that the applicant should have been separated or retired under the IDES, these proceedings will serve as the authority to void their administrative separation and to issue them the appropriate separation retroactive to their original separation date, with entitlement to all back pay and allowances and/or retired pay, less any entitlements already received.

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains changing his type of separation without evaluation under the IDES.

[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. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a states 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, of the version in effect at the time, established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. It provided that action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally appropriate for a Soldier discharged under this chapter. However, the separation authority could direct an honorable discharge if merited by the Soldier's overall record.

2. 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.

3. 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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

4. 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.

5. Section 1556 of Title 10, United States Code, 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 applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//