

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 November 2024

DOCKET NUMBER: AR20240004167

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his general discharge under honorable conditions.

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

- DD Form 149 (Application for Correction of Military Record)
- Rating Decision, 8 January 2019
- Department of Veterans Affairs (DVA) letter, 8 December 2023
- OK Divorce decree
- Certificate of live birth
- OK marriage license

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20210015555 on 28 June 2022.
2. The applicant states he did have a period of honorable service. Because of trauma, mental issues pertaining to his post-traumatic stress disorder he should be considered in his correction of discharge.
3. The applicant enlisted in the Regular Army on 6 February 1996.
4. The applicant reenlisted in the Regular Army on 15 September 2000 for 4 years.
5. The applicant's separation packet which led to his discharge is not available for review; however, the applicant's available service record includes his DD Form 214 (Certificate of Release or Discharge from Active Duty) which shows he was discharged for misconduct under honorable conditions on 17 July 2003 under the provisions of Army Regulation 635-200, paragraph 14-12c (1) with a Separation Code: JKD, and a Reentry Code: 3. He was awarded or authorized:

- Army Achievement Medal (3rd Award)
- Army Good Conduct Medal (2nd Award)
- National Defense Service Medal
- Armed Forces Service Medal
- Army Service Ribbon
- Overseas Service Ribbon (2nd Award)
- Expert Marksmanship Qualification Badge with Rifle Bar
- Expert Marksmanship Badge, Pistol with 9mm Bar
- Expert Marksmanship Qualification Badge with Grenade
- Driver and Mechanic Badge with Driver-W Component Bar

6. On 4 September 2013, the Army Discharge Review Board (ADRB), after carefully examining the applicant's record of service during the period of enlistment under review, and considering the Discussion and Recommendation which follows, the ADRB determined the discharge was both proper and equitable and voted to deny relief.

7. In his previous request (AR20210015555) on 28 June 2022, after reviewing the application and all supporting documents, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned. The application submitted was denied by the ABCMR.

8. The applicant provides:

- Rating Decision, 8 January 2019, showing:
 - PTSD rated at 70% from 8 May 2017
 - Degenerative Joint Disease, Left Knee rated at 20% from 1 April 2010
 - Chondromalacia and Unstable Knee Cap, Right Knee rated at 10% from 18 July 2003
 - Left Ear Tinnitus rated at 10% from 13 May 2009
- Department of Veterans Affairs (DVA) letter, 8 December 2023, showing he was rated at 80% combined service connected evaluation effective 1 December 2023
- OK marriage license showing he was married 11 June 1996
- OK Divorce decree from his ex-spouse effective 22 December 2014

9. By regulation, AR 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to their normal expiration of term of service.

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

11. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR for reconsideration of his previous request for an upgrade of his general discharge under honorable conditions. He contends he experienced mental health conditions including 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 6 February 1996; 2) The applicant's separation packet which led to his discharge is not available for review. However, the applicant's available service record includes his DD Form 214, which shows he was generally discharged for misconduct under honorable conditions on 17 July 2003, Chapter 14-12c (1) with a Separation Code: JKD, and a Reentry Code: 3.

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 that mitigate his misconduct while on active service. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active serve.

d. A review of JLV provided sufficient evidence the applicant has been diagnosed with a service-connected PTSD in 2017. He was seen by the VA for treatment for poly-substance abuse/dependence. He has also been diagnosed with other mental health conditions including depression and anxiety.

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 while on active service. However, there is insufficient evidence 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? No. There is sufficient evidence beyond self-report the applicant was experiencing mental health conditions including PTSD while on active service. However, there is insufficient evidence 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. Yet, 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:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and the medical review, the Board concurred with the advising official finding sufficient evidence beyond self-report the applicant was experiencing mental health conditions including PTSD while on active service. The opine noted, however there is insufficient evidence 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.

2. The Board determined there is sufficient evidence of in-service mitigating factors to overcome the misconduct. The Board found based on the medical opine, liberal consideration and the applicant's contentions he experienced mental health condition while on active service, which mitigates his misconduct and discharge, relief was granted to upgrade the applicant's character of service to honorable.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	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 reissuing the applicant a DD Form 214 showing his characterization of service as honorable.



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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows his DD Form 214 omitted administrative entries in the Remarks block. As a result, amend the DD Form 214 by adding in item 18 the entry "Continuous honorable service 19960206 to 20000914."

REFERENCES:

1. Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to their normal expiration of term of service. The regulation in effect at the time stated individuals in pay grades E-5 and above could be processed for separation upon discovery of a drug offense. Those in pay grades below E-5 could also be processed after a first drug offense and must have been processed for separation after a second offense. The issuance of a discharge under other than honorable conditions was normally considered appropriate.

a. Paragraph 3-7a (1) states an honorable discharge is a separation with honor. 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b (1) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

2. AR 635-8 (Separations Processing and Documents), currently in effect, provides for the preparation and distribution of the DD Form 214. It states for item 18 (Remarks) to Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable", enter "Continuous Honorable Active Service from" (first day of service for which DD Form 214 was not issued) until (date before commencement of current enlistment).

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. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

5. The Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta

Memorandum]. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury (TBI), 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

a. Guidance documents are not limited to under other than honorable conditions discharge characterizations but rather apply to any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from general to honorable characterizations.

b. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.

c. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards 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. 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, 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.

7. 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//