

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 October 2024

DOCKET NUMBER: AR20240004168

APPLICANT REQUESTS: Upgrade of his under honorable conditions (general) discharge.

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

DD Form 149 (Application for Correction of Military Record)

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 relief is warranted due to his experiences in Iraq. He served in downtown Baghdad under constant bombings, murder, and other tense situations on a daily basis. He does not condone his behavior; he seeks consideration of his actions.
3. On his DD Form 149, the applicant notes post-traumatic stress disorder (PTSD) issues are related to his request.
4. The applicant enlisted in the Regular Army on 5 August 2003, for 5 years. Upon completion of initial entry training, he was awarded military occupational specialty 92G (Food Service Operations). The highest grade he attained was E-3.
5. He served in Kuwait/Iraq from 21 June 2004 until 18 June 2005.
6. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice; however, the relevant DD Form 458 (Charge Sheet) is not available for review.
7. Before a summary court-martial on 15 September 2015, at Fort Drum, NY, the applicant was found guilty of two specifications of wrongful use of a controlled substance and one specification of wrongful introduction of a controlled substance.

8. The court sentenced the applicant to reduction in grade to E-1, forfeiture of \$757.00, and confinement for 21 days. The sentence was approved on 20 September 2005, and the record of trial was forwarded for appellate review.

9. The applicant's commander notified the applicant that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, paragraph 14-12c(2) for misconduct-abuse of illegal drugs. As the specific reasons, the commander noted the applicant's wrongful use of Ketamine a schedule III controlled substance, between 7 March 2005 and 30 April 2005.

10. On 23 January 2006, the applicant consulted with counsel and was advised of the basis for the contemplated separation action, the possible effects of the discharge, and the rights available to him. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a discharge/character of service that is less than honorable was issued to him. He submitted a statement in his own behalf; however, the available record is void of his statement.

11. The applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 14, prior to his expiration term of service.

12. Consistent with the chain of command's recommendations, the separation authority approved the recommended separation action and directed the applicant's discharge with his service characterized as under honorable conditions (general).

13. The applicant was discharged on 10 March 2006. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c(2) for misconduct (drug abuse). His service was characterized as under honorable conditions (general). He was assigned Separation Code JKK and Reentry Code 4. He completed 2 years, 7 months, and 6 days of net active service this period.

14. Additionally, his DD Form 214 shows he was awarded or authorized the National Defense Service Medal, Global War on Terrorism Expeditionary Medal, Global War on Terrorism Service Medal, and the Army Service Ribbon.

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

16. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under honorable conditions (general) to honorable. He contends he experienced an undiagnosed mental health condition, including PTSD, that mitigates his misconduct.

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 5 August 2003, and he served in Kuwait/Iraq from 21 June 2004 until 18 June 2005.
- Court-martial charges were preferred against him on 15 September 2005, but the charge sheet is unavailable. The applicant was found guilty of two specifications for wrongful use of a controlled substance and one specification of wrongful introduction of a controlled substance.
- The applicant was discharged on 10 March 2006 and completed 2 years, 7 months, and 6 days of net active service.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts relief is warranted due to his service in Iraq where he endured constant bombings, murder, and other tense situations on a daily basis. The application did not include any medical or mental health records. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed the applicant initiated mental health services through the VA on 20 October 2006 and reported anxiety, irritability, and hyperarousal symptoms. He related that he was a cook in the military, but he mostly did security work and patrols. He discussed exposure to car bombings and deceased/dismembered bodies. He was diagnosed with Anxiety Disorder Not Otherwise Specified (NOS) and was referred for individual therapy and Vocational Rehabilitation services, but there was no evidence of follow up. In 2015 he was prescribed a sleep medication for insomnia by primary care, and in November 2021 he was referred to primary care mental health due to sleep difficulty. He reported sleep onset problems due to ruminating thoughts, and he self-medicates with alcohol, consuming 6-8 drinks a day to fall asleep. He also reported nightmares and had a positive PTSD screening, and he declined a referral for substance abuse treatment and requested medication to help with sleep. A psychiatric evaluation was conducted on 29 December 2021, and the applicant reported excessive alcohol use since discharge from the military, problems with concentration, irritability, and social isolation. He explained that his discharge was

related to cannabis use, and he described specific trauma-related events (i.e. a helicopter crash and witnessing floating bodies in the water; a bomb creating an eight-foot crater; a father knowing his child was deceased in the front yard but not being able to allow him access to the child). He was diagnosed with PTSD, Insomnia, and Alcohol Use Disorder. He was started on a medication for anxiety and sleep, and he was referred to substance abuse treatment. Scheduling efforts were not responded to. He had a follow up with psychiatry in May 2022 and was started on an antidepressant and referred again to substance abuse treatment. In October 2022 he was assessed for alcohol treatment and began an intensive outpatient program as well as evidence-based psychotherapy for PTSD. He successfully completed both programs and continued in aftercare for maintenance of sobriety, and he maintained routine follow up through May 2023. He was next seen in March 2024 due to depressed mood and alcohol use in the context of situational stressors (i.e. unemployment; relationship problems). There was indication of a possible move [REDACTED] and intent to engage care there, but there is no additional mental health documentation. The applicant is 90% service connected for several conditions, and he is 70% service connection for PTSD.

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

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. There is no documentation from his time in service indicating any mental health symptoms, but he was seen by the VA seven months after discharge and was diagnosed with Anxiety Disorder NOS.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service. He was deployed to Kuwait/Iraq from June 2004 to June 2005, and he reported trauma exposure to VA mental health providers.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. However, VA documentation showed a history of alcohol and substance abuse and diagnoses of PTSD and Alcohol Abuse, and the applicant is 70% service connected for PTSD. Substance abuse is a common self-medicating strategy for avoiding uncomfortable emotions and memories related to trauma exposure, and substance use can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Given the

nexus between trauma exposure, avoidance of emotion, and substance use and in accordance with liberal consideration, the basis for separation is mitigated.

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 warranted.

2. The Board carefully considered the applicant's contentions, is record of service to include a deployment, the frequency and nature of his misconduct, the outcome of the court-martial, the reason for his separation and his character of service when discharged. The Board considered the review and conclusions of the medical advisor, to include the applicant's service-connected VA rating for PTSD. The Board found: (1) The applicant had a condition or experience that mitigated his discharge; (2) The applicant was experiencing a mental health condition while on active duty; (3) The condition or experience mitigates the applicant's discharge. Based on a preponderance of evidence, the Board determined that an upgrade of the applicant's discharge to Honorable was warranted as a matter of liberal consideration.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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|-------------------------------------|-------------------------------------|-------------------------------------|----------------------|
| <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 relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 10 March 2006 to show in item 24 (Character of Service): Honorable

6/11/2025

X

CHAIRPERSON

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. Title 10, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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.
3. 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. 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. Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. It states that action will be initiated to separate a Soldier for misconduct when it was clearly established that rehabilitation was impracticable or unlikely to succeed.

4. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR), on 3 September 2014, 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.

5. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. 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, 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 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.

6. 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.

//NOTHING FOLLOWS//