

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 January 2025

DOCKET NUMBER: AR20240004508

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his Under Honorable Conditions (General) characterization of service and to appear before the Board via video/telephone.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Rating Decision, 31 October 2023
- VA Benefits Decision, 13 November 2023
- VA Summary of Benefits, 5 March 2024
- VA Summary of Benefits, 13 August 2024

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 AR20180010262 on 5 February 2020.
2. The applicant states, in effect, he suffered from chronic post-traumatic stress disorder (PTSD) while serving in the Army and it was a contributing factor in his misconduct. He still suffers from very bad hallucinations, social anxiety, and erratic behavior. He also has a history of reaching points where he cannot make logical decisions. Until recently, he could not receive proper treatment for his condition, because it had not been diagnosed by the VA. His PTSD and other mental health conditions have been diagnosed as service connected stemming from his combat deployments. Depression, anxiety, social awkwardness, anger, and behavioral issues have all been part of his PTSD journey.
3. Following a period of service in the U.S. Army Reserve, the applicant enlisted in the Regular Army on 14 March 2001 in the rank/grade of private (PV1)/E-1 for a period of 4 years. Upon completion of training, he was assigned to a unit at Fort Lewis, WA. He was advanced to the rank/grade of specialist (SPC)/E-4 on 1 November 2002, and that was the highest rank he held.

4. The applicant was assigned to a unit in Vilseck, Germany from 21 January 2003 until 13 June 2005. He was subsequently reassigned to a unit at Fort Belvoir, VA.
5. On 9 December 2005, he reenlisted for a period of 4 years.
6. On 11 January 2006, an administrative flag was imposed upon the applicant to prevent him from receiving favorable personnel actions while he was pending field initiated elimination. He was also notified that he was being command referred for mental health evaluation and enrolled in the Army Substance Abuse Program as a result of his abuse of illegal drugs.
7. On 12 January 2006, the applicant was counseled regarding his referral to the Medical Review Officer as a result of his positive urinalysis result. He was advised that continued misconduct could result in the initiation of actions to administratively separate him from the Army, a bar to reenlistment, and/or punishment under the provisions of the Uniform Code of Military Justice (UCMJ).
8. The applicant's Rehabilitation Team met on 3 February 2006 and agreed that he should be enrolled in individual counseling, group counseling, family counseling, and stress management.
9. On 8 March 2006, the applicant accepted field grade nonjudicial punishment under the provisions of Article 15, of the UCMJ for on or about 27 December 2005, wrongfully using cocaine. His punishment was reduction from SPC/E-4 to private first class (PFC)/E-3; forfeiture of \$846.00 pay per month for 2 months, suspended to be automatically remitted if not vacated before 4 September 2006; and extra duty for 30 days.
10. The applicant underwent a separation medical examination on 22 March 2006 and was found to be qualified for administrative separation.
11. A Military Police Report shows the applicant was apprehended on 11 April 2006 and charged with Simple Assault Consummated by a Battery as a result of an altercation with his wife that began verbally and became physical when he grabbed her, threw her to the ground, and spit in her face.
12. On 11 April 2006, the applicant and his wife were both counseled regarding the consequences of misconduct on Fort Belvoir, VA, and specifically advised that their privilege to reside in government quarters could be terminated as a result of misconduct.
13. The applicant underwent a behavioral health evaluation on 14 April 2006. It was determined that he had the mental capacity to understand and participate in the

proceedings and was mentally responsible. He was psychiatrically cleared for any administrative action deemed appropriate by command.

14. The applicant's immediate commander notified the applicant of his intent to initiate action to separate him under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 14, paragraph 14-12c, for Commission of a Serious Offense as a result of his receipt of a field grade Article 15 for wrongfully using cocaine. He was advised that he was being recommended for an Under Honorable Conditions (General) discharge.

15. On 23 May 2006, the applicant acknowledged receipt of the notification and that he was advised of the reasons for separation and of the rights available to him. He elected not to submit statements in his own behalf.

16. On 9 June 2006, the applicant's immediate commander formally recommended his separation prior to the expiration of his term of service, under the provisions of Army Regulation 635-200, paragraph 14-12c by reason of Commission of a Serious Offense. The intermediate commander concurred with the recommendation.

17. On 6 July 2006, the applicant voluntarily waived his right to consideration of his case by an administrative separation board contingent upon him receiving a characterization of service or description of separation no less favorable than General, Under Honorable Conditions. He elected not to submit statements in his own behalf.

18. On 11 July 2006, the separation authority approved the recommendation and directed the applicant to be discharged with a General, Under Honorable Conditions characterization of service.

19. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show he was discharged on 31 July 2006, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of Misconduct (Serious Offense), with separation code "JKQ" and reentry code "3." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 5 years, 4 months, and 17 days of net active service this period.

20. Block 18 (Remarks) of his DD Form 214 shows he had an immediate reenlistment this period from 20051209-220060731 (indicating 9 December 2005 to 31 July 2006) but does not identify his continuous period of honorable service prior to reenlistment (see Administrative Notes).

21. The applicant petitioned the Army Discharge Review Board (ADRB) for relief. On 19 March 2010, the applicant was informed that after careful review of his application,

military records, and all other available evidence, the ADRB had determined he was properly and equitably discharged and denied this request.

22. The applicant petitioned the ABCMR for relief. On 26 May 2021, the applicant was informed the ABCMR had considered his application under procedures established by the Secretary of the Army and denied his application.

23. The applicant provides documents from the VA that are available in their entirety for the Board's consideration. The documents show, in part, the applicant was awarded a disability rating of 100 percent for PTSD effective 20 August 2021.

24. 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. By regulation, an applicant is not entitled to a hearing before the Board.

25. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request for an upgrade of his Under Honorable Conditions (General) characterization of service. 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) Following a period of service in the U.S. Army Reserve, the applicant enlisted in the Regular Army on 14 March 2001; 2) On 8 March 2006, the applicant accepted field grade nonjudicial punishment (NJP) for wrongfully using cocaine; 3) A Military Police Report shows the applicant was apprehended on 11 April 2006 and charged with Simple Assault Consummated by a Battery as a result of an altercation with his wife that began verbally and became physical when he grabbed her, threw her to the ground, and spit in her face; 5) The applicant was discharged on 31 July 2006, Chapter 14-12c, by reason of Misconduct (Serious Offense). His service was characterized as Under Honorable Conditions (General); 6) On 19 March 2010, the Army Discharge Review Board reviewed and denied the applicant's request for an upgrade; 7) On 26 May 2021, the ABCMR reviewed and denied the applicant's request for an upgrade.

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

c. The applicant asserts he was experiencing mental health conditions including PTSD, which mitigates his misconduct. There is insufficient evidence the applicant

reported or was diagnosed with a mental health condition including PTSD while on active service. There is evidence the applicant was referred to a Mental Status Evaluation following a positive urinalysis for cocaine, and the applicant, on 03 February 2006, was enrolled in substance abuse treatment (8 sessions of psychoeducation group treatment). He was also referred to individual and group treatment, family counseling, and stress management. On 14 April 2006, the applicant was seen at behavioral health services for a Command Referred Behavioral Health evaluation due to testing positive for drugs in December 2005. The applicant denied any drug use/abuse and was actively engaged in substance abuse treatment. He did not meet criteria for a substance abuse disorder, and he did not meet criteria for a mental health disorder. The applicant was cleared from a psychiatric perspective to participate in any administrative proceedings deemed appropriate by his command.

d. A review of JLV provided evidence the applicant began to engage with the VA in 2010. He was diagnosed and treated by the VA for service-connected PTSD related to his experiences during his deployment. The applicant receives service-connected disability for PTSD (100%).

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence to support the applicant had a condition or experience that partially 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 experienced mental health conditions including PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed with service-connected PTSD by the VA in 2010.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD while on active service that mitigates his misconduct. There is evidence the applicant has been diagnosed with service-connected PTSD by the VA in 2010.

(3) Does the condition/experience actually excuse or mitigate the discharge? Partially, there is sufficient evidence beyond self-report the applicant was experiencing PTSD while on active service as a result of his deployment. The applicant did have a positive urinalysis for cocaine use. Substance use can be an example of avoidant behavior and a natural sequelae to PTSD. Therefore, per Liberal Consideration, this misconduct is mitigatable. However, there is no nexus between the applicant's PTSD and Simple Assault Consummated by a Battery towards his wife: 1) this type of misconduct is not a part of the natural history or sequelae of PTSD; 2) His PTSD does

not affect one's ability to distinguish right from wrong and act in accordance with the right.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial 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 advisory the Board considered the advising official finding sufficient evidence to support the applicant had a condition or experience that partially mitigates his misconduct. The opine noted, there is no nexus between the applicant's PTSD and Simple Assault Consummated by a Battery towards his wife:

2. The Board determined there is insufficient evidence of in- service mitigating factors to overcome the serious misconduct of physical assault against his spouse. The Board notwithstanding the medical opine's partial mitigation for use of cocaine and his PTSD. The Board found his behavioral health conditions could not outweigh the attack on his spouse with grabbing her and throwing her to the ground followed by spitting in her face. The Board noted the applicant was discharged for misconduct and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge.

3. During deliberation, the Board determined the applicant had a prior period of honorable service which is not currently reflected on his DD Form 214 and recommended that change be completed to more accurately show his period of honorable service by granting a partial relief to correct the applicant's records.

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 the evidence presented is 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 amending the applicant's DD form 214 for the period ending 11 October 2001 by adding in item 18 (Remarks): "CONTINUOUS HONORABLE SERVICE FROM 20010314-20051208.

2. The Board further determined 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 to reconsideration of his previous request for an upgrade of his Under Honorable Conditions (General) characterization of service.



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 NOTES:

REFERENCES:

1. Title 10, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
4. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.
  - 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.

5. Army Regulation 635-5 (Personnel Separations – Separation Documents), in effect at the time, prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It establishes the standardized policy for preparing and distributing the DD Form 214. It states the DD Form 214 provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge.

a. Paragraph 1-4b(5) of the regulation in effect at the time stated that a DD Form 214 would not be prepared for enlisted Soldiers discharged for immediate reenlistment in the Regular Army.

b. Paragraph 2-4h(18) of the regulation currently in effect states that item 18 documents the remarks that are pertinent to the proper accounting of the separating Soldier's period of service. Subparagraph (c) states that for enlisted Soldiers with more than one enlistment period during the time covered by the DD Form 214, enter "IMMEDIATE REENLISTMENTS THIS PERIOD" and specify the appropriate dates. For Soldiers who have previously reenlisted without being issued a DD Form 214 and who are later separated with any characterization of service except "honorable," enter "CONTINUOUS HONORABLE ACTIVE SERVICE FROM" (first day of service which DD Form 214 was not issued) UNTIL (date before commencement of current enlistment)." Then, enter the specific periods of reenlistments as prescribed above.

6. 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 post-traumatic stress disorder; traumatic brain injury; sexual assault; or sexual harassment. Boards are 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 misconduct that led to the discharge.

7. 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//