

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 December 2024

DOCKET NUMBER: AR20240004536

APPLICANT REQUESTS: upgrade of his under honorable conditions (general) discharge. Additionally, he requests an appearance before the Board in person or via video/telephone.

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 he was diagnosed with post-traumatic stress disorder (PTSD) after he was injured in Afghanistan, it went untreated after his return to the states. He was discharged due to his behavior and misconduct. He was later diagnosed with a traumatic brain injury (TBI). He had a good career before his deployment. He witnessed things in Afghanistan that he brought back home, and he didn't know how to maintain control.
3. On 27 April 2004, the applicant enlisted in the Regular Army for 3 years. The highest grade he attained was E-4.
4. He served in Afghanistan from 1 March 2006 to 7 February 2007.
5. On 27 March 2007, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice, for physically controlling a vehicle while drunk, on or about 25 February 2007. His punishment included reduction to E-3, and 45 days extra duty and restriction.
6. On 3 May 2007, the applicant tested positive for cocaine.

7. On 21 May 2007, the applicant underwent a medical examination. The attending physician diagnosed him with PTSD. However, he was deemed medically qualified for administrative separation.
8. On 28 August 2007, the applicant tested positive for cocaine, a second time.
9. On 27 November 2007, he was reported as absent without leave (AWOL) and remained absent until he returned to military authorities on 3 December 2007.
10. On 10 January 2008, the applicant underwent a mental status evaluation. The attending physician noted that the applicant needed additional follow-up with behavior health. However, he was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
11. On 6 February 2008, the applicant tested positive for cocaine, a third time.
12. The applicant's commander notified the applicant on 14 February 2008, 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, for commission of a serious offense. He noted the applicant's Article 15, his positive tests for cocaine, and his period of AWOL.
13. 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 was less than honorable was issued to him. He declined to submit a statement in his own behalf.
14. The applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, paragraph 14-12c.
15. Consistent with the chain of command's recommendations, the separation authority directed the applicant's separation from the Army on 3 March 2008, with an under honorable conditions (general) characterization of service.
16. The applicant was discharged on 19 March 2008. 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 3 years, 10 months, and 16 days of net active service this period with 7 days of lost time.

17. Additionally his DD Form 214 shows he was awarded or authorized the: Purple Heart, Army Commendation Medal, National Defense Service Medal, Afghanistan Campaign Medal, Army Service Ribbon, Overseas Service Ribbon, North Atlantic Treaty Organization Medal, and the Combat Action Badge.

18. 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.

19. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) discharge. The applicant selected PTSD and TBI on his application as related to his request.

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:

- Applicant enlisted in the Regular Army on 27 April 2004.
- Applicant served in Afghanistan from 1 March 2006 to 7 February 2007.
- On 27 March 2007, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice, for physically controlling a vehicle while drunk, on or about 25 February 2007. His punishment included reduction to E-3, and 45 days extra duty and restriction.
- On 3 May 2007, the applicant tested positive for cocaine.
- On 28 August 2007, the applicant tested positive for cocaine, a second time.
- On 27 November 2007, he was reported as absent without leave (AWOL) and remained absent until he returned to military authorities on 3 December 2007.
- On 6 February 2008, the applicant tested positive for cocaine, a third time.
- Applicant's commander notified the applicant on 14 February 2008, 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, for commission of a serious offense. He noted the applicant's Article 15, his positive tests for cocaine, and his period of AWOL.
- Applicant was discharged on 19 March 2008. 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 3 years, 10 months, and 16 days of net active service this period with 7 days of lost time.

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 he was diagnosed with post-traumatic stress disorder (PTSD) after he was injured in Afghanistan, it went untreated after his return to the states. He was discharged due to his behavior and misconduct. He was later diagnosed with a traumatic brain injury (TBI). He had a good career before his deployment. He witnessed things in Afghanistan that he brought back home, and he didn't know how to maintain control.

d. The active-duty electronic medical records available for review indicate the applicant was treated in the emergency room on 17 June 2006, while in theater. The note states, while driving back after "a mission in the Asadabad region, his vehicle was struck with an IED". The applicant lost consciousness and was on the ground for an unknown period of time, he was "Medivac'ed to ABAD". The applicant was diagnosed with Trauma and medically treated. Three notes in the record indicate he was seen by behavioral health at his bedside on 19, 20, and 21 June 2006 and diagnosed with Bereavement. A note dated 23 June 2006 diagnosed the applicant with Anxiety Disorder. The applicant continued receiving behavioral health treatment while in theater and on 28 July 2006 was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood. On 29 July 2006, he was evaluated by psychiatry and started on medication to address insomnia. On 1 February 2007, he participated in a TBI evaluation and screened positive for a TBI but was cleared to return to his home station. On 26 March 2007, the applicant was seen for a psychiatry intake at Ft. Drum. On 17 April 2007, he was provided with a neuropsychological screening based on his reported symptoms of memory issues, visual disturbance, and sleep paralysis. The applicant was diagnosed with Depression and provided with individual therapy and medication management. In a session dated 8 May 2007, the applicant notes his frustration with command and improving his quality of life. The clinician notes supporting the applicant while he awaits his the MEB process. On 17 May 2007, the applicant participated in a mental status evaluation for the purpose of separation, he was cleared for all administrative action. However, the note states the applicant had a case manager who was assisting with MEB processing and notes he was receiving supportive psychotherapy, was treated while in Afghanistan, and participated in ASAP. On 10 January 2008, the applicant participated in a second mental status evaluation for the purpose of separation, he was cleared for all administrative action. However, during the assessment he reported nightmares and periods of depressed mood with passive suicidal ideation but denied having any intent or plan. The applicant continued to receive supportive psychotherapy until his discharge.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected, including 70% for PTSD. A C and P evaluation dated 11 October 2011, diagnosed the applicant with PTSD that is aggravated by his TBI. The evaluation references a previous C and P evaluation dated 20 September 2008, that

diagnosed the applicant with PTSD and Major Depressive Disorder. The applicant has been treated intermittently via behavioral health services and has been diagnosed with PTSD, Anxiety, Depression, and TBI.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his misconduct.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected PTSD and TBI on his application as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. During military service the applicant experienced a traumatic event of an IED explosion and loss consciousness. He was diagnosed with a TBI and later with Anxiety Disorder and Depression. The applicant is 100% service connected, including 70% for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to being AWOL, driving while under the influence, and three specifications of cocaine use/positive urinalysis. Given the nexus between PTSD and the use of substances to alleviate/cope with the symptoms of his behavioral health condition, the applicant's use of substances is mitigated by his BH condition. In addition, given the nexus between PTSD and avoidance, the applicant's AWOL is also mitigated by his BH condition.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was/was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available evidence showing all misconduct occurred post-deployment to Afghanistan, the misconduct involved, and the findings of the medical review, the Board concluded there was sufficient evidence to warrant a change to the characterization of service to Honorable.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	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:

- Characterization of Service: Honorable
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

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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 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.
 - a. Paragraph 2-9 states 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.
 - b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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 – 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. 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 (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.

5. 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.

6. 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, 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 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.

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//