

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 December 2024

DOCKET NUMBER: AR20240004980

APPLICANT REQUESTS: an upgrade of his general, under honorable conditions characterization of service to honorable.

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

- DD Form 293 (Application for the Review of Discharge)
- Personal Statement
- Two VA Forms 21-10210 (Lay/Witness Statement) dated 3 April 2023
- Department of Veterans Affairs (VA) Letter dated 9 August 2023

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:

a. He served in the United States Army from 2002-2006 with tours in Iraq for Operation Iraqi Freedom and Operation Enduring Freedom. He was discharged by a failed urinalysis. This was hard time in his life, he made a huge mistake that has haunted him to this day. He has not touched drugs in over 15-years and has been on a straight and narrow path. He currently works armed security in the private sector and train police in military martial arts and boxing. He is working on his bachelor's degree in Kinesiology and working on getting his TSAC-F (tactical strength and conditioning facilitator) certification through NSCA (National Strength and Conditioning Association) to continue training agencies and units such as law enforcement, fire fighters, and emergency medical technicians.

b. He is requesting the upgrade since the VA is acknowledging his honorable discharge. He would like an upgrade to allow him to continue training and possibly become a law enforcement officer. His mission is to create the very best of the best in

law enforcement and first responders for the betterment of this great country he once served and wishes to serve again. The applicant marked post-traumatic stress disorder (PTSD), traumatic brain injury (TBI) and other mental health on the DD Form 149 as conditions related to his request.

3. The applicant provides the following:

a. Two lay witness statements dated 3 April 2023, which attest to the applicant changing his life around for the better. Further noted is the applicant is a person of integrity, professionalism, and consistently improves his skills to help others in his community. He is a great supporter, provider, father, and grandfather and wants the best for everyone.

b. A letter from the VA dated 9 August 2023, shows the applicant's post-traumatic stress with unspecified depressive disorder, anxiety, and alcohol-use disorder with traumatic injury was continued at a 70% disability rating.

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

a. He enlisted into the Regular Army on 31 January 2005.

b. A CID Form 94 (Agent's Investigation Report) dated 17 November 2005 shows the applicant tested positive for methamphetamine during his unit routine urinalysis on 31 October 2005.

c. A memorandum from the Army Substance Abuse Program (ASAP) dated 14 November 2005 shows the commander was notified and to schedule the applicant for a medical evaluation. The record is void of a DA Form 8003 (ASAP Enrollment).

d. On 17 November 2005 he was advised of his rights, which he waived, and rendered a sworn statement admitting to the offense.

e. On 6 December 2005, he accepted nonjudicial punishment for one specification of wrongful use of methamphetamine (Crystal Meth) a Schedule II controlled substance, between on or about 13 September 2005 and on or about 13 October 2005.

f. On 23 January 2006, the applicant underwent a mental status evaluation. The report shows show he had no significant mental illness and had the mental capacity to understand and participate in board proceedings. He was psychiatrically cleared for administrative separation.

g. On 13 February 2006, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR)

635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c, for commission of a serious offense. The reason for his proposed action was wrongfully using methamphetamines (Crystal Meth). The applicant acknowledged receipt on the same day.

h. On 15 February 2006, after consulting with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if less than honorable discharge was issued to him
- he may be ineligible for many or all benefits as a Veteran under both Federal and State laws
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he will be ineligible to apply for enlistment for a period of 2 years after discharge.
- he was not entitled to have his case heard before an administrative separation board if considered for an under other than honorable conditions discharge
- he elected not to submit a statement on his own behalf

i. The immediate commander initiated separation action against the applicant under the provisions of AR 635-200, Chapter 14-12c, for commission of a serious offense. He recommended a general, under honorable conditions characterization of service.

j. On 3 March 2006, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter 14, paragraph 14-12c for commission of a serious offense. He would be issued a general, under honorable conditions characterization of service.

k. On 14 March 2006, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 shows he completed 1 year, 1 month, and 14 days of active service with no lost time. Block 18 (Remarks) shows he served in Iraq from 16 April 2005 to 4 October 2005. He was assigned separation code JKK and the narrative reason for separation listed as "Misconduct (Drug Abuse)," with reentry code 4. It also shows he was awarded or authorized:

- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon

5. On 29 July 2009, the applicant was notified the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.
6. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as commission of a serious offense, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.
7. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

8. 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, and traumatic brain injury (TBI) 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 31 January 2005. His DD214 showed that he had 2 years, 2 months, and 14 days of prior active service, and he deployed to Iraq from 16 April 2005 until 4 October 2005.
- On 6 December 2005 the applicant accepted NJP for one specification of wrongful use of methamphetamine.
- The immediate commander initiated separation action against the applicant under the provisions of AR 635-200, Chapter 14-12c, for commission of a serious offense.
- The applicant was discharged on 14 March 2006 and completed 1 year, 1 month, and 14 days of active service.

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 asserts he served two tours in Iraq between 2002 and 2006, and this was a difficult time in his life. He indicated mental health, TBI, and PTSD as mitigating factors in his misconduct. A VA Rating Decision letter dated 9 August 2023 showed continuation of 70% service connected rating for PTSD, Unspecified Depressive Disorder, Anxiety, Alcohol Use Disorder, and TBI. A memorandum from the Army Substance Abuse Program (ASAP) showed that the applicant tested positive for amphetamines/methamphetamine. A sworn statement by the applicant showed that he admitted to using crystal meth in order to stay

awake to make a long drive. Army Discharge Review Board Case number AR 20090006750 included an Aeromedical Evacuation Patient Record dated 28 July 2003, which showed that the applicant was evacuated out of theater after sustaining injuries secondary to an RPG attack, and the documentation includes mention of combat related stress and mental health issues. This application also includes VA documentation, which will be summarized below. 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 DoD documentation of a post-deployment examination dated 5 October 2005, which noted that the applicant had received combat stress treatment while in theater and wanted to follow up with a provider. On 7 December 2005 there is documentation that the applicant sought services again and reported anger problems, conflict in his unit, the death of a friend by suicide, financial and marital stress, and a positive drug screen. A separation physical was conducted on 10 January 2006, which showed the applicant was cleared for separation associated with drug use, and a mental status evaluation was completed on 23 January 2006 with no evidence of mental health related symptoms noted. However, documentation on 25 January 2006 indicated he was engaged in group therapy for anger, and the following day he began individual therapy. He attended several group and individual therapy sessions, and his last encounter was on 7 February 2006. His diagnosis was Adjustment Disorder with mixed disturbance of emotions and conduct, and it was also noted that he was prescribed an anxiolytic medication. On 25 April 2008, the applicant initiated mental health services through the VA and was referred for substance abuse treatment. However, when contacted, he reported he had discontinued alcohol use. He engaged in an evaluation for TBI and a neuropsychology consult was entered. During a psychiatry intake he reported anger, depression, sleep difficulty, flashbacks, nightmares, and a history of drug use. He reported trauma exposure while deployed as "being blown up by an RPG and seeing about 100 bodies piled up in a grave. I'll never forget that smell." He was started on medications for sleep and nightmares, and he was continued on an antidepressant. He did not attend follow up appointments, but in April 2009 he reengaged with services. A PTSD evaluation was completed on 21 April 2009, and he was diagnosed with PTSD, ADHD by history, and Methamphetamine Abuse in remission. A neuropsychological evaluation, including psychological testing, was completed on 28 May 2009, and results showed no significant cognitive deficits, and he was diagnosed with PTSD. He intermittently engaged in medication management, and a Compensation and Pension (C&P) was conducted on 17 September 2010 resulting in a diagnosis of PTSD and Alcohol Abuse. Between 2010 and 2016, the applicant intermittently engaged in mental health treatment, but he is not actively engaged in treatment currently.

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. The applicant was diagnosed with an Adjustment Disorder while on active service, and he is 70% service connected through the VA for PTSD and other mental health conditions, including TBI.

(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, and records show he received services for a mental health condition. The applicant deployed in 2003 and again from April until October 2005, and he reported deployment-related trauma exposure.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. A review of military medical and mental health records revealed documentation of a mental health condition while on active service, and the applicant has been diagnosed and treated for PTSD. The applicant's history of substance abuse, both while in service and following discharge, is a common self-medicating strategy for avoiding uncomfortable emotions and memories related to trauma exposure. Given the nexus between trauma exposure, avoidance, and substance use and in accordance with liberal consideration, the basis for separation is mitigated.

### 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 warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct leading to the applicant's separation and the mitigation for such misconduct found in the medical review, the Board concluded there was sufficient evidence to upgrade the applicant's characterization of service to Honorable.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

|                          |                          |                          |                      |
|--------------------------|--------------------------|--------------------------|----------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input 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:

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

3/17/2025

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

a. 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.

b. 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. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed. Paragraph 14-12c further states commission of a serious offense includes abuse of illegal drugs or alcohol.

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 post-traumatic stress disorder (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. 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, 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, 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.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Service Boards for Correction of Military/Naval Records (BCM/NR) 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, 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.

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.

6. 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//