

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 October 2024

DOCKET NUMBER: AR20240005515

APPLICANT REQUESTS:

- Reconsideration of his previous request to upgrade his general under honorable conditions discharge to an honorable character of service
- Permission to appear personally before the Board
- As new requests, the applicant asks the Board to amend the following items on his DD Form 214 (Certificate of Release or Discharge from Active Duty): item 26 (Separation Code), item 27 (Reentry Code), and item 28 (Narrative Reason for Separation)

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

- DD Form 149 (Application for Correction of Military Record)
- Letter of support
- Extract from applicant's Department of Veterans Affairs (VA) medical records
- VA letter

FACTS:

1. Incorporated herein by reference are military records, as were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20200010192, on 29 April 2021.

2. The applicant states he seeks this correction because he has worked hard to get help and has turned his life around. He is now a father of four, a college graduate, is active in a local gym, and no longer uses marijuana or alcohol.

a. On his application, the applicant has checked boxes for PTSD (post-traumatic stress disorder) and sexual assault/harassment. In support of his application, he includes a VA letter that states his combined disability rating is 70 percent, as well as an extract from his VA medical records, which offer more details of what he experienced while on active duty.

b. The applicant also offers a letter of support from his spouse, in which she notes her observations of the applicant as he dealt with his PTSD symptoms, describes the effects on her and the family, and details the steps he has taken to change.

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

a. On 28 June 2010, the applicant enlisted into the Regular Army for 6 years; upon completion of initial entry training and the award of military occupational specialty 25U (Signal Support Systems Specialist), orders assigned him to Germany, and he arrived at his new unit (a medical company), on or about 1 February 2011.

b. On 20 April 2012, the applicant's unit awarded him a Department of the Army Certificate of Achievement for his role as a communications specialist during a major exercise. At some point prior to January 2013, his command promoted him to specialist (SPC)/E-4.

c. In January 2013, the applicant completed his tour in Germany, and orders reassigned him to Fort Bliss, TX. On 31 January 2013, his unit awarded him an Army Achievement Medal, for the period 1 February 2011 to 31 January 2013, based on his service as his unit's communications sergeant. On or about 1 February 2013, the applicant arrived at his Fort Bliss unit.

d. The applicant's separation packet is unavailable for review; however, his service record includes his DD Form 214, which shows that, on 4 September 2013, the Army discharged the applicant under honorable conditions (General). The report additionally reflects the following:

- Items 4a (Grade, Rate, or Rank) and 4b (Pay Grade) – private (PV1)/E-1
- item 12c (Record of Service – Net Active Service This Period) – 3 years, 2 months, and 7 days
- Item 12i (Effective Date of Pay Grade) – 8 July 2013
- Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – Army Good Conduct Medal (1st Award), National Defense Service Medal, Global War on Terrorism Service Medal, Army Service Ribbon, and Overseas Service Ribbon
- Item 25 (Separation Authority) – Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c (2) (Commission of a Serious Offense – Abuse of Illegal Drugs)
- Item 26 (Separation Code) – "JKK"
- Item 27 (Reentry (RE) Code) – RE-4
- Item 28 (Narrative Reason for Separation) – "Misconduct (Drug Abuse)"

e. On 30 March 2018, the applicant petitioned the Army Discharge Review Board (ADRB) seeking an upgraded character of service.

(1) The applicant disclosed that he had really enjoyed his time in the Army, but that he had failed a drug test and this led to his adverse discharge. After leaving the Army, he remained in Fort Bliss area and, at the time of his application, he had two children. He was asking for this upgrade to better support his kids.

(2) On 29 May 2019, after conducting a records review, the ADRB concluded the applicant's separation was proper and equitable and denied the applicant's request.

f. On 4 June 2020, the applicant requested the Board upgrade his discharge to honorable.

(1) The applicant noted he had incurred mental health conditions while on active duty, and the VA had rated him with a combined 50 percent disability rating. He additionally, he stated he had been sexually assaulted twice, and those assaults contributed to his PTSD. In support of his request, he provided a VA Disability Rating Decision, the medications he was being prescribed, a letter of support from his spouse, and a list of personal references.

(2) The Army Review Boards Agency (ARBA) Medical Advisor provided a medical review, which affirmed that VA had granted the applicant service-connected PTSD due to military sexual trauma.

(3) On 29 April 2021, after considering the applicant arguments, evidence, and service record and taking into account the ARBA Medical Advisor's review, the Board concluded relief was not warranted.

4. AR 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

5. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request to upgrade his general under honorable conditions discharge along with other changes to his DD214. He contends he experienced military sexual trauma (MST) and 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 Regular Army on 28 June 2010; 2) The applicant's separation packet is unavailable for review. However, his service record includes his DD Form 214, which shows that, on 4 September 2013, the applicant was

discharged, Chapter 14-12c (2) (Commission of a Serious Offense – Abuse of Illegal Drugs). His service was characterized as under honorable conditions (general).

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 medical documentation provided by the applicant were also examined.

c. The applicant asserts he was exposed to MST and experienced PTSD while on active service, which mitigates his misconduct. The applicant first engaged with behavioral health services in January 2013 after his Command contacted FAP in regard to a domestic violence incident between the applicant and his active-duty female partner. The applicant was placed on a no-contact order and also placed on a safety plan of not drinking for his remaining time at his duty station. The applicant attended four FAP sessions before he moved away from Germany to Ft. Bliss focused on the applicant and his partner planning for the birth of their baby, parenting style, and better interpersonal communication. The applicant was not diagnosed with a mental health condition. Later at his new duty station, on 01 July 2013, the applicant was seen at ASAP for a Command Referral evaluation. He was diagnosed with Cannabis-related disorder. Later on, 03 July 2013, the applicant completed an ASAP evaluation, and he was diagnosed with Alcohol-Abuse. On 09 July 2013, the applicant was seen for a Mental Status Evaluation related to a Chapter 14-12c pertaining to a positive urinalysis for THC. He denied experiencing significant anxiety, depressive, or PTSD symptoms. The applicant was found to meet retention standards IAW AR 40-501 Ch. 3, 31-37. He did endorse severe alcohol abuse six months prior to the appointment, and he was diagnosed with a history of alcohol abuse, and substance abuse. The applicant was cleared for administrative separation as deemed appropriate by Command. The applicant continued in weekly substance abuse counseling till his last session on 13 August 2013.

d. A review of JLV provided evidence the applicant began to engage with the VA in 2019. He reported traumatic events which occurred prior to his enlistment during his childhood, witnessing a woman be sexually assaulted, and two experiences where the applicant reported waking up with another servicemember nude and touching him. The applicant's reported symptoms did not fit full criteria for PTSD, and he was diagnosed with Unspecified Trauma and Stressor Related Disorder. Also at this time, the applicant was provided a Compensation and Pension evaluation, and he reported a significant level of PTSD symptoms related to his childhood trauma, then witnessing two women sexually assaulted, and the death of a close friend. He was diagnosed with service-connected PTSD. The applicant did not engage in treatment for PTSD till November 2019 when he re-engaged with the VA for assistance for homelessness. He was not diagnosed PTSD but instead Major Depression, Generalized Anxiety Disorder and

substance abuse. The applicant has not engaged in continued behavioral health treatment at the VA, but his disability rating for PTSD was increased in 2020 (70%SC).

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is evidence the applicant was evaluated by multiple behavioral health providers while on active service, but the applicant did not report experiencing significant mental health symptoms including PTSD. Consequently, he was not diagnosed with a mental health condition while on active service. There is sufficient evidence the applicant was diagnosed with service-connected PTSD by the VA in 2019 as a result of his reported history of trauma before the Army and exposure to traumatic events during the military. The applicant has reported some experiences related to military sexual trauma, but his account is inconsistent in regard to the specific events which would constitute military sexual trauma. Lastly, there is insufficient evidence surrounding the events which resulted in the applicant's discharge beyond his positive urinalysis to provide an appropriate opinion on possible mitigation as the result of a mental health condition or experience.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A, the applicant asserts he experienced MST and PTSD that mitigates his misconduct. There is sufficient evidence the applicant has been diagnosed service-connected PTSD by the VA in 2019 related in part to his account of experience of MST. There is evidence the applicant used illegal drugs while on active service. Substance use can be seen as avoidant behavior of negative emotions associated with PTSD and MST. However, there is insufficient evidence surrounding the complete events which resulted in the applicant's discharge beyond his positive urinalysis to provide an appropriate opinion on possible mitigation as the result of a mental health condition or experience.

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition experience actually excuse or mitigate the discharge? 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 not 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 medical review, the Board concurred with the advising official finding insufficient evidence surrounding the complete events which resulted in the applicant's discharge beyond his positive urinalysis to provide an appropriate opine on possible mitigation as the result of a mental health condition or experience. The opine noted, there is evidence the applicant was evaluated by multiple behavioral health providers while on active service, but the applicant did not report experiencing significant mental health symptoms including PTSD.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of illegal drug abuse. The Board applauds the applicant's post service achievement of being a father, college graduate and owner of a local gym. Consideration was given to the applicant's awards and decorations and his character letter of support attesting to how the applicant as dealt with his PTSD symptoms, describing the effects on her and the family, and details the steps he has taken to change. The Board found 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. As such, the Board denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, the Board found the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20200010192, on 29 April 2021.

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):

Permanent Orders Number 022-02, dated 22 January 2013, awarded the applicant the Army Achievement Medal. This award should be added to item 13 of his DD Form 214.

REFERENCES:

1. Title 10, USC, section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

2. Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, prescribed policies and procedures for the administrative separation of enlisted Soldiers.

a. Paragraph 3-7a (Honorable Discharge). An honorable discharge was separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to evaluate the extent thereof, as well as the seriousness of the offense. Separation Authorities could furnish an honorable discharge when subsequent honest and faithful service over a greater period outweighed disqualifying entries in the Soldier's military record. It was the pattern of behavior, and not the isolated instance, which commanders should take into account as the governing factor.

b. Paragraph 5-3 (Secretarial Plenary Authority). Separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums.

c. Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Paragraph 14-12c (Commission of a Serious Offense) applied to Soldiers who had committed a serious military or civilian offense, and for which the UCMJ authorized a punitive discharge for the same or similar offense. In subparagraph (2), the regulation stated the abuse of illegal drugs was serious misconduct.

3. The Manual for Courts-Martial, in effect at the time, showed the maximum punishments for violating UCMJ Article 112a (Wrongful Use, Possession, Manufacture or Introduction of Controlled Substances) included a punitive discharge.

4. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation. In paragraph 2-4 (Completing the DD Form 214), the regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in item 28 (Narrative Reason for Separation). For item 27 (Reenlistment Code), the regulation referred preparers to AR 601-210 (Active and Reserve Components Enlistment Program).

5. AR 635-5-1, in effect at the time, defined separation codes used on the DD Form 214. For Soldiers separated pursuant to paragraph 14-12c (2), AR 635-200, the assigned SPD code is "JKK."

6. AR 601-210 covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army and Reserve Components.

a. Table 3-1 (U.S. Army RE Codes) lists the following:

- RE-1 applies to Soldiers completing their term of active service who are considered qualified to reenter the U.S. Army; they are qualified for enlistment if all other criteria are met
- RE-3 issued to Soldiers show are not fully qualified for reentry, but the disqualification(s) may be waived
- RE-4 is assigned to Soldiers with nonwaivable disqualifications

b. Paragraph 4-23 (Nonwaivable Disqualifying Separations or Discharges) provides a list of nonwaivable discharges and includes persons with prior service last discharged from any U.S. Armed Forces Component for drug abuse.

7. 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.

8. 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 (DRBs) and Board for Correction of Military/Naval Records (BCM/NRs) 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 (PTSD); Traumatic Brain Injury (TBI); 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.

9. 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, 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.

10. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states:

a. The ABCMR decides cases on the evidence of record; it is not an investigative body.

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

b. An applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

//NOTHING FOLLOWS//