

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 December 2024

DOCKET NUMBER: AR20240005650

APPLICANT REQUESTS:

- upgrade of his character of service from bad conduct to under honorable conditions (general),
- update of awards issued on his DD Form 214 (Certificate of Release or Discharge from Active Duty) to include the:
 - Combat Infantryman Badge,
 - two Overseas Service Ribbons, and the
 - Army Achievement Medal

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 31 December 2023
- DD Form 149 (Application for Correction of Military Record), 1 February 2024
- two self-authored statements
- Attachment A – character reference statements
- Attachment B – Medical Documentation
- Attachment C – Department of Veterans Affairs Form 21-0781
- Attachment D – written testimony
- Army Achievement Medal certificate, 20 November 2003
- DA Form 638 (Recommendation for Award) Reverse, 20 November 2003
- Enlisted Record Brief
- DD Form 214, 13 September 2013

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 did not condone the fact that he went absent without leave (AWOL), it was wrong of him, he pled guilty and accepted his punishment. He now understands more why he went AWOL, while on active duty.

(1) He was assigned to Korea, with the Charlie Company, 9th Cavalry, with Fort Hood, he had received orders to Iraq, with Forward Operating Base Headhunter. He was 20 years old and involved in direct combat, he realized he was not prepared or trained for the mental effects this could have on an individual. While deployed, his grandmother passed away and his pregnant girlfriend was involved in a car accident due to a drunk driver, she lost the unborn baby. He witnessed fellow Soldiers, his good friends, get killed or injured while deployed.

(2) While on leave, he went AWOL. He had no intention of going AWOL. Moving forward to present time, he is trying to be a productive member of society, however, he suffers from post-traumatic stress disorder (PTSD) with depression and anxiety. He has applied for Department of Veterans Affairs (VA) medical benefits; due to his characterization of service he is unable to obtain benefits. His bad conduct discharge negatively affects him in obtaining employment. As a father of four, he is trying his best but due to his character of service he ends up hitting a brick wall with the VA and other agencies. He is not trying to be a statistic and wants to move forward in life and receive the counseling and health care he is in desperate need of.

b. In reference to his awards, he states there were clerical errors made while transitioning from C Company 9th Cavalry to B Company 8th Cavalry, he served and deployed with C Company 9th Cavalry from 15 January 2004 to 11 December 2004, when he was approved for rest and recuperation (R&R). He was scheduled to return to Baghdad on Christmas 2004, he did not plan to AWOL; however, due to his PTSD he went AWOL and did not return.

3. The applicant enlisted in the Regular Army on 5 August 2002, for a 5-year period. He was awarded the military occupational specialty of 11B (Infantryman). The highest rank he attained was specialist/E-4.

4. He served overseas in Korea from 15 January 2003 until 30 January 2004. His Enlisted Record Brief shows he was assigned to Fort Hood on 31 January 2004 and does not show he was deployed to a combat location.

5. The applicant went AWOL on or about 8 January 2005. The relevant DD Form 616 (Report of Return of Absentee) shows he was apprehended by civil authorities on 24 October 2011.

6. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice; the relevant DD Form 458 (Charge Sheet) shows he was charged with going AWOL.

7. Special Court Martial Order Number 51, issued by Headquarters, III Corps and Fort Hood, on 14 June 2012 shows he was found guilty of going AWOL on or about 8 January 2005 and remaining AWOL in desertion until on or about 24 October 2011 when he was apprehended. He was sentenced to reduction to the grade of private/E-1, confinement for 53 days, and to be discharged from the service with a bad conduct discharge, which was adjudged on 7 March 2012. The sentence was approved, and the record of trial was forwarded to the U.S. Court of Criminal Appeals for appellate review.

8. Special Court-Martial Order Number 53, issued by Headquarters, U.S. Army Fires Center of Excellence and Fort Sill, on 8 August 2013, shows the sentence was finally affirmed, the provisions of Article 71(c) had been complied with, and the sentence of bad conduct discharge was ordered to be duly executed.

9. The applicant was discharged on 13 September 2013, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 3, by reason of court-martial, in the grade of E-1. His DD Form 214 shows his service was characterized as bad conduct with separation code JJD and reentry code 4. He was credited with 4 years, 2 months, and 15 days of net active service, with lost time from 8 January 2005 to 23 October 2011 and from 7 March 2012 to 14 April 2012. He was awarded or authorized the following decorations, medals, badges, citations, and campaign ribbons:

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

10. The applicant additionally provides in his request for an upgrade of his character of service attachments a, b, c, and d. Attachment A includes three-character reference statements, Attachment b includes his report of mental status evaluation and PTSD diagnosis. Attachment c includes his submitted statement in support of claim for service connection for PTSD for the VA. Attachment d includes his self-authored statement.

a. A character reference statement, from [REDACTED] the applicant's battle buddy who states in effect, he and the applicant deployed together and grew to know each other well. While deployed to Iraq they were roommates, the applicant carried himself in a professional manner, and took orders and executed them. Times ended up being tough, mission after mission, when the applicant went on leave, he left valuables while

deployed and did not come back, which he believed the applicant was wrong in not coming back. He now knows the applicant is depended on by his children and wife, he was a brave infantry Soldier, a good person, and hopes he can redeem himself and become a better person.

b. A character reference statement, from [REDACTED] the applicant's battle buddy who states in effect, he and the applicant served from 1999 to 2005 and together in deployment to Operation Iraqi Freedom from 2004 to 2005. He remembers the applicant as humble, smart, obedient in following orders, and an outstanding Soldier. While deployed together, they were dedicated to their company, brave, and engaged the enemy. He believes the applicant took his punishment of going AWOL with his head held high and requests the Board consider his good qualities. He knows he owes the applicant for his life while deployed.

c. A character reference statement, from [REDACTED] the applicant's battle buddy who states in effect, the applicant is a great dad who strives to improve his situation daily, he is a friend who is always willing to help a friend in need. While working together the applicant was courageous and loyal to his team and squad.

d. Medical documentation submitted shows the applicant tested positive for PTSD on 11 November 2017, he was deemed fit and medically cleared for administrative separation. Additional medical documentation shows the applicant was assessed for PTSD and major depressive disorder and generalized anxiety, he received a treatment plan, was prescribed medications, had completed tests and had pending labs. [This document indicates he was on Active Duty at the time of the assessment and was cleared for administrative separation.]

e. A VA statement in support of claim for service connection for PTSD, which summarizes his combat service while deployed to Iraq. He details his experiences of seeing Soldiers killed, lose limbs, being evacuated, while suppressing fire on the enemy on multiple incidents.

f. His self-authored statement summarizing his enlistment, duty in Korea, and his return to the U.S., Fort Hood. He states his unit was getting ready to deploy, he didn't know anyone in the unit, he was getting into trouble for various reasons; however, rather than stay in Rear Detachment he deployed to Iraq. While deployed his girlfriend was pregnant and was in a car accident. She lost her baby, and his grandmother became ill and would eventually pass, he kept his personal affairs to himself. While deployed he saw many losses of his friends who were his fellow Soldiers. He was suffering depression, lost weight, and just wanted to go home. When he went on R&R, his intention was to join back to the deployment; however, dealing with great loss he decided not to return. Since his discharge he has never been in trouble with the law,

has been a present father, he apologizes to the Army and has no one else to blame but himself.

11. The applicant provides in his request for awards his Army Achievement Medal with the reverse side of the DA Form 638 and his Enlisted Record Brief, dated 27 March 2021 circling in Section VIII Awards and Decorations the Combat Infantryman Badge.

12. A Defense Finance and Accounting Service (DFAS), foreign service verification email shows the applicant served in:

- South Korea from 14 January 2003 to 26 January 2004
- Iraq from 7 March 2004 until he was AWOL in December 2004

13. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

14. Regulatory guidance provides a Soldier will receive a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

15. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

16. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his bad conduct discharge to under honorable conditions (general) and an update of awards issued on his DD Form 214. His request for updating awards on his DD Form 214 is outside of the scope of this advisory and will not be addressed. On his DD Form 293, the applicant indicated Posttraumatic Stress Disorder (PTSD) is related to his request. 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 the Regular Army (RA) on 05 August 2002, 2) he served in Korea from 15 August 2002 until 30 January 2004 and was assigned to Ft. Hood (now known as Ft. Cavazos) on 31 January 2004, 3) Special Court Martial Orders dated 14 June 2012 show the applicant was found guilty of going absent without leave (AWOL) from 08 January 2005 until on or about 24 October 2011 when he was apprehended by civil authorities, 4) the applicant was discharged on 13 September 2013 under the provisions of Army

Regulation (AR) 635-200, Chapter 3, by reason of court-martial, with a separation code of JJD and reentry code of '4.' 5) a Defense Finance and Accounting Service (DFAS) foreign service verification email shows he served in Iraq from 07 March 2004 until he went AWOL in December 2004.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. Limited in-service records were available for review in JLV after he returned from going AWOL from 03 November 2011 through 06 April 2012. On 03 April 2012, the applicant underwent a standardized psychological evaluation upon his incarceration at Ft. Leavenworth, KS. It was noted that he was screened for PTSD using the PCL-M, with his score of 69 being clinically significant for PTSD-related symptoms. It was further noted that on the PTSD survey he indicated he deployed to Iraq in 2004-2005 and was exposed to blast, a bullet/fragment, and a fall, though reported the severity of his injuries as "Not at all." The provider noted that many of the symptoms related to PTSD he endorsed began after 2006. He was also administered an objective measure of personality functioning as part of the evaluation (Personality Assessment Inventory (PAI)). It was noted that his scores suggested he was experiencing distress related to an event he considered to have been traumatic and was experiencing symptoms of anxiety (e.g., worry, feeling tense or nervous, and physiological arousal). Review of the assessment results also indicated that he may experience sadness, pessimism about his future, harbor feelings of resentment, be socially isolated, experience poor concentration or confusion, and may experience perceptual disturbances. The provider provisionally diagnosed him with Anxiety Disorder, Not Otherwise Specified (NOS) with a note to rule out PTSD, Schizoaffective Disorder, and Major Depressive Disorder (MDD). An in-service Report of Mental Status Evaluation (DA Form 3822) dated 11 November 2017 completed for the purposes of clearance for administrative separation under AR 635-200, Chapter 14-12 was reviewed [*Advisor's note*: there is likely a clerical error with the date of service as the applicant's Chapter evaluation in JLV was dated 17 November 2011]. The MSE shows the applicant was determined to be fit for duty, could understand and participate in administrative proceedings, appreciate the difference between right and wrong, and met medical retention requirements. The provider noted that the applicant's screening for Traumatic Brain Injury (TBI) was negative, and although he showed some signs on the 'PTSD spectrum,' his symptoms were not of such severity to meet criteria for PTSD. He was psychiatrically cleared to proceed with administrative action.

d. A review of JLV shows the applicant is not service-connected through the VA for any conditions and there were no VA medical records available for review. It is of note that the applicant's bad conduct discharge renders him ineligible for VA clinical services.

e. The applicant provided a civilian BH record from CommuniCare Health Centers dated 06 August 2019. The records show the applicant as diagnosed and being treated for PTSD, Chronic, Major Depressive Disorder, Recurrent, Moderate, and Generalized Anxiety Disorder (GAD). He was prescribed Fluoxetine for anxiety/depression, Hydroxyzine for anxiety, Prazosin for nightmares, and Trazodone for insomnia. There was no additional information provided as to the onset of these conditions.

f. As part of his application, the applicant provided his VA Form(s) 21-0781 (Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD)). Review of the forms shows the applicant reported experiencing several incidents while deployed to Iraq to include on June 26, 2004, wherein his squad was the first on-site for evacuation and suppressive fire following a vehicle being hit by an RPG. He noted that he received a Combat Infantryman Badge (CIB) because of this incident. He also indicated that a Sergeant was accidentally killed in action by friendly fire, to which he expressed feeling responsible for the events that led to the friendly fire. He stated that a Staff Sergeant was killed by small arms fire the day he returned from Rest and Recuperation (R&R). He also reported on 20 May 2004 a squad attached to his battalion was hit with an IED, resulting in two deaths and three severe injuries. He indicated his squad proceeded to their location for security and MEDEVAC and he received a CIB as a result of this incident. [Advisor's Note: Review of the applicant's Enlisted Record Brief (ERB) dated 27 March 2012 shows one CIB in Section VIII Awards and Decorations]. The applicant also included transcripts from what appears to be his court-martial proceedings as part of his application [Advisor's Note: the records are not labeled but read as testimony and court transcripts]. The undated transcripts show that he detailed several stressful events that occurred both during his deployment in Iraq as well as in his personal life while deployed. Regarding events that occurred at home while deployed, he reported experiencing the loss of his unborn child as a result of a drunk driver hitting his girlfriend's vehicle, noting she was 7 months pregnant at the time of the accident. He also reported experiencing several losses within his unit while deployed, to include an individual whom he had known since basic training.

g. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant experienced trauma-related symptoms due to his service in Iraq. Thus, this Advisor would contend that the applicant's PTSD-related symptoms secondary to his service in Iraq provides support for BH mitigation.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his discharge was related to PTSD.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. In-service records following his return from going AWOL show that he endorsed PTSD-related symptoms which were attributed to his experiences and exposures in Iraq. He was provisionally diagnosed with Anxiety Disorder, NOS during a psychological evaluation while in confinement. It was also documented that he endorsed PTSD-related symptoms during his in-service chapter separation evaluation. Since being discharged from the military, the applicant has been diagnosed by a non-VA/civilian provider with PTSD, MDD, and GAD. Although it is acknowledged by this Advisor that the onset of these conditions was not specified by his civilian treating provider, there is documentation that the applicant endorsed symptoms consistent with PTSD and anxiety while in-service. The applicant is not service-connected through the VA for any conditions; however, his discharge renders him ineligible for VA services. As there is an association between avoidance behaviors and combat-related trauma exposure, there is a nexus between his going AWOL and underlying BH symptoms associated with combat-related trauma/PTSD symptoms and his in-service provisional diagnosis of Anxiety Disorder, NOS. As such, BH mitigation is supported.

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 partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation, the Board made the following findings and recommendations related to the requested relief:

- Discharge Upgrade: DENY, based upon the applicant's AWOL period being over six years and only ending by civilian apprehension (showing intent to stay away permanently)
- Add CIB to DD 214: GRANT, based upon the CIB reflected on the applicant's ERB as a previously received award and it not on his DD Form 214
- Add two Overseas Service Ribbons: GRANT, based upon the DFAS verification reflecting two periods of overseas service
- Add AAM to DD214: GRANT, based upon the information reflected below under administrative notes.

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 Army records of the individual concerned be corrected by amending the applicant's DD Form 214 by adding the Army Achievement Medal, Overseas Service Ribbon (2nd Award), and Combat Infantryman Badge, Army Good Conduct Medal.

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 upgrading the characterization of his discharge.

3/31/2025

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record and Army regulations show he meets the regulatory criteria for additional awards not currently listed on his DD Form 214; for the period ending 13 September 2013. Add the Army Achievement Medal in Item 13 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized).

REFERENCES:

1. Title 10, USC, 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, USC, Section 1556, 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.

3. Army Regulation 600-8-22 (Military Awards), prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards.

a. Paragraph 8-6 (Combat Infantryman Badge) of this regulation provides, in part, a Soldier must meet the following three requirements to be eligible for award of the Combat Infantryman Badge:

- be an Army infantry officer in the grade of Colonel/O-6 or below, or an Army enlisted Soldier or warrant officer with an infantry Military Occupational Specialty (MOS)
- be assigned to an infantry unit of either a brigade, regimental, or smaller size during such time as the unit is engaged in active ground combat
- must actively participate in such ground combat; campaign or battle credit alone is not sufficient for award of the Combat Infantryman Badge

b. The Overseas Service Ribbon was established by the Secretary of the Army on 10 April 1981. Effective 1 August 1981, all members of the Active Army, Army National Guard, and Army Reserve in an active Reserve status are eligible for the award for successful completion of overseas tours. The award may be awarded retroactively to those personnel who were credited with a normal overseas tour completion before 1 August 1981 provided they had an Active Army status on or after 1 August 1981.

Numerals are used to denote the second and subsequent awards of the Overseas Service Ribbon.

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

a. Chapter 3 provided that an enlisted person would be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed.

b. 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.

c. 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.

5. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

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 (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 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, 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.

//NOTHING FOLLOWS//