

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2025

DOCKET NUMBER: AR20240005960

APPLICANT REQUESTS:

- An upgrade of his under other than honorable conditions discharge to honorable
- Alternatively, a change to his Narrative Reason for discharge to reflect "Medical"

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

- DD Form 149 (Application for Correction of Military Record)
- VA Form 21-4138 (Statement in Support of Claim)
- DA Form 394 (Medical Evaluation Board Proceedings)

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. Due to the pain he was experiencing while in basic combat training (BCT), he received his first MRI, which revealed a problem; however, he was not given the diagnosis of spinal scoliosis at that time. After completing BCT, he was assigned to Fort Lewis, Washington. His pain and loss of motion worsened. The doctors conducted a second MRI, confirmed it was spinal scoliosis, prescribed additional pain medication, placed him on a light duty profile, and began the paperwork for his medical discharge.

b. His first sergeant (1SG), however, did not approve of the medical discharge process. The applicant was placed on extra duty and attempted to psychologically break him [the applicant] to discourage him from pursuing the medical discharge. As the pain intensified, he started using marijuana to alleviate his discomfort, which resulted in a failed drug test. He was subsequently drug tested 18 more times and failed each one, facing increased harassment from his 1SG. Eventually, he reached a breaking point and

went absent without leave (AWOL) for about a month. When he returned, his physical condition and his explanations were disregarded, and he was discharged.

3. The applicant provides:

a. VA Form 21-4138 (Statement in Support of Claim) (3 pages).

b. DA Form 394 (Medical Evaluation Board Proceedings) (page 1 of 6), dated 3 July 2018, which reflects the applicant's diagnosis of thoracolumbar dextroscoliosis (diagnosed by the QTC/VA Medical DBQ examiner as scoliosis thoracic spine) existed prior to service and that the applicant did not meet AR 40-501 Retention Standard. As of note, the applicant did not submit the DA Form 394 in its entirety, nor was it found in his service record located in the Interact Personnel Electronic Records Management System (iPERMS).

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

a. He enlisted in the Regular Army on 25 July 2017.

b. His duty status changed from Present for Duty (PDY) to Absent Without Leave (AWOL), effective 24 February 2019. The applicant's file is void of the subsequent duty status change from AWOL to PDY.

c. He accepted nonjudicial punishment (NJP) on 23 January 2019 for wrongfully use marijuana on four (4) separate occasions as listed below. His punishment consisted of a reduction to the grade of E-1.

- Between on or about 17 April 2018 and on or about 17 May 2018
- Between on or about 19 June 2018 and on or about 19 July 2018
- Between on or about 2 July 2018 and on or about 2 August 2018
- Between on or about 14 July 2018 and on or about 14 August 2018

d. On 29 January 2019, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c(2), misconduct-abuse of illegal drugs. Specifically, for the wrongful use of marijuana on four separate occasions.

e. On 5 March 2019, the separation authority approved the applicant's discharge under the provisions of AR 635-200, paragraph 14-12c(2), abuse of illegal drugs, with his service characterized as under other than honorable conditions.

f. His DD Form 214 reflects he was discharged on 8 March 2019, under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c(2), misconduct (drug abuse), and character of service of under other than honorable conditions. He served 1 year, 6 months, and 29 days of active service. He had lost time from 24 February 2019 to 8 March 2019.

5. There is no evidence that the applicant applied to the Army Discharge Review Board for review of his discharge within the board's 15 year statute of limitations.

6. AR 635-200 states action will be taken to separate a member for a pattern of misconduct. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

7. The Board should consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

#### MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests a discharge upgrade from Under Other Than Honorable Conditions to Honorable or Medical Discharge. He contends that he was denied a medical discharge for Spinal Scoliosis. He stated that PTSD and Other Mental Health conditions were related to his request.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant entered active service 25Jul2017. His MOS was 92G (Culinary Specialist). He did not deploy. He was discharged under provisions of AR 635-200 chapter 14-12c(2) for misconduct (drug abuse). The record showed multiple instances of wrongful use of marijuana April/May 2018, June/July 2018, and two instances in July/August 2018. He was discharged on 08Mar2019, and his service was characterized as Under Other Than Honorable Conditions.

3. Medical records for the back condition.

a. The applicant had a scoliosis survey completed 06Sep2017 due to complaints of back pain. The survey revealed thoracolumbar dextroscoliosis with a Cobb angle of approximately 34.4 degrees. The applicant also reported hip pain. His pain was mild (1/10). He wanted to return to duty. Six months later, on 05Mar2018, he reported to sick call for worsening back pain (8/10). He was taking Naproxen (over-the-counter anti-inflammatory). He did not report a back injury. During readiness assessment, the

applicant reported that the back pain was duty limiting; therefore, on 16Mar2018 he was not cleared for deployment. He did not report discrete injury but endorsed the back pain worsened since he was in the field and had to lift heavy objects such as tents and boxes. He was placed on a restrictive profile and Tramadol (a narcotic).

b. The applicant was evaluated by Orthopedics JBLM on 11May2018. The exam showed full active ROM, normal strength (5/5) and intact vascular and neurologic exam. The Forward Bend test showed thoracic prominence on the right side. The specialist noted that conservative managements to include physical therapy and a temp profile for 1.5 months had not yielded any improvement. After discussion, he was issued a permanent P3. A MEB was recommended since he did not meet the physical standards for enlistment per AR 40-501 CH 2-29 c. (4). The MEB was initiated 25Jun2018.

c. 06Jun2018 Back Conditions DBQ showed all normal ROMs for the back. Pain was noted during the exam but did not result/cause functional loss. There was no evidence of pain with weightbearing. There was no guarding or muscle spasm. Sensory, musculoskeletal, and neurologic exams were intact. Straight leg raise test was negative (normal) bilaterally.

d. During the 03Jul2018 Report of Medical Examination (DD Form 2808) and Report of Medical Assessment (DD Form 2697), he was deemed not fit for duty due to his Scoliosis. The congenital back condition reportedly became symptomatic during basic training. Treatment records during basic training were not available for review.

#### 4. Medical records for substance misuse

a. The applicant self-reported to SUDCC (Substance Use Disorder Clinical Care) Triage at JBLM as a self-referral on 24May2018. He reported being concerned about getting a positive urine and didn't want to get out of the Army. He reported his last use of marijuana was 01May2018. The provisional diagnosis was Cannabis Misuse. During the 12Jun2018 SUDCC Intake, the applicant reported his first use was age 12 and he began regular use at age 17. The heaviest use started since joining the Army. Currently, he reported smoking several blunts in the evening M-F, and on non-working days (Saturday and Sunday) up to 20 blunts throughout the day/night. He reported (almost) daily use spending most of the day using or getting over the effects of using. He reported that his use had caused him to lose a job. He also reported using to self-medicate.

b. The applicant participated in SUDCC from May to September 2018. During the final visit on 19Sep2018, he had not heard if Command would proceed with Medical Board or chapter separation. He stated that he was ready to leave the Army. He also stated that he had learned what he needed from SUDCC. He endorsed continued use of cannabis because it helped with his pain. His case with SUDCC was closed.

## 5. Medical records for mental health condition

a. During the 2018 Mental Disorders DBQ, the applicant reported having joined the Army to please his mother. He did not want to join the Army and he did not want to remain in the Army. He reported feeling homesick, alone, and depressed. He had difficulty adjusting to being told what to do and to getting up early. He used cannabis to cope with these feelings/situations. The mental status exam showed logical, rational and goal directed thought process. There was no mania, psychosis, or suicide/homicide ideation. His memory appeared intact. *There was no history of psychiatric hospitalization or violence.* His mood was dysphoric, and his affect was constricted. He was currently undergoing a MEB for Scoliosis. Diagnoses: Cannabis Use Disorder, Moderate; and Major Depressive Disorder, Mild.

b. In the 03Jul2018 Report of Medical History (for separation) the applicant endorsed that he treated his depression and pain with marijuana.

c. 17Jan2019 the applicant underwent mental status evaluation for administrative separation. The mental status exam was normal including mood/affect, thought process, speech, and memory. The evaluation did not yield a mental health diagnosis. He met medical fitness standards for retention per AR 40-501 3-31 to 3-37. He was cleared from a behavioral health perspective for administrative separation IAW AR 635-200.

## 6. Summary/Opinion

a. Although the Scoliosis condition was not captured during the 12Apr2017 entrance exam (Report of Medical Examination, DD Form 2808), the condition was diagnosed 2 months into service. The 03Jul2018 MEB (DA Form 3947) determined that the Thoracolumbar Dextroscoliosis condition did not meet retention standards of AR 40-501 chapter 3. His Scoliosis was a developmental condition and as such, it existed prior to service. The MEB also determined that the condition was not permanently aggravated by service. The undersigned also did not find evidence in the record to support that the condition was permanently aggravated by military service beyond its natural progression. Referral for further medical discharge processing is not warranted.

b. Concerning the request for discharge upgrade, Liberal Consideration guidance was examined. Although the applicant claimed that PTSD contributed to the reason for his discharge, the applicant's record did not show that he was diagnosed with service-incurred PTSD nor did the current available record contain criteria supporting the diagnosis. In contrast, there was evidence to support the VA diagnosis Mild Major Depressive Disorder (MDD) diagnosis at the time he was seen. MDD can be a mitigating mental health condition under Liberal Consideration. It should be stated that the applicant did not receive a mental health diagnosis from Army BH providers.

## 7. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant was diagnosed with MDD. The applicant self asserts PTSD.

(2) Did the condition exist, or did the experience occur during military service? Yes. The applicant was diagnosed with MDD by the VA during the Mental Disorders DBQ exam while he was in service. The condition developed in the setting of feeling homesick and experiencing chronic pain from his back condition. He denied a family history of a mental health condition or a personal history of a mental health diagnosis prior to service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Substance abuse is a common sequela of MDD. In addition, the applicant reported using marijuana to help with his physical pain. Notwithstanding the applicant showed signs of cannabis dependence/tolerance prior to service (he reported daily use which continued despite having lost a job because of use); he also reported escalation of use while in service due to self-treatment of psychological symptoms as well as his physical pain condition. Therefore, a nexus is established between his MDD (and Scoliosis as well) and his use of cannabis which caused his separation from service. The MDD is condition is mitigating for the Under Other Than Honorable Conditions discharge.

## BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for misconduct (Drug Abuse) with an under other than honorable conditions characterization of service. The Board found no error or injustice in the designated characterization of service assigned by his commander during separation. However, the Board noted the medical advisor's review finding the applicant was diagnosed with MDD and that can be a mitigating mental health condition, the Board determined an upgrade to under honorable conditions (General) was warranted.

2. The Board concluded the applicant's request to amend his narrative reason to medical was unwarranted based on the medical advisor's review and his record being void of evidence to support service-incurred PTSD.

3. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration, the Board determined relief was not warranted to upgrade the applicant's request to honorable.

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant was diagnosed with MDD. The applicant self asserts PTSD.

(2) Did the condition exist, or did the experience occur during military service? Yes. The applicant was diagnosed with MDD by the VA during the Mental Disorders DBQ exam while he was in service. The condition developed in the setting of feeling homesick and experiencing chronic pain from his back condition. He denied a family history of a mental health condition or a personal history of a mental health diagnosis prior to service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Substance abuse is a common sequela of MDD. In addition, the applicant reported using marijuana to help with his physical pain. Notwithstanding the applicant showed signs of cannabis dependence/tolerance prior to service (he reported daily use which continued despite having lost a job because of use); he also reported escalation of use while in service due to self-treatment of psychological symptoms as well as his physical pain condition. Therefore, a nexus is established between his MDD (and Scoliosis as well) and his use of cannabis which caused his separation from service. The MDD is condition is mitigating for the Under Other Than Honorable Conditions discharge.


BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:XX	:XX	:XX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 8 March 2019, to show an under honorable conditions (General) characterization of service.

2. The Board further determined that 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 applicant's characterization of service to honorable.

  
 X //SIGNED//  
 \_\_\_\_\_

CHAIRPERSON  
Signed by:

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, USC, section 1552(b), provides that applications for correction of military records must be filed within three years after discovery of the alleged error or injustice. This provision of law also allows the Army Board for Correction of Military Records (ABCMR) to excuse an applicant's failure to timely file within the three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a states an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14, of the version in effect at the time, established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. It provided that action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally appropriate for a Soldier discharged under this chapter. However, the separation authority could direct an honorable discharge if merited by the Soldier's overall record.

3. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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. 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 based on 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. 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//