

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2025

DOCKET NUMBER: AR20240006109

APPLICANT REQUESTS:

- Upgrade of his general discharge under honorable conditions
- In effect, correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his deployment in support of Operation Enduring Freedom and all authorized service awards
- In effect, medical retirement

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Disability Rating Decision
- Temporary Change of Station (TCS) Orders
- North Atlantic Treaty Organization (NATO) Travel Orders
- DD Form 214

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, in effect, he would like his DD Form 214 to reflect his deployed service and to receive his authorized service medals; in addition, he requests an upgraded character of service because, effective in 2022, the VA awarded him a 70 percent disability rating for post-traumatic stress disorder (PTSD). In support of his request, he supplies a copy of a VA Rating Decision and orders indicating his command scheduled him to deploy; he has not included evidence he actually deployed, and the orders do not state the specific area of operation.
3. A review of the applicant's service record shows the following:

a. On 28 July 2000, the applicant enlisted into the Regular Army for 3 years. Upon the completion of initial entry training and the award of military occupational specialty 92S (Laundry and Textile Specialist), orders assigned him to Fort Bragg, NC, and he arrived at his new duty assignment, on 22 December 2000.

b. On 11 January 2002, the applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for violating Article 91 (Disobedience of a Noncommissioned, UCMJ by willfully disobeying his noncommissioned officer's order to only use a government credit card for official travel. Effective 28 January 2002, the applicant's leadership promoted him to specialist (SPC)/E-4. On 26 September 2002, he immediately reenlisted for 4 years.

c. On 4 March 2003, the applicant accepted NJP for absenting himself without authority (AWOL) from 21 to 23 January 2003; the imposing commander's punishment included a reduction to private first class (PFC)/E-3. On 6 June 2003, he accepted NJP for three specifications of failing to report to his place of duty; the imposing commander's punishment included reduction to private (PV2)/E-2.

d. On 10 July 2003, the applicant underwent a mental status evaluation due to a pending separation action; the examining behavioral health professional affirmed the applicant met medical retention standards and showed no evidence of any psychiatric condition that would warrant referral into medical channels.

e. On 12 August 2003, the applicant accepted NJP for violating UCMJ Article 92 (Violation of a General Order or Regulation) by wrongfully misusing a government travel card to make purchases and withdrawals; the imposing commander's punishment included reduction to private (PV1)/E-1.

f. On 21 August 2003, the applicant's company commander advised him she was initiating separation action, under the provisions of paragraph 14-12c (Commission of a Serious Offense), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), based upon the applicant's prior NJP actions.

g. On 27 August 2003, after consulting with counsel, he acknowledged counsel had informed him of his rights and that, because he had less than 6 years of total active/reserve military service, he was not entitled to an administrative separation board. He indicated he did not intend to submit statements in his own behalf.

h. On 9 September 2003, the separation authority approved the commander's separation recommendation and directed the applicant's general discharge under honorable conditions; on 3 October 2003, orders separated the applicant accordingly. His DD Form 214 shows he completed 3 years, 1 month, and 26 days of net creditable

service, with 1 year, 1 month, and 1 days served on his reenlistment contract. The report additionally reflects the following:

(1) Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – National Defense Service Medal, Army Service Ribbon, Expert Marksmanship Qualification Badge with Rifle Bar.

(2) Item 18 (Remarks) – No entry for deployed service and the applicant's continuous honorable service, from 20000730 TO 20020925, is not included.

(3) Special Additional Information:

- Item 25 (Separation Authority) – AR 635-200, paragraph 14-12c
- Item 26 (Separation (Separation Program Designator (SPD)) Code) – "JKQ"
- Item 27 (Reentry (RE) Code) – RE-3
- Item 28 (Narrative Reason for Separation) – Misconduct

#### 4. 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, and a correction to his DD Form 214 showing deployment to OEF and indication of a medical retirement. He contends he experienced an undiagnosed mental health condition, including PTSD, 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 28 July 2000. Order dated 22 February 2002 showed that the applicant was temporarily reassigned to USCENTCOM AOR in support of OEF with a report date of 1 March 2002.
- On 11 January 2002, the applicant accepted NJP for willfully disobeying his NCO's order to only use a government credit card for official travel.
- On 4 March 2003, the applicant accepted NJP for being AWOL from 21 to 23 January 2003, and on 6 June 2003, he accepted NJP for three specifications of failing to report to his place of duty.
- On 12 August 2003, the applicant accepted NJP for wrongfully misusing a government travel card to make purchases and withdrawals.
- On 21 August 2003, the applicant's company commander advised him she was initiating separation action, under the provisions of paragraph 14-12c (Commission of a Serious Offense), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), based upon the applicant's prior NJP actions.

- The applicant was discharged on 3 October 2003 and completed 3 years, 1 month, and 26 days of net creditable 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 a correction should be made because he served his country honorably and is service connected with PTSD. A VA Rating Decision letter dated 7 March 2024 showed that the applicant is 70% service connected for PTSD. A Mental Status Evaluation dated 10 July 2003 showed no indication of mental health symptoms and that the applicant met retention standards with no evidence for need for disposition through medical channels. 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 the applicant initiated care with the VA in 2009, engaging in their polytrauma program and vocational rehabilitation services, and he was seen for an initial psychiatric evaluation on 1 July 2009. He denied significant concerns related to mental health symptoms, and his primary complaint was related to memory problems and unemployment. Over the years, he has been a high utilizer of VA medical and mental health services as well as referrals to community care for mental health. His most recent psychotherapy encounter through VA was on 29 January 2025, and his diagnoses were PTSD and Major Depressive Disorder.

e. Compensation and Pension (C&P) examinations were obtained separately, and it was noted that the applicant had completed three evaluations. An Initial PTSD Disability Benefits Questionnaire (DBQ) dated 10 February 2017 showed that the applicant endorsed the requisite number and severity of symptoms to warrant a diagnosis of PTSD. However, the primary trauma was noted as "not related to military service; related to gunshot injury and house robbery in 2015, about 12 years after discharge from active duty." He was also diagnosed with Antisocial Personality Disorder. He reported he deployed to Jordan "for a few months," and his role was to set up laundry and showering facilities. He reported an incident where a truck ahead of his blew up, but he stated "it didn't affect us." He also reported a deployment to Kandahar, Afghanistan as an attachment to a special forces unit "about two days after 9/11" and was there for "8-9 months." He discussed having to guard their area, hearing mortar attacks at night, and an incident where another soldier "pulled his rifle out on us and I had to take it from him." He denied significant difficulties with basic training or AIT. The evaluator concluded his PTSD was not related to or caused by his military service, and a review of records from 2009 showed that he was not diagnosed with PTSD or any mental health condition. A second Initial PTSD DBQ dated 22 February 2024 showed diagnoses of PTSD, Cannabis Use Disorder (in remission), and Stimulant Use Disorder (in remission). It was noted that he brought military orders with him to document travel to Jordan in 2001 for three months and to Afghanistan in 2002 for ten months. He

reported being assigned to mortuary affairs for 5 to 6 months and witnessing “many dead bodies, some dismembered.” He attributed his PTSD symptoms to the events he witnessed in Afghanistan, although he did discuss the 2015 home invasion and gunshot injury. A third PTSD DBQ dated 7 November 2024 concluded diagnoses of PTSD and Uncomplicated Bereavement. The symptom presentation was unremarkable or significantly changed from the previous evaluation.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a mental health condition while on active service that warranted a referral to the Disability Evaluation System (DES). A Mental Status Evaluation dated 10 July 2003 provides evidence that the applicant was evaluated for consideration of disposition through medical channels and was determined to meet retention standards. The applicant's assertion that his VA PTSD service connection substantiates a medical retirement is insufficient evidence for a referral to DES. The DES compensates an individual only for service incurred medical condition(s) that have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions, which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

g. 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. DoD documentation from a Mental Status Evaluation did not indicate the presence of any mental health conditions, but the applicant is 70% service connected through the VA for PTSD. He has received mental health treatment there as well.

(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. Although the application and available service records did not show a deployment history, the applicant provided documents showing orders, and a review of his C&P examinations provide description of deployment-related trauma exposure.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service, but VA records show the applicant has been diagnosed with PTSD and has received mental health

treatment for this condition. Avoidant behavior, such as going AWOL or failing to report for duty, can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. However, there is no nexus between his asserted mental health condition, PTSD, and his misconduct related to misuse of a government travel card: 1) this type of misconduct is not part of the natural history or sequelae of a mental health condition; 2) his asserted mental health condition does not affect one's ability to distinguish right from wrong and act in accordance with the right.

h. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

### 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 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 request, available military records and medical review, the Board concurred with the advising opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a mental health condition while on active service that warranted a referral to the Disability Evaluation System (DES).

### 2. 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. DoD documentation from a Mental Status Evaluation did not indicate the presence of any mental health conditions, but the applicant is 70% service connected through the VA for PTSD. He has received mental health treatment there as well.

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 Partial. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service, but VA records show the applicant has been diagnosed with PTSD and has received mental health treatment for this condition. Avoidant behavior, such as going AWOL or failing to report for duty, can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. However, there is no nexus between his asserted mental health condition, PTSD, and his misconduct related to misuse of a government travel card: 1) this type of misconduct is not part of the natural history or sequelae of a mental health condition; 2) his asserted mental health condition does not affect one's ability to distinguish right from wrong and act in accordance with the right.

3. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct that warrants an upgrade of the applicant's general under honorable conditions discharge. The Board noted the applicant's repeated misconduct, including multiple nonjudicial punishments for AWOL, failure to report, and misuse of a government travel card, warranted separation under Army Regulation 635-200, paragraph 14-12c, and supports the characterization of service at discharge. Furthermore, the Board found insufficient evidence to support the applicant's claim of deployment in support of Operation Enduring Freedom or entitlement to additional service awards not currently listed on his DD Form 214.

4. However, during deliberation the Board found the applicant served honorably and without disciplinary action from 30 July 2000 through 25 September 2002. In recognition of this period of continuous honorable service, the Board granted partial relief to correct the applicant's DD Form 214 to reflect this honorable service.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

|     |     |     |                      |
|-----|-----|-----|----------------------|
| :   | :   | :   | GRANT FULL RELIEF    |
| XXX | XXX | XXX | 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 the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 3 October 2003 to add the following comment to: item 18 (Remarks) CONTINUOUS HONORABLE SERVICE FROM 20000730 TO 20020925.

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 an upgrade of the applicant's general discharge under honorable conditions, correction of his DD Form 214 to show his deployment in support of Operation Enduring Freedom and all authorized service awards and a medical retirement.

X //SIGNED//

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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): N/A

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Title 10, 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.

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

a. Paragraph 3-7a (Honorable Discharge) stated an honorable discharge was separation with honor.

(1) 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 consider the extent thereof, as well as the seriousness of the offense.

(2) 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 consider as the governing factor.

b. Paragraph 3-7b (General Discharge) stated a general discharge was a separation from the Army under honorable conditions. When authorized, separation authorities issued general discharges to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. 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.

d. Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Commanders were required to initiate separation action when they determined a Soldier had committed serious misconduct and could clearly establish rehabilitation was impracticable or unlikely to succeed. Paragraph 14-12c (Commission of a Serious Offense) applied to Soldiers who

committed a serious military or civilian offense, for which the UCMJ authorized a punitive discharge for the same or similar offense.

4. The Manual for Courts-Martial, in effect at the time, showed the following Uniform Code of Military Justice Articles included a punitive discharge among their maximum punishments:

- Article 91 (Willful Disobedience of a Noncommissioned Officer's Order)
- Article 92 (Violation of a General Order or Regulation)

5. 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) Codes) 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).

6. AR 635-5-1, in effect at the time, defined separation codes and narrative reasons for separation to be entered on the DD Form 214. For Soldiers separated pursuant to paragraph 14-12c, AR 635-200, the assigned SPD code is "JKQ" and the narrative reason for separation was, "Misconduct."

7. AR 601-210 covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army and Reserve Components. Table 3-1 (Interservice 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

8. The SPD/RE Code Cross Reference Table, in effect at the time, provided instructions for determining the RE code for Active Army Soldiers. This cross reference table showed the SPD code and a corresponding RE code. The SPD code of "JKQ" had a corresponding RE code of "3."

9. AR 600-8-22 (Military Awards), currently in effect, states, in paragraph 2-19 (Global War on Terrorism Expeditionary Medal):

a. Servicemembers of the Armed Forces of the United States who were deployed abroad for service in the Global War on Terrorism on or after 11 September 2001 to a date to be determined are eligible for this award; however, this award can only be granted for Soldiers who were in a deployed status (i.e., on temporary change of station orders).

b. Effective 9 February 2015 (retroactive to 11 September 2001), separate deployments and periods of service in support of different named operations are recognized by bronze service stars.

10. AR 40-501 (Standards of Medical Fitness), in effect at the time, provided guidance for determining when Soldiers failed medical retention standards and had to be referred to a medical evaluation board (MEB).

11. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation), then in effect, prescribed policies, and procedures for disability separations.

a. Paragraph 3-1 stated the mere presence of an impairment did not, of itself, justify a finding of unfitness due to a physical disability. Each individual Soldier's case had to be assessed to determine whether the nature of the disability caused the Soldier to become unable to perform the duties expected of a Soldier of his/her rank.

b. Paragraph 4-17 (Physical Evaluation Boards (PEB)). PEBs were charged with investigating the nature, cause, degree of severity, and probable permanency of a Soldier's disabling conditions; assessing the Soldier's physical conditions against the physical requirements of the Soldier's particular office, grade, rank, or rating; and making findings and recommendations in accordance with the law.

c. Paragraph 4-24 (Disposition by U.S. Army Personnel Command). Available dispositions were for the Soldier to:

- return to duty
- separate with severance pay when the combined disability rating was 20 percent or less and medical conditions were in the line of duty
- Be permanently retired when combined ratings were 30 percent or more; when permanency of a disabling condition could not be established, Soldier placed on Temporary Disability Retired List; placement on the Permanent Disability Retired List was for conditions not likely to change over time

12. 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.

13. 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.

14. 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.

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

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(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.

//NOTHING FOLLOWS//