

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 February 2025

DOCKET NUMBER: AR20240006208

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

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

DD Form 149 (Application for Correction of Military Record)

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 his post-traumatic stress disorder (PTSD) was undiagnosed while serving in the U.S. Army. He has been diagnosed by the Department of Veterans Affairs (VA) with PTSD, with a disability rating of 30 percent. Outside of the irresponsible act, his service and commitment to the U.S. Army was without flaws. One error caused a mark on his record that has been following him since his departure from the Army. His mental state at the time did not allow him to make a wise decision, in reference to the act that caused him to be dismissed from the Army. After his service to the U.S. Marine Corps, he was released with an honorable discharge.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 6 September 2000.
 - b. Forensic Toxicology Drug Testing Lab (FTDTL) results, dated 26 May 2004, show the applicant tested positive for tetrahydrocannabinol (THC).
 - c. DA Form 4856 (Developmental Counseling Form), dated 8 July 2004, shows he was counseled for wrongful use of a controlled substance (THC), and he was directed to attend and complete the Army Substance Abuse Program.

d. A report of mental status evaluation, dated 14 July 2004, shows the applicant was evaluated by the Department of Behavioral Health Services, McDonald Army Community Hospital for a chapter 14 mental status exam. The Clinical Diagnostic Impression was Axis I: Cannabis Abuse.

e. The applicant underwent a medical examination for the purpose of separation on 20 July 2004.

f. DA Form 8003 (Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) Enrollment), dated 4 August 2004, shows the applicant was command referred for THC.

g. On 14 September 2004, he accepted nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice, for wrongful use of marijuana, a controlled substance, on or about 26 April 2004. His punishment included reduction to private first class (PFC)/E-3 and 45 days of extra duty.

h. On 24 September 2004, the applicant's immediate commander notified the applicant of his intent to initiate separation actions against him under the provisions Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 14, Section III, paragraph 14-12c (2), by reason of commission of a serious offense. The commander listed the following reason for the proposed action: on 26 May 2004, he tested positive for THC, the active ingredient in marijuana. The commander informed the applicant he was recommending he receive a general, under honorable conditions characterization of service and explained his rights.

i. On 28 October 2004, the applicant acknowledged receipt of the notification after being advised by his consulting counsel of the basis for the contemplated action to separate him for commission of a serious offense under AR 635-200, chapter 14, paragraph 14-12c, and its effects; of the rights available to him; and the effect of any action he took in waiving his rights. He voluntarily waived consideration of his case by an administrative separation board contingent upon receiving a characterization of service or description of separation no less favorable than a general, under honorable conditions.

j. On an unspecified date, the applicant's immediate commander formally initiated separation under the provisions of AR 635-200, chapter 14, Section III, paragraph 14-12c (2).

k. On 13 October 2004, the intermediate commander recommended approval of the separation with a general, under honorable conditions characterization of service.

l. On 12 November 2004, the separation authority approved the recommended discharge and directed the applicant be issued a general, under honorable conditions discharge.

m. The applicant was discharged on 3 December 2004. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, chapter 14-12c, by reason of misconduct, in the rank/grade of private first class (PFC)/E-3, and his service was characterized as under honorable conditions (general). He completed 4 years, 2 months, and 28 days of net active service this period. Additionally, his DD Form 214 shows in:

- Item 12d (Total Prior Active Service): 3 years, 11 months, and 7 days
- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Achievement Medal, Army Good Conduct Medal, National Defense Service Medal, Overseas Service Ribbon, Sharpshooter Marksmanship Qualification Badge (M-16 rifle), Global War on Terrorism Expeditionary Medal, and the Global War on Terrorism Service Medal
- Item 18 (Remarks): Member has completed first full term of service.

4. The applicant's service record does not contain a copy of the applicant's initial DD Form 4 (Enlistment/Reenlistment Document) enlisting him in the Army. His record does not contain a copy of his DD Form 214, discharging him from the U.S. Marine Corps, nor does the applicant provide a copy.

5. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

6. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under honorable conditions (general) to honorable. He contends he experienced an undiagnosed mental health condition, including PTSD, 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 6 September 2000.
- A Developmental Counseling Form, dated 8 July 2004, shows he was counseled for wrongful use of a controlled substance (THC), and he was directed to attend and complete the Army Substance Abuse Program (ADAPCP).

- On 24 September 2004, the applicant's immediate commander notified him of his intent to initiate separation actions against him under the provisions Army Regulation (AR) 635-200, chapter 14, Section III, paragraph 14-12c (2), by reason of commission of a serious offense. The commander listed the following reason for the proposed action: on 26 May 2004, he tested positive for THC, the active ingredient in marijuana.
- The applicant was discharged on 3 December 2004 and completed 4 years, 2 months, and 28 days of net active service this period. Notably, his DD Form 214 showed total prior active service of 3 years, 11 months, and 7 days.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he has been diagnosed with PTSD and is 30% service connected for this condition. He explains that his mental state at the time did not allow him to make a wise decision in regard to his misconduct, and he purports an honorable discharge from the Marine Corps. A Memorandum to the commander dated 14 July 2004 showed that the applicant underwent a Mental Status Evaluation and the diagnosis was Cannabis Abuse. The applicant was psychiatrically cleared for any administrative action deemed appropriate by command. A Report of Medical Examination dated 20 July 2004 showed no indication of any psychiatric symptoms, and a Report of Medical History dated 7 July 2004 completed by the applicant showed that he endorsed depression or excessive worry and illegal drug use. Documentation also showed that the applicant was enrolled in the ADAPCP on 4 August 2004 and was determined to need alcohol and drug education. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed DoD records between 19 July 2004 and 22 September 2004 indicating engagement in substance abuse evaluation and counseling. The full content of these encounters is not included in the documentation. VA records showed that the applicant initiated mental health treatment on 16 May 2022 and reported sleep difficulty, nightmares, panic attacks, and depression-related symptoms. He discussed combat trauma related to "driving on convoys from Kuwait to Iraq," and he discussed experiences where he was ordered not to stop, resulting in running over civilians, including children. He was diagnosed with PTSD and rule out diagnoses of Bipolar Disorder and Alcohol Use Disorder. He completed five trauma-focused psychotherapy sessions and was lost to follow up. In April 2024 he reengaged with mental health and psychotherapy was again initiated. He completed 12 sessions of an evidence-based treatment for PTSD, and he was successfully discharged from the program on 30 October 2024.

e. An Initial PTSD Disability Benefits Questionnaire (DBQ) dated 20 December 2021 was obtained and showed that the applicant endorsed the required number and severity of symptoms to warrant a diagnosis of PTSD. He reported the incident where a child was run over as his primary stressor/traumatic event, and he reported two additional stressors meeting criteria to be considered traumatic events. He related that his deployment was to Iraq in 2003, and the evaluator noted that his file was void of his DD Form 214 so there was no way to verify his deployment history. A Review PTSD DBQ dated 28 August 2024 also concluded a diagnosis of PTSD. Again, the evaluator noted no service records were reviewed.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct.

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 showed a diagnosis of Cannabis Abuse following a positive drug screen in 2004, and VA records showed that the applicant was diagnosed with PTSD in 2021. He is 70% service connected for this condition.

(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. There is no indication of deployment history during this term of service (2000-2004). However, the applicant's DD Form 214 showed prior service of 3 years, 11 months, and 7 days, and 1 year, 5 months, and 15 days of foreign service. However, there is no DD Form 214 from that prior service available for review. Additionally, the applicant's deployment history was not verified as part of his Compensation and Pension Examination.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. 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 diagnosis and treatment for PTSD. Substance abuse is a common self-medicating strategy for avoiding uncomfortable emotions and memories related to trauma exposure, and substance use can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. The applicant has reported significant deployment-related trauma exposure from his time in the Marine Corp, but verification of that deployment is unavailable. However, he consistently provides a compelling account of events that occurred in Iraq through his C&P exam and his VA treatment records. Given the nexus between trauma exposure, avoidance of emotion, and substance use

and in accordance with liberal consideration, the basis for separation could be mitigated.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that 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 Board reviewed and concurred with the medical advisor's review finding sufficient evidence to support the applicant had a condition or experience that mitigated his misconduct. 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 warranted.

(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 showed a diagnosis of Cannabis Abuse following a positive drug screen in 2004, and VA records showed that the applicant was diagnosed with PTSD in 2021. He is 70% service connected for this condition.

(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. There is no indication of deployment history during this term of service (2000-2004). However, the applicant's DD Form 214 showed prior service of 3 years, 11 months, and 7 days, and 1 year, 5 months, and 15 days of foreign service. However, there is no DD Form 214 from that prior service available for review. Additionally, the applicant's deployment history was not verified as part of his Compensation and Pension Examination.

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of events that occurred in Iraq through his C&P exam and his VA treatment records. Given the nexus between trauma exposure, avoidance of emotion, and substance use and in accordance with liberal consideration, the basis for separation could be mitigated.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant 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 December 2004 to show an honorable characterization of service.



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

2. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 established policy and procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally considered appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

3. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, paragraph 14-12c for misconduct would receive a separation code of "JKQ."

4. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.

- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification.

5. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

6. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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.

7. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including

summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//