

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 February 2025

DOCKET NUMBER: AR20240006518

APPLICANT REQUESTS: an upgrade of his general under honorable conditions discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Two Veterans Affairs (VA) letters

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, while he served in Iraq, he experienced an incident in which two of his fellow soldiers were killed in a blast on base, and he was selected for the cleanup detail. This event led to his disability rating with the VA, and shortly thereafter, he was discharged from Army service. He is now rated at 70% permanent and total due to that incident and feels he has sufficient evidence, based on his rating, to demonstrate the circumstances surrounding his discharge. At the time, his discharge should have been attributed to a disability.
3. The applicant provides two VA letters, dated 6 and 10 April 2024, that reflects he has one or more service-connected disabilities, with a combined service-connected evaluation of 70 percent, and is considered to be totally and permanently disabled due solely to his service connected disabilities.
4. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 16 February 2005.
 - b. On 14 April 2006, 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 13-2a, for unsatisfactory performance. Specifically, the applicant received a Summarized Article 15 for negligently failing to keep accountability of his weapon and military identification card. He had also received numerous counseling statements for failure to report, disobeying a noncommissioned officer, failure to meet grooming standards in accordance with Army Regulation 670-1, failure to keep his living area clean, failure to report to his appointed place of duty on time. It is noted that the commander has recommended that the applicant receive an honorable discharge.

c. The applicant acknowledged receipt of the commander's intent to separate him on 14 April 2006. He consulted with legal counsel on 15 April 2006 and was advised of the basis for the contemplated separation action for unsatisfactory performance, the type of discharge he could receive and its effect on further enlistment or reenlistment, the possible effects of this discharge, and of the procedures/rights available to him. He elected not to submit a statement in his own behalf. He acknowledged he:

- understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him
- understood he could be ineligible for many or all benefits as a veteran under Federal and State laws as a result of the issuance of a discharge under other than honorable conditions
- understood if he received a discharge characterization of less than honorable, he could make an application to the Army Discharge Review Board (ADRB) or the ABCMR for an upgrade, but he understood that an act of consideration by either board did not imply his discharge would be upgraded

d. It is unclear of the exact date in which the separation authority approved the applicant's discharge under the provisions of AR 635-200, paragraph 13-2 for unsatisfactory performance, and directed the applicant be issued an General Discharge Certificate.

e. His DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects he was discharged on 15 May 2006, under the provisions of AR 635-200, chapter 13, unsatisfactory performance, separation code JHJ, reentry code 1, and character of service of general under honorable conditions. He completed 1 year and 3 months of net active service this period. It also reflects the following:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons awarded or authorized): National Defense Service Medal, Iraq Campaign Medal, Global War on Terrorism Service Medal, Army Service Ribbon
- Item 18 (Remarks): Service in Kuwait/Iraq from 1 November 2005 thru 1 May 2005

5. AR 635-200 states, action will be taken to separate a member due to unsatisfactory performance when in the commander's judgment, the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future.

6. 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.

7. The applicant was asked, via letter from Case Management Division, dated 24 December 2024, to provide a copy of the medical documents that support his mental health issues (PTSD). As of the date of this writing, medical documents were not submitted.

8. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

9. 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 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 16 Feb 2005. His DD214 showed service in Kuwait/Iraq from 01 Nov 2005 to 1 May 2006.
- On 14 Apr 2006 the applicant's immediate commander notified applicant of his intent to initiate separation under Army Regulation (AR) 635-200 for unsatisfactory performance. The applicant had summarized Article 15 charges preferred against him for not maintaining accountability of his weapon and CAC card, failure to report for duty, disobeying an NCO, failure to adhere to grooming standards and failure to maintain his living area.
- The applicant was discharged on 15 May 2006 under the provisions of AR 635-200, chapter 13, unsatisfactory performance, and he was credited with 1 year and 3 months of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The

applicant asserts he developed PTSD, based on an incident in Iraq where two fellow soldiers were killed in a blast, and he was tasked with clean-up detail. A Veterans Affairs letter, dated 6 Apr 2024, indicated he was awarded a combined service-connected evaluation of 70%. It further noted he was “*totally and permanently disabled*” and paid at the 100% rate as a result of unemployability from his service-connected disabilities. A second Veterans Affairs letter (10 Apr 2024) indicated he was honorably discharged from the Army two separate times with periods of service 30 Jul 2003-11 Feb 2004 and 28 Jan 2012-9 Jan 2013. A third *under honorable conditions* discharge was indicated with a period of service from 16 Feb 2005-15 May 2006. There was insufficient evidence that the applicant was diagnosed with any mental health conditions while on active service.

d. The VA’s Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed the applicant was awarded a service-connected disability of 70% for PTSD. The initial BH entry (8 Jun 2009) indicated applicant’s report of mood disturbance and history of ADHD that included previous use of medications. He reported still having trouble staying focused, being impulsive and having mood swings. He endorsed symptoms of PTSD, but it was noted that he did not meet full criteria for the diagnosis. He was diagnosed with Adjustment Disorder with mixed anxiety and depression, “PTSD like symptoms which do not meet the full criteria,” and ADHD and Bipolar symptoms, and he was started on a non-stimulant medication to help with attention problems and a medication for sleep. He was reportedly in the National Guard at that time. A social work note (14 Sep 2009) indicated he recently became unemployed from a security position but attending a technical college and in need of financial assistance.

e. There was no direct in-person clinical contact for over five years until 3 Nov 2014 when he had a psychosocial evaluation. He reported uncertainty of current BH needs, marital difficulties and being still viscerally impacted by the death of his two friends in Iraq and the mortar attacks on his FOB. He was referred to a VA psychiatrist. On 3 Dec 2014, applicant and his spouse came in for the initiation of couple’s therapy. A Compensation and Pension examination for PTSD was conducted on 14 Aug 2015. He reported PTSD symptoms across all criterion clusters which resulted in the substantiation of a firm PTSD diagnosis. In particular, he discussed frequent indirect fire, several friends KIA/WIA while in country outside the wire and having to clean up human remains from incoming hits. On 25 Mar 2016, applicant met with a neuropsychologist for testing with plan to meet again to review the results. This follow-up remains undocumented. Applicant started to attend a PTSD Group on 27 Oct 2017 and 03 Nov 2017. No additional group entries were in outpatient encounter entries. A phone contact occurred on 20 Jun 2019 in which applicant indicated a desire to reinstate couples therapy. The first Integrated Behavioral Couples Therapy (ICBT) was initiated on 10 Jul 2019 with the fourth session occurring on 29 Aug 2019. The focus was on his PTSD symptoms and its impact on his relationship with his fiancé. Applicant

did not return for the feedback session. Two and a half years passed before the next BH session on 13 May 2022 which was a Bariatric Pre-surgical Psychosocial Evaluation. The final four BH outpatient encounters in JLV (Sep-Oct 2023) pertained to applicant's application into the Program of Comprehensive Assistance for Family Caregivers. VA records show the applicant-initiated treatment again on 27 Jan 2025 and has an intake appointment scheduled for 4 Mar 2025.

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

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. There were not any DoD medical or mental health documents provided that identified BH conditions during his time in service. However, the applicant asserts he had an undiagnosed mental health condition, PTSD, at the time of the misconduct. This was supported by VA documents including a Compensation and Pension examination confirming PTSD and a 70% service-connected disability for PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition, PTSD, while on active service. This was based on his response to traumatic events during his deployment to a combat zone in Kuwait/Iraq from 01 Nov 2005 to 1 May 2006.

(3) Does the condition or experience 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. VA mental health records revealed documentation that the applicant was diagnosed with an Adjustment Disorder in 2009 and was determined to be service connected for PTSD in 2015. Behaviors, such as disrespect for authority and disregard for military standards, can be a natural sequela to mental health conditions associated with exposure to traumatic and traumatic events. Given the nexus between the applicant's misconduct related to failure to keep track of his personal weapon and CAC card, FTRs, poor grooming, lack of care for his area, and disobeying an NCO and his diagnosis of PTSD, and in accordance with liberal consideration, the basis for separation is mitigated.

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 relief was warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct leading to the applicant’s separation, the available documentation and the following findings outlined in the medical review:

- (1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes
- (2) Did the condition exist or experience occur during military service? Yes
- (3) Does the condition or experience excuse or mitigate the discharge? Yes

the Board concluded there was sufficient evidence to grant clemency by upgrading the applicant’s characterization of service to Honorable.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Honorable
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

X **//SIGNED//**

 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.

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 635-200 (Active Duty Enlisted Administrative Separations), sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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 provides that 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 13 of that regulation provides, in pertinent part, if it is clearly established that the Soldier will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier. Further stating it is likely that the Soldier will be a disruptive influence in present or future duty assignments and his ability to perform duties effectively in the future, including potential for advancement or leadership, is unlikely.

3. 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.

4. 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.

5. 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.

6. 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//