

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 February 2025

DOCKET NUMBER: AR20240006547

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge to honorable.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Self-authored statement
- Medical documents

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, via personal statement:

a. Within eight months of completing basic training and Advanced Individual Training, he joined his new unit and was deployed to Iraq. He spent a year in Iraq from 31 October 2006 until 12 December 2007. While serving in Iraq, he experienced a life-threatening situation when an improvised explosive device explosion temporarily caused him to lose hearing. On another mission to replace Quick Reaction Forces, his convoy encountered small arms fire and rocket propelled grenades while trying to turn around. The convoy managed to escape to safety despite the hostile environment.

b. The first 60 percent of his time in the Army was arguably the most challenging and stressful period of his service. The remaining 16 months were spent stateside post-deployment. He noted that the final 40 percent of his Army time, excluding the mental health concerns following deployment, should have been easier.

c. On 27 October 2008, a RESPECT-Mil assessment and a mental status evaluation were conducted. The evaluation identified posttraumatic stress disorder

(PTSD) and recommended inpatient psychiatric hospitalization. A US Army O-6, Chief of Inpatient Psychiatry, characterized him as potentially dangerous and recommended increased supervision, but he was deemed psychiatrically cleared for "any action deemed appropriate by Command."

d. He is now requesting an upgrade of his discharge characterization so he can pursue VA healthcare and potentially VA compensation, stating, "I went to Iraq. I served honorably in Iraq."

3. The applicant provides seven (7) pages of medical documents.

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

a. He enlisted in the Regular Army on 21 March 2006.

b. He accepted nonjudicial punishment (NJP) as follows:

(1) On 3 July 2008, Company Grade (CG) Article 15 for being derelict on or about 24 April 2008. The punishment consisted of a reduction to private first class (PFC) E-3, suspended, to be automatically remitted if not vacated before 30 December 2008.

(2) On 5 September 2008, Field Grade Article 15, for wrongfully using marijuana between on or about 1 June 2008 and on or about 1 July 2008. The punishment consisted of a reduction to PFC.

c. His duty status changed as follows:

- From present for duty (PDY) to absent without leave (AWOL), effective 1 November 2008
- From AWOL to PDY, effective 6 November 2008
- (missing document that reflects duty status change from PDY to AWOL)
- From AWOL to PDY, effective 20 November 2008

d. DD Form 3822-R (Report of Mental Status Evaluation) reflects an evaluation was conducted on the applicant, who was being considered for a discharge. He was found to have the mental capacity to understand and participate in the proceedings, was mentally responsible, and met the retention requirements of Chapter 3 (AR 40-501). The remarks section states, "Axis I: Polysubstance abuse (cocaine/THC) PTSD."

e. DD Form 458 (Charge Sheet) reflects the applicant was charged with Violation of the UCMJ, Article 121, four specifications of larceny.

f. Pretrial Agreement (Offer to Plead Guilty), dated 1 April 2009, reflects the applicant, after having had the opportunity to examine the Charge and Specifications preferred against him and all statements and documents attached thereto, and after consulting with his defense counsel, and being fully advised that he has a legal and moral right to plead not guilty, offered to plead as follows:

- To the Specifications of The Charge and The Charge; Guilty
- To plead guilty at a Summary Court Martial
- To not request personal production of any witness outside a twenty-mile radius of Fort Bliss
- To provide information regarding any missing property item(s)
- To testify against other Servicemembers accused of certain acts of misconduct if he is given a testimonial grant of immunity
- To waive all pre-trial motions except the accused reserves the right to file a motion with the Summary Court Martial Officer arguing R.C.M. 305, Pretrial confinement, is applicable in this case
- To waive his right to an administrative separation board and any subsequent administrative separation proceedings under Army Regulation 635-200, paragraph 14-12

g. Appendix I (Quantum), dated 1 April 2009, reflects the applicant's offer to plead guilty to The Charge and Specifications, as stated in the Offer to Plead Guilty, and offer to abide by the other terms and conditions set forth in the Offer to Plead Guilty, provided the Convening Authority refer and try his case to a Summary Court-Martial.

h. DD Form 2329 (Record of Trial by Summary Court-Martial), dated 14 April 2009, reflects the applicant was found guilty of four specifications of Violation of Article 121, UCMJ, larceny. His punishment consisted of a reduction to private (E1), forfeiture of \$933.00, and 30 days confinement.

i. DD Form 2707 (Confinement Order), dated 14 April 2009, reflects the applicant was to be reduced to private (E1), to forfeit \$933.00, and to be confined for 30 days.

j. On 29 April 2009, 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), commission of a serious offense. Specifically for being derelict in the performance of his duties, wrongfully used marijuana, and four cases of larceny.

k. The applicant acknowledged receipt of the commander's intent to separate him and consulted with legal counsel on 29 April 2009. Further certifying that he received a copy of all documents being forwarded to the separation authority for consideration.

l. On 13 May 2009, the separation authority approved the applicant's discharge under the provisions of Army Regular 635-200, paragraph 14-12c, commission of a serious offense, with his service characterized as under other than honorable conditions.

m. His DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects he was discharged on 21 May 2009, under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 14-12c, misconduct (serious offense), with the character of service of under other than honorable conditions. He served 3 years and 19 months of net active service this period. It also reflects the following:

- Item 12h (Effective Date of Pay Grade): 14 April 2009
- Item 18 (Remarks): service in Iraq from 31 October 2006 thru 12 December 2007
- Item 29 (Dates of Time Lost During this Period): 30 October 2008 thru 19 November 2008 and from 16 April 2009 thru 7 May 2009

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. By regulation (AR 635-200), action will be taken to separate a member for misconduct such as drug abuse. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

7. 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.

8. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) 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 21 March 2006, and he deployed to Iraq from 31 October 2006 to 12 December 2007.
- The applicant accepted NJP for being derelict on 24 April 2008 and on 5 September 2008 for wrongfully using marijuana. Additionally, he was AWOL from

1 to 6 November 2008 and an additional AWOL with returning to duty on 20 November 2008.

- DD Form 458 (Charge Sheet) reflects the applicant was charged with violation of the UCMJ, Article 121, four specifications of larceny. DD Form 2329 (Record of Trial by Summary Court-Martial), dated 14 April 2009, reflects the applicant was found guilty of four specifications of larceny.
- On 29 April 2009, 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, paragraph 14-12c(2), commission of a serious offense. Specifically, for being derelict in the performance of his duties, wrongfully used marijuana, and four cases of larceny.
- The applicant was discharged on 21 May 2009 and served 3 years and 19 months of net active service.

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 his deployment to Iraq resulted in a behavioral health condition that manifested into poor decision-making and self-medicating, and he contends that an undiagnosed mental health condition and/or PTSD are mitigating factors in his misconduct. The application included medical and mental health documentation dated 27 April 2017, which showed the applicant was involved in an IED blast, and a RESPECT-MIL primary care screener (dated 9 February 2008) where he endorsed symptoms of depression, nightmares, avoidance of reminders of trauma, and hypervigilance. Another document dated 12 October 2008 showed he reported suicidal ideation secondary to a domestic disturbance and was taking trazadone and Klonopin. A third document showed he was admitted to a psychiatric unit on 20 October 2008 and discharged on 27 October 2008 with diagnoses of PTSD, Unspecified Alcohol Dependence, Cocaine Dependence, Cannabis Abuse. Documentation from 4 February 2009 showed diagnoses of PTSD and Depression as well as medications for depression, sleep, and anxiety. Similar documentation was included with dates of 13 February 2009 and 5 and 6 March 2009. A Report of Mental Status Evaluation dated 27 October 2008 showed that the applicant underwent a thorough psychological evaluation, including psychometric testing, and was diagnosed with Polysubstance Abuse (cocaine/cannabis) and PTSD. However, he was determined to meet retention standards and to have the mental capacity to understand and participate in administrative proceedings. The evaluator remarked that the applicant had been hospitalized on an inpatient psychiatric unit due to safety concerns related to substance abuse and symptoms consistent with a diagnosis of PTSD. At the time of discharge, he was stable and psychiatrically cleared for administrative action, but it was noted that a medical evaluation board may be initiated post-disciplinary action. There was sufficient evidence that the applicant was diagnosed with PTSD and Depression 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 additional RESPECT-MIL documentation from 9 March, 17 March, and 11 May 2009, which noted the applicant endorsed symptoms of PTSD and Depression and was taking antidepressant, anxiolytic, and sleep medications.

e. 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 partially mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had a mental health condition, including PTSD, at the time of the misconduct. Mental health documentation from his time in service showed that he was hospitalized for suicidal ideation and symptoms of PTSD and depression, and he was diagnosed with Polysubstance Abuse and PTSD.

(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. The applicant deployed to Iraq from October 2006 until December 2007 and provides an account 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 documentation of a mental health condition, including PTSD, while on active service. 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. Additionally, avoidant behavior, such as going AWOL, can also be a natural sequela to mental health conditions associated with exposure to traumatic events. Given the nexus between trauma exposure, PTSD, and substance use the applicant's misconduct related to using marijuana and being AWOL can be mitigated. However, there is no nexus between PTSD and his misconduct related to larceny: 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.

g. 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 relief was not 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 that the applicant had a condition or experience that partially mitigates his misconduct. However, the Board determined there was no error or injustice in the characterization of service he received at the time of his discharge.

2. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had a mental health condition, including PTSD, at the time of the misconduct. Mental health documentation from his time in service showed that he was hospitalized for suicidal ideation and symptoms of PTSD and depression, and he was diagnosed with Polysubstance Abuse and PTSD.

(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. The applicant deployed to Iraq from October 2006 until December 2007 and provides an account of deployment-related trauma exposure.

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The Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XX	:XX	:XX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.



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 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 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//