

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 February 2025

DOCKET NUMBER: AR20240006567

APPLICANT REQUESTS: upgrade of his Under Honorable Conditions (General) characterization of service, and award of the Army Commendation Medal (ARCOM).

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Reenlistment documents
- Documentation for award of the ARCOM
- Department of Veterans Affairs (VA) letter, dated 4 January 2024
- University of Phoenix Customer Account History, dated 17 January 2024
- VA Letter, dated 21 February 2024
- screenshot of VA rated disabilities

02:40

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 upon returning from his deployment in support of Operation Enduring Freedom in 2003, he was not the same person he was prior to deploying.

a. He did not know what was troubling him, but he knew that he was not well. He did not realize that he was suffering from post-traumatic stress disorder (PTSD) and turned to self-medication as a way to manage. The only time he felt peace was when he was using marijuana. He knew it was wrong and not allowed, but he was just trying to cope with being in the Army and everyday life. As a result, he had a positive urinalysis test result for using marijuana and was subsequently separated from the Army.

b. His DD Form 214 (Certificate of Release or Discharge from Active Duty) does not indicate that he reenlisted with an honorable discharge for a second term on 21 November 2002. This egregious mistake prevented him from being to use his education benefits under the Montgomery GI Bill to pursue a Bachelor's degree. He had to drop his classes and pay for the semester out of pocket. This mistake put him in a terrible financial bind.

c. He served in Iraq from 20 March 2003 until May 2003, but his DD Form 214 does not show that. He was also awarded an ARCOM for his service in Iraq that is not reflected on his DD Form 214.

d. During his time of service, PTSD was not as well-known and accepted as it is now. He did not realize what he was going through until long after he got out of the Army. Once he was made aware of his specific condition, he reached out to the VA to seek additional help. He is currently seeing a psychiatrist once every 90 days to treat his service-connected PTSD. He also sees other VA physicians to treat other ailments he incurred while serving.

3. The applicant enlisted in the Regular Army on 24 August 1999 in the rank/grade of private (PV1)/E-1 for a period of 4 years. Upon completion of initial entry training, he was awarded military occupational specialty 92A (Automated Logistical Specialist) and assigned to a unit in Hawaii. He was advanced to the rank/grade of specialist (SPC)/E-4 effective 1 December 2001 and that was the highest rank he held. He served in Bosnia from 14 March 2002 to 3 September 2002.

4. On 21 November 2002, the applicant reenlisted for a period of 3 years and was subsequently reassigned to a unit at Fort Benning, GA in accordance with the terms of his reenlistment.

5. The applicant provides an ARCOM Certificate for exceptionally meritorious service in support of Operation Iraqi Freedom, from 20 March 2003 to 31 May 2003, with permanent orders, issued on 30 June 2003.

6. During the applicant's monthly counseling for the month of September 2003, his squad leader stated his performance had been fair. She noted that his work was pretty good, but he spent an inordinate amount of time on his cellular telephone, which was not permitted when he was at work. It was also noted that the applicant had failed his second consecutive Army Physical Fitness Test (APFT) that morning and as a result an administrative flag was imposed upon him to prevent him from receiving favorable personnel actions until he passed the APFT.

7. On 20 October 2003, the applicant was counseled regarding not maintaining his room up to the cleanliness standards.

8. On 11 November 2003, the applicant was counseled regarding providing a urinalysis sample on 29 October 2003 that tested positive for marijuana use. He was advised that he would be required to attend Army Substance Abuse Program (ASAP) training and counseling sessions and that disciplinary action would be taken.

9. The applicant underwent a separation medical examination on 25 November 2003 and was found to be qualified for separation.

10. The applicant underwent a mental status evaluation on 10 December 2003. It was determined that he had the mental capacity to understand and participate in the proceedings and was mentally responsible. There was no evidence of any mental disease or defect which would warrant disposition through medical channels. He was psychiatrically cleared for any administrative action deemed appropriate by command. It was noted that he expressed motivation to remain on active duty. It was recommended that he continue treatments through ASAP.

11. On 20 December 2003, the applicant was counseled regarding failing a urinalysis on 24 November 2003. He was advised that this was his second offense and paperwork had been initiated to have him administratively separated from the Army. He was further advised he would be required to attend ASAP training and counseling sessions and that disciplinary action would be taken.

12. On 21 January 2004, the applicant accepted field grade nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice for wrongfully using marijuana during the two aforementioned time periods. His punishment was reduction from SPC/E-4 to private (PV1)/E-1; extra duty for 45 days; and restriction for 45 days.

13. On 23 February 2004, the applicant's immediate commander notified the applicant of his intent to initiate action to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, paragraph 14-12c for Commission of a Serious Offense. He was advised that he was being recommended for an Under Honorable Conditions (General) discharge. The specific reason for this action was the applicant's wrongful use of marijuana. The applicant acknowledged receipt of the notification the same day.

14. On 25 February 2004, the applicant rendered an Election of Rights wherein he acknowledged receipt of the notification and that he was advised of the reasons for separation, of the rights available to him, and the effect of any action taken by him in waiving his rights. He elected to waive consideration of his case by an administrative separation board, personal appearance before and administrative separation board, to

submit statements in his own behalf, and consulting counsel and representation by counsel.

15. On 2 March 2004, the applicant's separation packet underwent a legal review and was determined to be legally sufficient to support his separation.

16. On 9 March 2004, the applicant's intermediate commander recommended approval of his separation with a General, under honorable conditions discharge.

17. On 11 March 2004, the separation authority approved the recommendation. He directed the applicant's service be characterized as General, Under Honorable Conditions.

18. Orders and the applicant's DD Form 214 show he was discharged in the rank/grade of PV1/E-1 on 2 April 2004, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of Misconduct with separation code "JKK" and reentry code "3." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 4 years, 7 months, and 9 days of net active service this period. He had no time lost. He did complete his first full term of service.

a. Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) does not show award of the ARCOM.

b. Item 18 (Remarks):

(1) does not show the applicant reenlisted or his period of honorable service (see administrative notes);

(2) does not show he served in Iraq; and;

(3) contains the entry "SOLDIER SERVED IN BOSNIA FROM 020314 TO 020903 IN KUWAIT FROM 030309 TO 030714."

19. The applicant petitioned the ABCMR for the portion of his current request pertaining to correction of his DD Form 214 to show he was awarded the ARCOM and to correct the dates of his service in Bosnia and Iraq. On 26 July 2021, the applicant was informed that a review of his records and the documents he provided with his petition were sufficient to substantiate correction of his DD Form 214. A review of his records also revealed he is authorized an Army Achievement Medal and second award of the ARCOM that were not recorded on his DD Form 214. As a result, the applicant was provided a DD Form 215 (Correction to DD Form 214) which shows his DD Form 214 was amended as follows:

a. Item 13 was corrected by adding the entry: //ARMY COMMENDATION MEDAL (2ND AWARD//ARMY ACHIEVEMENT MEDAL (1ST AWARD)//NOTHING FOLLOWS//.

b. Item 18 was corrected by:

(1) Deleting the entry: //SOLDIER SERVED IN BOSNIA FROM 020314 TO 020903 IN KUWAIT FROM 030309 TO 030714//;

(2) Adding the entry: //SERVICE IN BOSNIA FROM 20020314-20020903//SERVICE IN KUWAIT/IRAQ FROM 20030309-20030714//; and

(3) Adding the entry: SERVED IN A DESIGNATED IMMINENT DANGER PAY AREA//NOTHING FOLLOWS.

20. In addition to the previously discussed evidence, the applicant provides the following documents which are available in their entirety for the Board's consideration.

a. A letter from the VA Buffalo Regional Office located in Buffalo, NY, dated 4 January 2024 shows, in part, the VA denied the applicants eligibility for education benefits under the Montgomery GI Bill based upon the fact he was separated with an "Under Honorable Conditions" characterization of service. Claimants must have an "Honorable" characterization of service.

b. A University of Phoenix Customer Account History, dated 17 January 2024 shows the applicant was billed for tuition expenses he incurred.

c. A letter from the VA, dated 21 February 2024, shows the applicant is receiving service-connected disability compensation from the VA, effective 1 December 2023.

d. A screenshot of the applicant's VA rated disabilities, dated 21 February 2024 shows, in part, the applicant has a 70 percent disability rating for PTSD, effective 29 July 2016.

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

22. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) discharge to honorable as well as award of the Army Commendation Medal (ARCOM). The applicant selected PTSD on his application as related to his request. This opine will narrowly focus on his request for an upgrade.

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:

- Applicant enlisted in the Regular Army on 24 August 1999.
- He served in Bosnia from 14 March 2002 to 3 September 2002.
- On 21 November 2002, the applicant reenlisted for a period of 3 years.
- Applicant provides an ARCOM Certificate for exceptionally meritorious service in support of Operation Iraqi Freedom, from 20 March 2003 to 31 May 2003, with permanent orders, issued on 30 June 2003.
- On 11 November 2003, the applicant was counseled regarding providing a urinalysis sample on 29 October 2003 that tested positive for marijuana use. He was advised that he would be required to attend Army Substance Abuse Program (ASAP) training and counseling sessions and that disciplinary action would be taken.
- On 20 December 2003, the applicant was counseled regarding failing a urinalysis on 24 November 2003. He was advised that this was his second offense and paperwork had been initiated to have him administratively separated from the Army. He was further advised he would be required to attend ASAP training and counseling sessions and that disciplinary action would be taken.
- On 21 January 2004, the applicant accepted field grade nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice for wrongfully using marijuana during the two aforementioned time periods.
- On 23 February 2004, the applicant's immediate commander notified the applicant of his intent to initiate action to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, paragraph 14-12c for Commission of a Serious Offense. He was advised that he was being recommended for an Under Honorable Conditions (General) discharge. The specific reason for this action was the applicant's wrongful use of marijuana. The applicant acknowledged receipt of the notification the same day.
- Orders and the applicant's DD Form 214 show he was discharged in the rank/grade of PV1/E-1 on 2 April 2004, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of Misconduct with separation code "JKK" and reentry code "3." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 4 years, 7 months, and 9 days of net active service this period. He had no time lost. He did complete his first full term of 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 states upon returning from his deployment in support of Operation Enduring

Freedom in 2003, he was not the same person he was prior to deploying. He did not know what was troubling him, but he knew that he was not well. He did not realize that he was suffering from post-traumatic stress disorder (PTSD) and turned to self-medication as a way to manage. The only time he felt peace was when he was using marijuana. He knew it was wrong and not allowed, but he was just trying to cope with being in the Army and everyday life. As a result, he had a positive urinalysis test result for using marijuana and was subsequently separated from the Army. His DD Form 214 (Certificate of Release or Discharge from Active Duty) does not indicate that he reenlisted with an honorable discharge for a second term on 21 November 2002. This egregious mistake prevented him from being able to use his education benefits under the Montgomery GI Bill to pursue a bachelor's degree. He had to drop his classes and pay for the semester out of pocket. This mistake put him in a terrible financial bind. He served in Iraq from 20 March 2003 until May 2003, but his DD Form 214 does not show that. He was also awarded an ARCOM for his service in Iraq that is not reflected on his DD Form 214. During his time of service, PTSD was not as well-known and accepted as it is now. He did not realize what he was going through until long after he got out of the Army. Once he was made aware of his specific condition, he reached out to the VA to seek additional help. He is currently seeing a psychiatrist once every 90 days to treat his service-connected PTSD. He also sees other VA physicians to treat other ailments he incurred while serving.

d. Due to the period of service limited active-duty electronic medical records were available for review. Hardcopy medical documentation submitted by the applicant, show on 10 December 2003, he underwent a mental status evaluation for the purpose of separation. The evaluation determined there was no evidence of any mental disease or defect which would warrant disposition through medical channels, and he was psychiatrically cleared for any administrative action deemed appropriate by command. The clinician noted the applicant expressed motivation to remain on active duty and it was recommended he continue treatment via ASAP.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 90% service connected, including 70% for PTSD. The available treatment record evidences ongoing mental health treatment since March 2017, with the applicant currently being treated via medication management by psychiatry and diagnosed with PTSD.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a behavioral health condition during military service 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 selected PTSD on his application as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 90% service connected, including 70% for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to the wrongful use of marijuana on two separate occasions. Given the nexus between PTSD and the use of substances to alleviate/cope with the symptoms of his behavioral health condition, the applicant's use of marijuana is mitigated by his BH condition.

#### 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 record and medical review, the Board considered the advising opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his misconduct.

2. Consideration was given to the Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected PTSD on his application as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 90% service connected, including 70% for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to the wrongful use of marijuana on two separate occasions. Given the nexus between PTSD and the use of substances to alleviate/cope with the symptoms of his behavioral health condition, the applicant's use of marijuana is mitigated by his BH condition.

3. The Board acknowledged the applicant's combat service and the challenges he faced following his deployment in support of Operation Enduring Freedom. The Board noted, the applicant's contentions that his misconduct specifically, two positive

urinalysis results for marijuana use was the result of undiagnosed post-traumatic stress disorder (PTSD), which he later sought treatment for through the Department of Veterans Affairs. Notwithstanding, the Board considered the medical opinion indicating that the applicant had a behavioral health condition during service that may have mitigated his misconduct, it found the nature and recurrence of the offenses, combined with the applicant's acceptance of nonjudicial punishment, to be compelling evidence of a serious breach of military discipline. Therefore, the Board determined that the general, under honorable conditions discharge was appropriate and denied relief for an upgrade to fully honorable.

4. However, the Board did identify administrative omissions in the applicant's DD Form 214. The record clearly shows the applicant honorably completed his initial term of service and reenlisted on 21 November 2002, yet this period of continuous honorable service was not properly reflected. Additionally, the Board confirmed that the applicant's Army Commendation Medal (ARCOM) had already been added to his DD Form 214 through a previously issued DD Form 215, and no further action was required on that matter. Therefore, the Board granted partial relief by directing correction of the applicant's DD Form 214 to accurately reflect his continuous honorable service through 21 November 2002.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 2 April 2004 to add in item 18 (Remarks) CONTINUOUS HONORABLE SERVICE FROM 19990824-20021120.

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 upgrade of his Under Honorable Conditions (General) characterization of service and award of the Army Commendation Medal.

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 NOTES: N/A

REFERENCES:

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

2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

4. 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 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 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). 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 appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

5. Army Regulation 635-5 (Personnel Separations – Separation Documents), in effect at the time, prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It establishes the standardized policy for preparing and distributing the DD Form 214. It states the DD Form 214 provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge.

a. Paragraph 1-4b(5) of the regulation in effect at the time stated that a DD Form 214 would not be prepared for enlisted Soldiers discharged for immediate reenlistment in the Regular Army.

b. Paragraph 2-4h(18) of the regulation currently in effect states that item 18 documents the remarks that are pertinent to the proper accounting of the separating Soldier's period of service. Subparagraph (c) states that for enlisted Soldiers with more than one enlistment period during the time covered by the DD Form 214, enter "IMMEDIATE REENLISTMENTS THIS PERIOD" and specify the appropriate dates. For Soldiers who have previously reenlisted without being issued a DD Form 214 and who are later separated with any characterization of service except "honorable," enter "CONTINUOUS HONORABLE ACTIVE SERVICE FROM" (first day of service which DD Form 214 was not issued) UNTIL (date before commencement of current enlistment)." Then, enter the specific periods of reenlistments as prescribed above.

6. 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 (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) 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; traumatic brain injury; 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.

7. 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, 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.

//NOTHING FOLLOWS//