

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 February 2025

DOCKET NUMBER: AR20240006755

APPLICANT REQUESTS: an upgrade of his Under Honorable Conditions (General) characterization of service, and to appear in person before the Board at his own expense.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Rating Decision
- VA Benefits Guidance

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 one of the most important things he has done in life is serve in the Army. It has taken him a long time to accept that he had and still has issues. To be able to say that he served honorably would be his most prized achievement. His mental health battle never ends, and he continues to fight the good fight. He wishes he had the tools then to have finished in a commendable manner, but because of combat and a broken mind he was unable to do so. He has been barely able to hang on and navigate life. He is grateful for the VA helping him with his education and offering help with his mental health, opening his mind, and enabling him to understand his condition. The applicant indicates on his DD Form 149, that post-traumatic stress disorder (PTSD) is related to his request.

3. The applicant enlisted in the Regular Army on 23 August 2002 in the rank/grade of private (PV2)/E-2 for a period of 4 years. Upon completion of initial entry training, he was awarded military occupational specialty 11B (Infantryman) and assigned to a unit at Fort Drum, NY. He was advanced to specialist (SPC)/E-4 effective 23 August 2004 and that was the highest rank he held. He served in Afghanistan from 2 May 2003 to 13 November 2003 and in Kuwait/Iraq from 17 June 2004 to 17 June 2005.

4. On 29 September 2005, the applicant accepted field grade nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for on or about 12 August 2005, physically controlling a vehicle while drunk. His punishment was reduction from SPC/E-4 to private (PV1)/E-1; extra duty for 45 days; and restriction for 45 days.

5. On 25 October 2005, the applicant was counseled for misconduct and advised that continued conduct of this nature could result in punishment under the UCMJ and or the initiation of action to administratively separate him from the Army. The specific infractions for which he was counseled were:

- Suspicion of being drunk on duty
- Dereliction of duty
- Disobeying a direct order from a commissioned officer and noncommissioned officer
- Breaking restriction and extra duty

6. A DA Form 4430 (Department of the Army Report of Result of Trial) shows the applicant was tried by Summary Court-Martial on 11 January 2006, at Fort Drum, NY.

a. He was found guilty of Failure to Report; Drunk on Duty; and Restriction Breaking.

b. He was sentenced to 30 days confinement. The sentence was adjudged on 10 January 2006.

7. The applicant underwent a separation medical examination on 14 February 2006 and was found not to be qualified for service due to a diagnosis of a right arm radial fracture.

8. The applicant underwent a mental status evaluation on 16 February 2006. It was determined that he had the mental capacity to understand and participate in the proceedings, was mentally responsible, and met regulatory retention requirements. There was no evidence of any psychiatric condition which would warrant disposition through medical channels. He was psychiatrically cleared for any administrative action deemed appropriate by command. He was diagnosed with alcohol dependence. He was not a risk for suicide but was emotionally labile and angry. He denied current intent to harm others but could become a risk to others if aggravated. It was recommended that any action to separate him should be completed as expeditiously as possible.

9. On 17 April 2006, 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 reasons for this action were his aforementioned misconduct that resulted in him being punished by Summary Court-Martial and under the provisions of Article 15, UCMJ. The applicant acknowledged receipt of the notification.

10. On 20 April 2006, the applicant rendered an Election of Rights wherein he acknowledged receipt of the notification and that he was advised of the reasons for separation and of the rights available to him. He elected to take the opportunity to seek advice from military counsel at no charge to explain the proposed separation and its effects, the rights available to him; and the effect of any action taken by him in waiving his rights. He elected to submit a statement in his own behalf which is available in its entirety for the Board's consideration.

11. On 24 April 2006, the applicant's immediate commander formally recommended his separation prior to the expiration of his term of service, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of Commission of a Serious Offense. The intermediate commander concurred with the recommendation.

12. On 2 May 2006, the separation authority approved the recommendation. He directed the applicant's service be characterized as General, Under Honorable Conditions.

13. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show he was discharged in the rank/grade of PV1/E-1 on 17 May 2006, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of Misconduct (Serious Offense) with separation code "JKQ" and reentry code "3." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 3 years, 8 months, and 25 days of net active service this period. He had no time lost. He did not complete his first full term of service.

14. The applicant petitioned the Army Discharge Review Board (ADRB) for relief. On 25 February 2008, the applicant was informed that after careful review of his application, military records, and all other available evidence, the ADRB determined that he was properly and equitably discharged and denied his request.

15. The applicant provides the following documents which are available in their entirety for the Board's consideration:

a. A VA Rating Decision letter, dated 14 August 2023, which shows, in part, his evaluation of PTSD, major depressive disorder, traumatic brain injury, which was rated as 50 percent (%) disabling was increased to 70% effective 29 January 2023, also claimed as dizziness, peripheral vestibular disorder.

b. A VA letter, dated 16 August 2023, shows the applicant was provided information and guidance regarding the steps he could take to utilize his VA benefits.

16. 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.

17. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) discharge. The applicant selected PTSD on his application as related to his request.

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 23 August 2002.
- Applicant served in Afghanistan from 2 May 2003 to 13 November 2003 and in Kuwait/Iraq from 17 June 2004 to 17 June 2005.
- On 29 September 2005, the applicant accepted field grade nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for on or about 12 August 2005, physically controlling a vehicle while drunk.
- On 25 October 2005, the applicant was counseled for misconduct and advised that continued conduct of this nature could result in punishment under the UCMJ and or the initiation of action to administratively separate him from the Army. The specific infractions for which he was counseled were:
Suspicion of being drunk on duty
Dereliction of duty
Disobeying a direct order from a commissioned officer and a noncommissioned officer
Breaking restriction and extra duty
- A DA Form 4430 (Department of the Army Report of Result of Trial) shows the applicant was tried by Summary Court-Martial on 11 January 2006, at Fort Drum, NY. He was found guilty of Failure to Report; Drunk on Duty; and Restriction Breaking.
- Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show he was discharged in the rank/grade of PV1/E-1 on 17 May 2006, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of Misconduct (Serious Offense) with separation code "JKQ" and reentry code "3." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 3 years, 8 months, and 25 days of

net active service this period. He had no time lost. He did not complete his first full term of service.

- Applicant petitioned the Army Discharge Review Board (ADRB) for relief. On 25 February 2008, the ADRB determined he was properly and equitably discharged and denied his request.

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 one of the most important things he has done in life is serve in the Army. It has taken him a long time to accept that he had and still has issues. To be able to say that he served honorably would be his most prized achievement. His mental health battle never ends, and he continues to fight the good fight. He wishes he had the tools then to have finished in a commendable manner, but because of combat and a broken mind he was unable to do so. He has been barely able to hang on and navigate life. He is grateful for the VA helping him with his education and offering help with his mental health, opening his mind, and enabling him to understand his condition.

d. The active-duty electronic medical record available for review indicates the applicant was being treated with antidepressant medication, per a medical note dated 16 February 2006. The applicant provides hardcopy documentation of an undated screening measure where he endorsed being, "an alcoholic doing best to quit, been sober since 31 December 2005" as well as a mental status evaluation for the purpose of separation dated 16 February 2006. The evaluation notes the applicant presented with an angry, emotionally unstable stance but denied risk to self or others. He was psychiatrically cleared for any administrative action deemed appropriate by command but was diagnosed with Alcohol Dependence and expeditious discharge was recommended.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 90% service connected, including 70% for PTSD. Soon after his discharge, the applicant participated in a C and P evaluation on 21 July 2006, he was diagnosed with Alcohol-Induced Mood Disorder; Alcohol Dependence; and Adjustment Disorder with Mixed Anxiety and Depressed Mood. However, the evaluation noted significant traumatic events related to his combat deployment including, "regular mortar attacks, exposure to fire fights and sniper fire, seeing soldiers killed and wounded, and having a friend blown up in an attack". The evaluation noted the applicant was being treated via medication management for anxiety, depression, and sleep disruption; and he continued to engage in alcohol abuse without treatment. Of note, all of the symptoms noted are consistent with a diagnosis of PTSD. An in-depth neuropsychological evaluation, dated 9 May 2007, notes the applicant's involvement in a noncombat related motor vehicle accident while in service. In addition, the evaluation documented numerous issues including depression, PTSD, sleep disorder, dizziness, and traumatic brain injury. The results of the testing indicated the applicant was severely depressed

and moderately anxious with impaired performance in some cognitive domains likely associated with the motor vehicle crash, representing residual cognitive deficits and/or decline. It was recommended the applicant participate in services to treat his PTSD, TBI and Alcohol Abuse. A CT scan of the brain was also recommended to note any possible cortical changes. Following this evaluation, the applicant initiated behavioral health services and participated in an initial intake session on 30 May 2007. He was referred for a PTSD specialty consult which he participated in on 30 January 2008, and he was diagnosed with chronic PTSD and Alcohol Abuse in remission. A note dated 12 September 2008, indicates the applicant completed 12 weeks of an intensive outpatient program following a relapse in his alcohol use. The applicant's medical record shows ongoing care for his chronic PTSD, including specialty therapy.

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 was being treated with antidepressant medication while in service and he is 90% service connected, including 70% for combat related PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to being drunk on duty, failure to report, and breaking restriction. Given the nexus between PTSD and the use of substances to alleviate/cope with the symptoms of his behavioral health condition, the applicant's misconduct of being drunk on duty is mitigated by his BH condition. Given the association between PTSD and difficulty with authority, his breaking restriction is also mitigated by his BH condition. In addition, given the nexus between PTSD and avoidance, the applicant's failure to report is also 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 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 petition, available military records and medical review, the Board concurred with 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. 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 was being treated with antidepressant medication while in service and he is 90% service connected, including 70% for combat related PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to being drunk on duty, failure to report, and breaking restriction. Given the nexus between PTSD and the use of substances to alleviate/cope with the symptoms of his behavioral health condition, the applicant's misconduct of being drunk on duty is mitigated by his BH condition. Given the association between PTSD and difficulty with authority, his breaking restriction is also mitigated by his BH condition. In addition, given the nexus between PTSD and avoidance, the applicant's failure to report is also mitigated by his BH condition.

3. The Board determined there is sufficient evidence of in-service mitigating factors that overcome the misconduct. The Board noted the applicant served honorably in Afghanistan from May to November 2003 and in Kuwait/Iraq from June 2004 to June 2005, demonstrating commitment and courage in support of combat operations. While the applicant's record includes disciplinary actions specifically, a field grade Article 15 for driving under the influence and a subsequent summary court-martial for failure to report, being drunk on duty, and breaking restriction. The Board found these offenses, though serious, were isolated and occurred late in his enlistment. Evidence in the record show the applicant had no lost time and completed nearly four years of active service.

4. The Board agreed, based on the advising opine, the applicant's conditions, particularly PTSD and TBI, are consistent with the applicant's combat deployments and provide compelling mitigation for the misconduct that led to his separation. In light of the applicant's honorable combat service, the mitigating impact of service-connected mental health conditions, the Board found the characterization of service should be upgraded as a matter of equity honorable. As such, the Board granted relief.

5. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 for the period ending 17 May 2006, showing his characterization of service as honorable.

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, 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. 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.

6. 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//