

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 January 2025

DOCKET NUMBER: AR20240006768

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (General) discharge to honorable
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Rating Decision, 12 February 2024

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 he has come to understand he was coping through substance abuse such as weed and alcohol. He knew he should have had an honorable at the time but was ashamed to ask and it may have been due to post traumatic stress disorder (PTSD).
3. The applicant provides a VA Rating Decision dated 12 February 2024 which shows the applicant was previously rated 70% service connected disability for PTSD. His rating was increased to 100% effective 11 July 2023.
4. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 2 June 2004.
  - b. A memorandum dated 8 March 2006 shows on 21 February 2006, the applicant tested positive for tetrahydrocannabinol (THC) on a random drug screening for the company.

c. A DA Form 4856 (Developmental Counseling Form) dated 9 March 2006, indicated the applicant was counseled for a positive urinalysis for marijuana use during a random company drug screening.

d. On 22 March 2006, he accepted nonjudicial punishment for one specification of wrongful use of marijuana, a controlled substance, between on or about 1 February 2006 and 1 March 2006. His punishment included reduction to private (E-1).

e. The applicant was subsequently enrolled in the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) on 13 April 2006, as evidenced by DA Form 8003 (ADAPCP Enrollment).

f. The service record includes the applicant's medical evaluation for the purpose of administrative separation which indicated he was generally in good health.

- DD Form 2807-1 (Report of Medical History) dated 12 April 2006
- DD Form 2808 (Report of Medical Examination) dated 12 April 2006

g. A DA Form 3822 (Report of Mental Status Evaluation) dated 27 April 2006 shows the applicant underwent a Command Referred mental status evaluation. The report noted he had no significant mental illness and had the mental capacity to understand and participate in board proceedings. He was psychiatrically cleared for administrative separation.

h. On 5 May 2006, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c, for commission of a serious offense. The reason for his proposed action was for the applicant receiving a Field Grade Article 15 on 22 March for the wrongful use of marijuana. The applicant acknowledged receipt on the same day.

i. On 16 May 2006, after consultation with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a character of service that is less than honorable was issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he will be ineligible to apply for enlistment for a period of 2 years after discharge
- he elected not to submit matters on his own behalf

j. The immediate commander-initiated separation action against the applicant under the provisions of AR 635-200, Chapter 14-12c, for commission of a serious offense. The commander recommended a general, under honorable conditions discharge.

k. On 17 May 2006, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter 14, paragraph 14-12c for commission of a serious offense. He would be issued a general, under honorable conditions characterization of service.

l. On 16 June 2006, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 2 years and 15 days of active service. Block 18 (Remarks) shows he did not complete his first full term of service. He was assigned separation code JKK and the narrative reason for separation listed as "Misconduct (Drug Abuse)," with reentry code 4. It also shows he was awarded or authorized:

- Army Achievement Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

6. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as commission of a serious offense, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

7. In reaching its determination, the Board can consider the applicants 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 Honorable Conditions (General) to Honorable. He contends he experienced an undiagnosed mental health condition, 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 02 June 2004.
- The applicant had an Article 15 preferred against him on 22 Mar 2006 for violations of the Uniform Code of Military Justice (i.e. drug abuse). The applicant was charged with the wrongful use of marijuana after testing positive for THC on 21 Feb 2006. He did not dispute a separation from the Army which was initiated by his commander.
- The applicant was discharged on 16 June 2006. He was credited with 2 years and 15 days 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 did submit medical and behavioral health documentation with his application. A Report of Medical History (12 Apr 2006) only indicated use of illicit drugs in section 17 where BH issues are noted. Marijuana use was specified as the drug of choice at the end of the report. Applicant was enrolled in the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) the following day (13 Apr 2006) due to a positive UA for marijuana. On 27 Apr 2006, a Report of Mental Status Evaluation identified normal behavior and thought content, unremarkable mood or affect and good memory. He was diagnosed with Cannabis abuse and psychiatrically cleared for any administrative action. There was documentation that the applicant was diagnosed with a service-connected disability, PTSD. The VA disability rating derived from the Compensation and Pension Exam was initially at 70% and subsequently raised to 100% for PTSD, effective 11 Jul 2023. Symptoms included difficult work and social relationships, depressed mood, memory loss, sleep problems and suspiciousness. There was thus minimally sufficient evidence to establish a behavioral health condition while on active duty.

d. The VA's Joint Legacy Viewer (JLV) which includes medical and mental health records from DoD and VA was also reviewed and showed very limited history of behavioral health related treatment or diagnoses. A DoD BH entry on 27 Apr 2006 noted SM's appointment was for a mental status examination, chapter related. His mental status as a whole was in the normal range. The psychologist diagnosed him with Cannabis Abuse and he was cleared for any administrative action.

e. On 8 May 2023, an Initial PTSD Disability Benefits Questionnaire (DBQ) indicated he endorsed the requisite number of symptoms to warrant a diagnosis of PTSD based on his deployment to Iraq. It was established from the post deployment health assessment (12/1/2005) that he was deployed to Camp Virginia starting on 03/01/2005 and subsequently to Iraq from 4/27/2005-11/09/2005. The evaluation indicated that a key stressor impacting him and contributing significantly to his PTSD diagnosis was his exposure to the destructiveness of the war and his opposition to the presence of the U.S. military in Iraq. The evaluation noted that this internal dissonance affected him more than the fear of being severely wounded or losing his life.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is evidence to support that the applicant had a condition or experience, PTSD, which at least partially mitigates his misconduct in the absence of any treatment notes for PTSD. It is acknowledged that the DD214 and Enlisted Record Brief did not indicate any deployment history, but that the DBQ included a PDHA which conversely provided evidence of a deployment. As there is an association between PTSD and self-medication with illicit drugs, there is a nexus between this condition and his substance abuse.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he had a behavioral health condition, PTSD, at the time of the misconduct. This was validated by his 100% SC disability rating for PTSD. Documentation from his time in service showed he was referred to ADAPCP following a positive UA and was diagnosed with Cannabis Abuse. He is 100% service connected through the VA for PTSD, but there is no evidence of any mental health treatment.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he had experienced PTSD while on active service. However, the DD214 and Enlisted Record Brief did not indicate any deployment history while the DBQ included a (PDHA) which provided evidence of a deployment.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. A Report of Mental Status Evaluation prior to discharge showed a diagnosis of Cannabis Abuse, and the applicant is 100% service connected for PTSD by the VA. The use of illicit drugs often serves as self-medicating behavior to cope with PTSD symptoms, and substance use can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. However, partial mitigation is determined most fitting because of a lack of in-service documentation of deployment and an absence of treatment records for PTSD. The singular available evidence of being deployed and having a PTSD diagnosis was the Compensation and Pension evaluation, which by itself lacked sufficient robustness for full mitigation.

h. 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 applicant was separated for misconduct with the commander citing wrongful use of marijuana. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. 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 behavioral health condition, PTSD, at the time of the misconduct. This was validated by his 100% SC disability rating for PTSD. Documentation from his time in service showed he was referred to ADAPCP following a positive UA and was diagnosed with Cannabis Abuse. He is 100% service connected through the VA for PTSD, but there is no evidence of any mental health treatment.
- (2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he had experienced PTSD while on active service. However, the DD214 and Enlisted Record Brief did not indicate any deployment history while the DBQ included a (PDHA) which provided evidence of a deployment.
- (3) Does the condition or experience actually excuse or mitigate the discharge? Partial. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. A Report of Mental Status Evaluation prior to discharge showed a diagnosis of Cannabis Abuse, and the applicant is 100% service connected for PTSD by the VA. The use of illicit drugs often serves as self-medicating behavior to cope with PTSD symptoms, and substance use can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. However, partial mitigation is determined most fitting because of a lack of in-service documentation of deployment and an absence of treatment records for PTSD. The singular available evidence of being deployed and having a PTSD diagnosis was the Compensation and Pension evaluation, which by itself lacked sufficient robustness for full mitigation.

The Board concluded there is evidence to support that the applicant had a condition or experience, PTSD, which at least partially mitigates his misconduct in the absence of

any treatment notes for PTSD; however, an under honorable conditions (General) discharge is appropriate for the type and frequency of misconduct.

2. 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:

Mbr 1      Mbr 2      Mbr 3

GRANT FULL RELIEF

## GRANT PARTIAL RELIEF

GRANT FORMAL HEARING

   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.

4/8/2025

X

## 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.
  - a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
  - b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.
3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
  - a. An honorable discharge is a separation with honor. 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
  - c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed. Paragraph 14-12c further states commission of a serious offense includes abuse of illegal drugs or alcohol.

4. 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 post-traumatic stress disorder (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.
5. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, 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, on 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 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.
  - 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 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.
  - b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

7. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//