

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 March 2025

DOCKET NUMBER: AR20240006965

APPLICANT REQUESTS: upgrade of his under honorable conditions (General) characterization of service. Additionally, he requests an appearance before the board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- Letter from Human Resources Command
- Letters of Support (4)

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 is looking to get upgraded to Honorable due his rehabilitation and the fact that his discharge at the time was not justified. Further, he sought help upon his discharge, and he has since been clean and a helpful member of his community. Lastly, he is using any means necessary to deal with the trauma of war. He made poor choices and has been attending health care for his trauma.
3. The applicant enlisted in the Regular Army on 30 May 2006. The highest grade he attained was E-4.
4. He received formal counseling on 30 March 2009, for failure of urinalysis by testing positive for cocaine on 26 January 2009.
5. On 5 March 2009, the applicant underwent a mental status evaluation. He was deemed psychiatrically cleared for administrative actions deemed appropriate by command.

6. On 18 March 2009, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.

7. On 2 April 2009, the applicant appeared before a Summary Court-Martial and was found guilty of wrongful use of cocaine. The court sentenced him to reduction in grade to E-1, forfeiture of \$933.00 pay for one month, and 30 days confinement. The sentence was approved and executed on 9 April 2009.

8. On 11 May 2009, the applicant's immediate commander notified him, that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12c, for Commission of a Serious Offense. The reason for his recommendation was the applicant's positive urinalysis on 2 February 2009 for wrongful use of cocaine.

9. On 11 May 2009, the applicant consulted with legal counsel and acknowledged he had been advised of the basis for the contemplated separation action. Following his consultation, he stated that he would not submit a statement in his behalf.

10. On 11 May 2009, the applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 14, for misconduct.

11. Consistent with the chain of command's recommendations, the separation authority approved the recommended discharge on 27 May 2009 and directed the issuance of a General Discharge Certificate.

12. The applicant was discharged on 15 June 2009. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c, for misconduct – Drug Abuse. He was discharged in the lowest enlisted grade and his service was characterized as under honorable conditions (General). He completed 2 years, 11 months, and 22 days of net active service this period.

13. The applicant provides several letters of support. The letters, in effect, state the applicant began at Crossbridge church over 10 years ago. He was willing to do anything that was asked of him to complete the hours-from cleaning restrooms to cleaning carpets. He exhibited a willingness to be coached, not only in cleaning but in his personal life. In the years since, he has accepted a call on his life to become a pastor in the Church of the Nazarene. He is a man of integrity, a man who works hard, and a man who cares about those around him. He has become a well-respected member of the community and moved past all negative aspects of his life.

14. 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.

15. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) character of service. He contends he experienced PTSD that mitigates his misconduct. 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: 1) The applicant enlisted in the Regular Army on 30 May 2006; 2) The applicant deployed to Iraq from 01 June 2007-21 July 2008; 3) On 2 April 2009, the applicant appeared before a Summary Court-Martial and was found guilty of wrongful use of cocaine; 4) The applicant was discharged on 15 June 2009, Chapter 14-12c, for misconduct – Drug Abuse. His service was characterized as under honorable conditions (general).

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. The applicant asserts he was experiencing PTSD as a result of his deployment, which mitigates his misconduct. There is evidence the applicant reported experiencing anxiety and problems with insomnia while on active service. He was seen for a Mental Status Evaluation as part of his administrative separation proceedings for misconduct on 05 March 2009. The applicant was diagnosed with Anxiety Disorder not otherwise specified, and occupational problem, and alcohol and cocaine abuse. The applicant stated his symptoms of anxiety were related to his deployment, but the applicant was described to have abused cocaine and alcohol prior to his deployment. The applicant was cleared from a psychiatric perspective for administrative action deemed appropriate by Command.

d. A review of JLV provided evidence the applicant began to engage with the VA following his discharge. He underwent a Compensation and Pension Evaluation in August 2009 and was diagnosed with service-connected PTSD (SC 70%) related to his experiencing during his deployment to Iraq.

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

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD, and he was reporting symptoms of anxiety while on active service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct while on active service. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD and he was reporting symptoms of anxiety while on active service.

(3) Does the condition/experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. The applicant did engage in substance abuse, which can be avoidant behavior while on active service. This type of behavior can be a natural sequelae to PTSD. Therefore, per Liberal Consideration, the applicant's misconduct, which led to his discharge is mitigable.

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 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 the applicant had a behavioral health condition during military service that mitigated his misconduct and granted relief.

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 experienced PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD, and he was reporting symptoms of anxiety while on active service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct while on active

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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.

3. 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

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant 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 15 June 2009 to show in item 24 (Character of Service): 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, 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.

a. Paragraph 2-9 states 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.

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 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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. 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 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. It states that action will be initiated to separate a Soldier for misconduct when it was clearly established that rehabilitation was impracticable or unlikely to succeed. Paragraph 14-12c (Commission of a Serious Offense) applied to commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense. First time offenders below the grade of sergeant, and with less than 3 years of total military service, may be processed for separation as appropriate.

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 Discharge Review Boards (DRB) and Boards 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 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 to those conditions or experiences.

5. 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.

//NOTHING FOLLOWS//