

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 February 2025

DOCKET NUMBER: AR20240007066

APPLICANT REQUESTS: upgrade of his under honorable conditions (general) discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Medical Center Problem Lists, dated 4 April 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 was 17/18 years old, and he was agitated because it was his first assignment, and he was entering a war. He also witnessed death, which added to his behavioral issues. He is requesting his discharge be upgraded to remove the stigma of a less than honorable discharge and to receive all the benefits for which he may be eligible.
3. The applicant was born on 12 November 1988. He enlisted in the Regular Army on 3 January 2006, and he served in military occupational specialty 92W (Water treatment Specialist). His record shows service in Iraq from 14 November 2006 to 16 June 2007.
4. On 1 May 2007, while serving in Iraq, the applicant was found guilty by a summary court-martial of two specifications of failure to go to his appointed place of duty, one specification of disrespect towards his superior commissioned officer, and two specifications of disrespect towards his superior noncommissioned officers. The sentence consisted of forfeiture of \$867 pay and confinement for 30 days.
5. On 6 July 2007, the applicant underwent a mental status evaluation. The evaluating behavioral health professional indicated the applicant met retention requirements of

Army Regulation 40-501 (Standards of Medical Fitness) and did not meet the criteria for a medical evaluation board for psychiatric reasons. There was no evidence of an emotional or mental condition of sufficient severity to warrant disposition through medical channels.

6. On 3 August 2007, the applicant was informed by his commander, he was initiating action to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c (Commission of a Serious Offense), with his service characterized as general under honorable conditions. The commander stated the reason for the proposed separation action was the applicant's conviction by a summary court-martial in Iraq. The applicant was also advised of his rights to consult with legal counsel and to submit statements in his own behalf.
7. On 3 August 2007, the applicant acknowledged receipt of the notification of the proposed separation action. He waived consulting with legal counsel and elected not to submit statements in his own behalf.
8. On 15 August 2007, the separation authority approved the separation action under the provisions of Army Regulation 635-200, paragraph 14-12c, with his service characterized as general under honorable conditions.
9. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 6 September 2007 under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of misconduct (serious offense) with his service characterized as under honorable conditions (general), with a separation code of "JKQ" and a reentry code of "3." The DD Form 214 also shows he completed 1 year, 7 months, and 4 days of active service.
10. On 17 August 2012, the Army Discharge Review Board determined the applicant's discharge was both, proper and equitable and denied his request for an upgrade of his discharge.
11. The applicant provided a VA Medical Center Problem Lists, dated 4 April 2024, showing he was diagnosed with depressive disorder and chronic post-traumatic stress disorder (PTSD).
12. The applicant provided argument or evidence the Board should consider in accordance with the published equity, injustice, or clemency determination guidance.

**13. MEDICAL REVIEW:**

- a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) character of service to honorable. 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 3 January 2006; 2) The applicant deployed to Iraq from 14 November 2006-16 June 2007; 3) On 1 May 2007, while serving in Iraq, the applicant was found guilty by a summary court-martial of two specifications of failure to go to his appointed place of duty, one specification of disrespect towards his superior commissioned officer, and two specifications of disrespect towards his superior noncommissioned officers; 4) The applicant was discharged on 6 September 2007, Chapter 14-12c, by reason of misconduct (serious offense) with his service 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) and VA medical documentation provided by the applicant were also reviewed.
- c. The applicant asserts he was experiencing PTSD as a result of his deployment while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service. He was seen for a Mental Status Evaluation as part of his administrative separation proceedings for misconduct. The applicant was not diagnosed with a mental health condition, and he met the retention requirements from a behavioral health perspective.
- d. A review of JLV provided evidence the applicant began to engage with the VA mental health treatment in 2013. He underwent a Compensation and Pension Evaluation in 2012 and was diagnosed with service-connected PTSD (SC 50%) 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.

(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.

(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 erratic behavior while on active service during his combat deployment. This type of behavior can be a natural sequela to PTSD. Therefore, per Liberal Consideration, the applicant's misconduct, which led to his discharge is mitigable.

**BOARD DISCUSSION:**

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct leading to the applicant's separation and the following findings and recommendation outlined in the medical review:

- (1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes
- (2) Did the condition exist or experience occur during military service? Yes
- (3) Does the condition/experience actually excuse or mitigate the discharge? Yes

the Board concluded there was sufficient evidence of an injustice warranting an upgrade of the applicant's characterization of service to Honorable.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
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: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 showing:

- Characterization of Service: Honorable
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

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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.

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. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. 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 such is merited by the Soldier's overall record. Only a general court-martial convening authority may approve an honorable discharge or delegate approval authority for an honorable discharge under this provision of regulation.

b. 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.

3. 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 Service Discharge Review Boards and Service Boards for Correction of Military Records 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. 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.

4. 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 on the basis of 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.

5. Section 1556 of Title 10, U.S. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//