

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 February 2025

DOCKET NUMBER: AR20240007143

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show:

- an upgrade of his under honorable conditions (General) discharge to honorable
- a change in his separation code
- a change in his narrative reason for separation

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

- Two DD Form 293 (Application for the Review of Discharge)
- Self-Authored Statement
- Three Character Letters

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 in effect:

a. He enlisted as an Infantryman and loved serving his country. However, after his return from deployment, he suffered psychological effects from being on the front-line during combat. He was nominated to attend Sniper School; but made some bad decisions. He smoked marijuana, tested positive, and lied in fear that everything he worked for would be gone. He received a Field Grade Article 15.

b. Following his discharge from the Army, he fell deeper into depression and alcoholism. He did not qualify for the G.I. Bill and had to work full time and go to school at night. He lost his job, quit school and jumped from job to job.

c. For the last 10 years he has been a union Ironworker in Southern CA. He is no longer on that downward spiral. As a union Ironworker, he is subject to random, annual and pre-job drug screening and he has never had a positive drug test. Him and his wife recently decided to move their family to Tennessee. Upgrading his discharge would help them achieve that dream. He will be able to attend college, obtain a degree and become more marketable to employers.

d. The applicant marked his deployment to Operation Iraqi Freedom, post-traumatic stress disorder (PTSD), and other mental health as conditions related to his request.

3. The applicant provides two photographs; and three character letters that show:

- D____ R____ states he served with the applicant in the U.S. Army, and the applicant is an accomplished father and husband
- J____ B____ states the applicant is dependable, they deployed together, and applicant helped him through some difficult times
- M____ S____ states he served as the applicant's supervising foreman, the applicant takes pride in his work, is dedicated, and hardworking

4. A review of the applicant's record shows:

a. He enlisted in the Regular Army on 22 September 2004.

b. The Enlisted Record Brief shows the applicant served in Iraq from 2 April 2007 to 5 June 2008.

c. On 17 October 2008, he received nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ) in that he did on or about 15 August and 15 September 2008, wrongfully use marijuana. His punishment consisted of reduction to private; forfeiture of \$647.00 pay per month for two months; extra duty for 45 Days; and restriction for 45 days.

d. The available service record includes the applicant's DD Form 2808 (Report of Medical Examination), undated, for the purpose of administrative separation which indicated he was marked qualified for service and separation.

e. The applicant underwent medical evaluation on 23 October 2008. The relevant MEDCOM Form 699-R (Mental Status Evaluation) shows the psychologist's opinion, his additional remarks state:

- the applicant is mentally responsible for is behavior, can distinguish right from wrong, and possesses sufficient mental capacity to participate in any administrative proceedings

- the applicant was cleared for administrative action as deemed appropriate by his command

f. On 5 January 2009, the applicant's immediate commander notified the applicant on of his intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c, for commission of a serious offense. He noted the specific reasons for separation were based on his misconduct-abuse of illegal drugs. Specifically, on or between 15 August and 15 September 2008, the applicant used marijuana. The commander recommended the applicant receive a general under honorable conditions discharge.

g. On 6 January 2009, 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 general, under honorable conditions discharge is issued to him
- he may be ineligible for many or all benefits as a Veteran under both Federal and State laws
- he may apply to the ADRB or the ABCMR for upgrading
- he elected to submit matters on his own behalf

h. A rebuttal statement from the applicant dated 7 January 2009, which indicated he regrets using marijuana. All he wanted was to serve honorably, lead men in battle and make sure they came home. He volunteered selflessly to go to Iraq on two separate occasions. He had no negative counseling statements and never failed his physical training test. He was a great team leader, about to be promoted to corporal and sergeant, and he was selected to become his company's Sniper Team Leader. He requested an honorable discharge based on his entire Army service record.

i. The applicant's immediate and intermediate commanders formally recommended the applicant be separated under AR 635-200, Chapter 14-12c, prior to the expiration of his term of service. Additionally recommending his characterization of service be characterized as under honorable conditions (General).

j. On 18 February 2009, the separation authority directed the applicant be separated under the provisions of AR 635-200, paragraph 14-12, commission of a serious offense. He further directed the applicant be furnished a general, under honorable conditions discharge.

k. On 20 February 2009, he was discharged with an under honorable conditions (General) characterization of service. His DD Form 214 shows he completed 4 years, 4 months, and 29 days of active service. He was assigned separation code JKK and the

narrative reason for separation listed as "Misconduct (Drug Abuse)." His DD Form 214 also shows he was awarded or authorized:

- Army Commendation Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal with two bronze service stars
- Army Service Ribbon
- Overseas Service Ribbon
- Combat Infantryman Badge
- Two Overseas Service Bars

5. A review of the applicant's record confirms an administrative entry was not recorded on his DD Form 214. The entry will be added to his DD Form 214 as an administrative correction and will not be considered by the Board.

6. There is no indication that the applicant requested an upgrade of his discharge from the Army Discharge Review Board within its 15-year statute of limitations.

7. By regulation (AR 635-5), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

a. Block 18 (Remarks) states for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable", enter "Continuous Honorable Active Service from" (first day of service for which DD Form 214 was not issued) Until (date before commencement of current enlistment).

b. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

8. By regulation (AR 635-5-1), provides separation program designators (SPD) are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in block 26 of the DD Form 214 exactly as listed in the tables. SPD code JKK is listed with narrative reason "Misconduct," under regulatory authority AR 635-200, paragraph 14-5.

9. By regulation, (AR 635-200), an individual will be considered for discharge and the case initiated and processed through the chain of command to the general court-martial

convening authority when initially convicted by civil authorities, or action is taken which is tantamount of a finding of guilty.

10. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

11. 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 and a change to the separation code and narrative reason for separation. He contends he experienced an undiagnosed mental health condition, including 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 22 September 2004, and he deployed to Iraq from 2 April 2007 until 5 June 2008.
- On 17 October 2008, he received NJP for wrongfully using marijuana between 15 August and 15 September 2008.
- On 5 January 2009 the applicant's immediate commander notified the applicant of his intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200, Chapter 14-12c, for commission of a serious offense.
- The applicant was discharged on 20 February 2009 and completed 4 years, 4 months, and 29 days of active 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 asserts he suffered from psychological effects of being on the frontline during combat, and he regrets his to smoke marijuana. After his discharge, he fell deeper into depression and alcoholism, but he has now gotten his life together. A Mental Status Evaluation dated 23 October 2008 showed that the applicant met retention standards, was mentally responsible, and had the mental capacity to understand and participate in the proceedings. He was cleared for any administrative actions deemed appropriate by command. A Report of Medical Examination showed no indication of any psychiatric symptoms or diagnoses, and the applicant was cleared for separation. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed documentation of a chapter

evaluation on 24 March 2006 following a positive urinalysis. He denied mental health symptoms but reported stress associated with extra duty, and he was cleared for any administrative action. A post-deployment TBI referral noted exposure to three blasts during his deployment and showed the applicant reported "high irritability." A PTSD checklist was completed, and the applicant's score was within normal limits but indicated he endorsed some symptoms of PTSD (score = 25; scores of 31-33 indicative of need for further assessment). A post-deployment mental health assessment conducted on 23 September 2008 showed some stress associated with separation from his spouse, and a chapter evaluation on 23 October 2008 showed a positive screen for marijuana, a referral to ASAP, and heavy alcohol use. It was concluded that he met retention standards and was cleared for separation. VA documentation from June 2010 showed that the applicant endorsed symptoms of depression, PTSD, and anxiety and was referred to mental health, but he did not respond to scheduling efforts.

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

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. Documentation from post-deployment examinations showed he reported blast exposure, irritability, and relationship stress, and a PTSD screener indicated some symptoms of PTSD were endorsed. VA documentation from 2010 showed he reported symptoms of depression, anxiety, and PTSD during an initial primary care visit.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service. The applicant deployed to Iraq from 2007 to 2008, and there is documentation of deployment-related trauma exposure.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. A review of military medical and mental health records revealed no documentation of any diagnosed mental health condition(s) while on active service, but there is indication that the applicant reported some symptoms associated with a mental health condition. Substance abuse is a common self-medicating strategy for avoiding uncomfortable emotions and memories related to trauma exposure, and substance use can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Given the nexus between trauma exposure, avoidance of emotion, and substance use and in accordance with liberal consideration, the basis for separation is mitigated.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record, and published Department of Defense Guidance for consideration of discharge upgrade requests, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's contentions, his record of service to include deployment, the frequency and nature of his misconduct, the NJP in his record and the reason for his separation. The Board considered the applicant's statement regarding PTSD and the review and conclusions of the Agency medical advisor. The Board found: (1) the applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct and VA documentation from 2010 showed he reported symptoms of depression, anxiety, and PTSD during an initial primary care visit; (2) the applicant asserts he was experiencing a mental health condition while on active service and there is documentation of deployment-related trauma exposure; (3) a review of military medical and mental health records revealed no documentation of any diagnosed mental health condition(s) while on active service, but there is indication that the applicant reported some symptoms associated with a mental health condition. The Board did not find evidence of a mitigating conditions sufficient to overcome the applicant's misconduct. The Board considered the applicant's statement regarding post service behaviors and the three character reference letters provided by the applicant. Based on a preponderance of evidence, the Board determined that the character of service, separation code and narrative reason were not in error or unjust and that a change to his discharge was not warranted as a matter of liberal consideration of clemency. The Board concurred with the correction stated in the Administrative Notes below.

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, except for the correction in the Administrative Notes that follow, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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 NOTE(S):

A review of the applicant's records shows his DD Form 214 omitted administrative entries in the Remarks block. As a result, amend the DD Form 214 by adding in block 18 the entry "Continuous Honorable Active Service from 20040922 to 20070921."

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 635-5 (Separation Documents), in effect at the time, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. The information entered thereon reflects the conditions as they existed at the time of separation.
 - a. Block 18 (Remarks) states for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service

except "Honorable", enter "Continuous Honorable Active Service from" (first day of service for which DD Form 214 was not issued) Until (date before commencement of current enlistment).

b. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

3. Army Regulation 635-5-1 (Separation Program Designator Codes) provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in block 28 of the DD Form 214 exactly as listed in the tables. SPD code JKK is listed with narrative reason "Misconduct," under regulatory authority AR 635-200, paragraph 14-5.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states 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. 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 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if such was merited by the Soldier's overall record.

5. 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 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.

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 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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

7. 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/NR) 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. 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.

8. 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//