

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 January 2025

DOCKET NUMBER: AR20240007356

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 narrative reason for separation

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- Petition and Order for Termination of Sex Offender Registration, 28 June 2019

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:

a. After his combat tours and losing some of his teammates, his life began a downward spiral. He volunteered to leave the 5th Special Forces Group because he could not forgive himself for losing teammates. He felt guilty for walking around while their families would be missing them for the rest of their lives, and it took a tremendous toll on him. He told his commander that he wanted to leave the unit. They sent him to be a survival instructor at survival, evasion, resistance, and escape (SERE) school at Fort Bragg, N.C. He had too much time on his hands with no emotional support. He did not know how to deal with what he had been through, so he got online and "escaped" into online chatting, and drinking and he began to live a life of consumption.

b. He got arrested for chatting online with what turned out to be the police, and at the time he felt like he deserved to be punished. He went to prison for four months and

that was the beginning of his redemption. After he got convicted, he began to see a counselor, and he began studying the Bible. He finally accepted help through the Department of Veterans Affairs (VA), and he gave his life to Jesus with the understanding that with his conviction, he would have a hard time getting back on his feet.

c. He went to work in the coal mines of eastern Kentucky. He worked there for two years while simultaneously seeking out the help he needed, not just from his conviction, but he sought help to get to the root of his problems that stemmed from what he went through in combat. The Tri Cities School of Preaching called. He told the director everything that he did, and they still wanted him to come and learn the Bible. He attended there for all three years and graduated. After he graduated, he helped a local congregation while he worked on a Biology/English degree at the University of Pikeville. He completed the requirements for a minor in English; he still will need a semester to complete the biology, Major.

d. He left school because he got called to go to Alaska to help a Church. He stayed there for six months before he returned to preach at a local congregation in eastern Kentucky. He did not have the desire to go and finish the biology degree because he thinks God has different plans for him now. He wrote a book about when he graduated Ranger School. He still cannot bring myself to write about the combat, because he does not want to dishonor the men, he served with by not giving an accurate account.

e. Since March 2018 he has preached at the Joe's Creek Church of Christ. He wants his wife and three children to know that he served honorably. If you want to learn more about what he does you can listen to his podcast. It is located on Apple podcast as Patriot Preacher podcast. You can also find him on YouTube at Mouth of Joe's Creek Church of Christ YouTube.

f. The applicant marked post-traumatic stress disorder (PTSD), TBI (Traumatic Brain Injury), and his deployment to Operation Iraqi Freedom on his DD Form 149 as conditions related to his request.

3. The applicant provides a Petition and Order for Termination of Sex Offender Registration, 6 September 2019, that shows the applicant was entitled to the relief requested and it was granted.

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

a. He enlisted in the Regular Army on 9 August 1994.

b. The DD Form 214 shows the applicant served in combat as follows:

- Kosovo from 17 April 1999 to 25 September 1999
- Iraq from 10 February 2003 to 9 February 2004
- Iraq from 7 May 2004 to 30 November 2004
- Iraq from 1 June 2005 to 30 April 2006

c. On or about 17 February 2009, the applicant was found guilty by a jury of the State of NC, Wake County, Superior Court Division for the offense of soliciting a child by computer.

d. On 18 March 2009, the applicant's immediate commander notified the applicant on 18 March 2009 of his intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-5, Conviction by a Civil Court. He noted the specific reasons for separation were based on his conviction by the Wake County Superior Court. Specifically, between on or about 12 December 2007 and 15 January 2008, the applicant used the internet in an attempt to solicit a minor female to engage in sexual activity. As a result of his attempt to solicit a 14-year-old female, on 15 January 2008, he was arrested by civilian law enforcement. The commander recommended the applicant receive an under other than honorable conditions discharge.

e. On 1 April 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 will be ineligible to apply for enlistment in the U.S. Army for a period of 2 year following discharge

f. The applicant's immediate and intermediate commanders formally recommended the applicant be separated under AR 635-200, Chapter 14-5, prior to the expiration of his term of service. Additionally recommending his characterization of service be characterized as under honorable conditions (General).

g. On 30 April 2009, the separation authority directed the applicant be separated under the provisions of AR 635-200, paragraph 14-5, commission of a serious offense. He further directed the applicant be furnished a general, under honorable conditions discharge.

h. The applicant's duty status changed:

- On 22 April 2009 to present for duty to confined by civilian authorities
- On 22 June 2009 to confined by civilian authorities to present for duty

i. The available service record includes the applicant's medical examination, dated 8 July 2009, for the purpose of administrative separation which indicated he was generally in good health. He was marked qualified for service and separation.

- DD Form 2697 (Report of Medical Assessment)
- DD Form 2807-1 (Report of Medical History)
- DD Form 2808 (Report of Medical Examination)

j. On 5 August 2009, he was discharged with an under honorable conditions (General) characterization of service. His DD Form 214 shows he completed 14 years, 9 months, and 27 days of active service with 61 days of lost time due to confinement. He was assigned separation code JKB and the narrative reason for separation listed as "Misconduct (Civil Conviction)." It also shows he was awarded or authorized:

- Bronze Star Medal with V Device,
- Bronze Star Medal (2nd Award)
- Meritorious Service Medal
- Army Commendation Medal (2nd Award)
- Army Achievement Medal (2nd Award)
- Army Good Conduct Medal (4th Award)
- National Defense Service Medal
- Global War of Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Kosovo Campaign Medal
- Iraq Campaign Medal with two campaign stars
- Noncommissioned Officer Professional Development Ribbon (3rd Award)
- Army Service Ribbon
- Overseas Service Ribbon (2nd Award)
- NATO Medal, Combat Infantryman Badge
- Expert Infantryman Badge

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. On 1 December 2010, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for a change in the character and/or reason of his discharge.

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 28 of the DD Form 214 exactly as listed in the tables. SPD code JKB 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 requesting an upgrade of his under honorable conditions (general) discharge to honorable as well as a change in his narrative reason for separation. He contends PTSD and TBI 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:

- The applicant enlisted in the Regular Army on 9 August 1994.
- His DD Form 214 shows the applicant served in combat as follows:

- Kosovo from 17 April 1999 to 25 September 1999
- Iraq from 10 February 2003 to 9 February 2004
- Iraq from 7 May 2004 to 30 November 2004
- Iraq from 1 June 2005 to 30 April 2006
- On or about 17 February 2009, the applicant was found guilty by a jury of the State of NC, Wake County, Superior Court Division for the offense of soliciting a child by computer.
- On 18 March 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 (Active Duty Enlisted Administrative Separations), Chapter 14-5, Conviction by a Civil Court. He noted the specific reasons for separation were based on his conviction by the Wake County Superior Court. Specifically, between on or about 12 December 2007 and 15 January 2008, the applicant used the internet in an attempt to solicit a minor female to engage in sexual activity. As a result of his attempt to solicit a 14-year-old female, on 15 January 2008, he was arrested by civilian law enforcement. The commander recommended the applicant receive an under other than honorable conditions discharge.
- On 5 August 2009, he was discharged with an under honorable conditions (General) characterization of service. His DD Form 214 shows he completed 14 years, 9 months, and 27 days of active service with 61 days of lost time due to confinement. He was assigned separation code JKB and the narrative reason for separation listed as "Misconduct (Civil Conviction)."
- On 1 December 2010, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for a change in the character and/or reason of his discharge.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states after his combat tours and losing some of his teammates, his life began a downward spiral. He volunteered to leave the 5th Special Forces Group because he could not forgive himself for losing teammates. He felt guilty for walking around while their families would be missing them for the rest of their lives, and it took a tremendous toll on him. He told his commander that he wanted to leave the unit. They sent him to be a survival instructor at survival, evasion, resistance, and escape (SERE) school at Fort Bragg, N.C. He had too much time on his hands with no emotional support. He did not know how to deal with what he had been through, so he got online and "escaped" into online chatting, and drinking and he began to live a life of consumption. He got arrested for chatting online with what turned out to be the police, and at the time he felt like he deserved to be punished. He went to prison for four months and that was the beginning of his redemption. After he got convicted, he began to see a counselor, and he began studying the Bible. He finally accepted help through the Department of Veterans Affairs (VA), and he gave his life to Jesus with the

understanding that with his conviction, he would have a hard time getting back on his feet. He went to work in the coal mines of eastern Kentucky. He worked there for two years while simultaneously seeking out the help he needed, not just from his conviction, but he sought help to get to the root of his problems that stemmed from what he went through in combat. The Tri Cities School of Preaching called. He told the director everything that he did, and they still wanted him to come and learn the Bible. He attended there for all three years and graduated. After he graduated, he helped a local congregation while he worked on a Biology/English degree at the University of Pikeville. He completed the requirements for a minor in English; he still will need a semester to complete the biology, Major. He left school because he got called to go to Alaska to help a Church. He stayed there for six months before he returned to preach at a local congregation in eastern Kentucky. He did not have the desire to go and finish the biology degree because he thinks God has different plans for him now. He wrote a book about when he graduated Ranger School. He still cannot bring himself to write about the combat, because he does not want to dishonor the men, he served with by not giving an accurate account. Since March 2018 he has preached at Joe's Creek Church of Christ. He wants his wife and three children to know that he served honorably.

d. Active-duty electronic medical records available for review show the applicant requested mental health services on 18 January 2008, following his arrest. He reported that he was wrongly accused by civilian authorities and felt nervous, ashamed, an anxious. The applicant was diagnosed with Adjustment Disorder with Anxiety during this encounter. On 02 July 2009, the applicant participated in a mental status evaluation for the purpose of termination, he screened negative for TBI and PTSD since he denied symptoms and injury / exposure history consistent with TBI or PTSD. The applicant indicated no behavioral health complaints or symptoms, and he was cleared for any administrative action deemed appropriate by command.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected, including 50% for PTSD and 10% for TBI. The applicant requested mental health services via the VA in February 2011 and was provided an intake appointment on 24 February 2011 where he was diagnosed with PTSD, Depression, and Insomnia. He reported dissatisfaction with his job and his overall situation since he felt isolated and trapped due to his employment and his wife's unwillingness to relocate which would offer better opportunities. The record shows the applicant has participated intermittently in behavioral health services but has withheld his sex offender status from his treatment providers. The applicant provides a Petition and Order for Termination of Sex Offender Registration, dated 6 September 2019, that shows the applicant's requested relief was granted.

f. A C and P evaluation dated 17 June 2011 diagnosed the applicant with PTSD, Chronic; and Depressive Disorder, Secondary to PTSD. A second C and P evaluation, dated 30 January 2014, diagnosed the applicant with PTSD, Chronic.

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence the applicant had an experience, serving in a combat zone, that contributed to his behavioral health condition of PTSD. However, his BH condition would not mitigate his misconduct.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts the mitigating conditions of PTSD and TBI.

(2) Did the condition exist or experience occur during military service? Yes. The applicant served in combat zones and is 50% service connected for PTSD and 10% service connected for TBI.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was discharge from military service due to a civil conviction of using the internet in an attempt to solicit a minor female to engage in sexual activity. As a result of his attempt to solicit a 14-year-old female, he was arrested by civilian law enforcement. The applicant is service connected for PTSD and TBI. However, attempting to have sex with a child is not part of the natural sequela of neither PTSD nor TBI and his BH conditions would not mitigate the reason for his discharge. Specifically, PTSD nor mild TBI, do not impair an individual's ability to know right from wrong, understand consequences, and make purposeful, conscious decisions.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial 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 the medical review, the Board concurred with the advising opinion of the Agency Behavioral Health Advisor that there is sufficient evidence the applicant had an experience, serving in a combat zone, that contributed to his behavioral health condition of PTSD. However, his BH condition would not mitigate his misconduct.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts the mitigating conditions of PTSD and TBI.

(2) Did the condition exist or experience occur during military service? Yes. The applicant served in combat zones and is 50% service connected for PTSD and 10% service connected for TBI.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was discharge from military service due to a civil conviction of using the internet in an attempt to solicit a minor female to engage in sexual activity. As a result of his attempt to solicit a 14-year-old female, he was arrested by civilian law enforcement. The applicant is service connected for PTSD and TBI. However, attempting to have sex with a child is not part of the natural sequela of neither PTSD nor TBI and his BH conditions would not mitigate the reason for his discharge. Specifically, PTSD nor mild TBI, do not impair an individual's ability to know right from wrong, understand consequences, and make purposeful, conscious decisions.

3. The Board determined there is insufficient evidence of in-service factors to overcome the misconduct. The Board acknowledges the applicant's combat service, the psychological toll of losing teammates, and his subsequent behavioral health challenges including PTSD and TBI, however, the misconduct resulting in a civil conviction for soliciting a minor is serious and not mitigated by his mental health conditions. The Board noted, the applicant's post-service rehabilitation efforts, including counseling, religious study, community service, and educational pursuits. His continued dedication to faith-based leadership and outreach, including preaching and podcasting, reflects a commendable commitment to personal growth and redemption. The Board found the nature of the offense and the circumstances surrounding the applicant's discharge do not warrant a change in characterization or narrative reason.

4. However, the Board determined the applicant's record omitted his prior honorable service, therefore, the Board granted partial relief to correct the applicant's DD Form 214 to include his continuous honorable active service from 19940809 to 20070211.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
XXX	XXX	XXX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by adding in item 18 (Remarks): Continuous Honorable Active Service from 19940809 to 20070211.
2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to an upgrade of the applicant's under honorable conditions (General) discharge to honorable and a change in his narrative reason for separation.

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.

ADMINISTRATIVE NOTE(S):

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 JKB 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 14-5 of the regulation states 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.

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 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. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

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//