

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 March 2025

DOCKET NUMBER: AR20240007501

APPLICANT REQUESTS: an upgrade of his characterization of service from under honorable conditions (general) to honorable.

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

DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 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 diagnosed with post-traumatic stress disorder (PTSD) and is 80 percent disabled and would like to have his discharge upgraded to be able to go back to school.
3. The applicant enlisted in the Regular Army on 31 January 2003, for a period of 6 years. He was awarded the military occupational specialty of 11B (Infantryman). The highest rank he attained was specialist/E-4.
4. His Enlisted Record Brief shows he served in an imminent danger pay area, Iraq, from 15 August 2004 to 19 July 2005.
5. On 2 November 2005, the applicant accepted nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for wrongfully using marijuana and cocaine on or between 15 August 2005 and 15 September 2005. The record is void of the continuation sheet. His punishment was reduction to the grade of E-2, forfeiture of \$692.00 pay per month for two months, extra duty for 45 days, restriction for 45 days, and an oral reprimand.

6. The applicant's command was informed on seven occasions of the applicant's confirmed urinalysis test results. He has tested positive on the following dates for the following substances:

- on 22 September 2005, positive for cocaine
- on 11 October 2005, positive for cocaine
- on 11 October 2005, positive for amphetamine/methamphetamine
- on 14 October 2005, positive for cocaine
- on 14 October 2005, positive for amphetamine/methamphetamine
- on 24 October 2005, positive for cocaine
- on 24 October 2005, positive for amphetamine/methamphetamine

7. The applicant's duty status changed from present for duty (PDY) to absent without leave (AWOL) effective 29 November 2005. The relevant DA Form 4187 (Personnel Action) shows his duty status changed from AWOL to PDY effective 15 December 2005, when he surrendered himself to military control.

8. 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 14-12c, for Commission of a Serious Offense. He noted the specific reasons as the applicant testing positive for cocaine on 22 September 2005, 11 October 2005, and 24 October 2005 and his testing positive for amphetamine/methamphetamine on 14 October 2005. The commander recommended the applicant receive a general discharge.

9. He consulted with counsel and was advised of the basis for the contemplated action to separate him and of the rights available to him. He acknowledged understanding he was not entitled to have his case heard by an administrative separation aboard, he was afforded the opportunity to consult with appointed counsel, and he did not elect to submit or not submit a statement in his own behalf.

10. On 3 January 2006, the applicant's immediate commander formally recommended the applicant be separated under AR 635-200, Chapter 14-12c, for Commission of a Serious Offense.

11. The applicant's intermediate commander recommended approval of the separation action under AR 635-200, Chapter 14-12c, with a general (under honorable conditions) characterization of service.

12. On 3 January 2006, the separation authority approved the recommended discharge, further directing issuance of an under honorable conditions (general) discharge.

13. The applicant was discharged accordingly on 13 January 2006. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct (drug abuse), in the grade of E-2. His service was characterized as under honorable conditions (general). He received a separation code of JKK and reentry code of 4. He completed 2 years, 10 months, and 27 days of net active service. He served in an imminent danger pay area, Iraq, from 15 August 2004 to 19 July 2005. He was awarded or authorized the following decorations, medals, badges, citations, and campaign ribbons:

- National Defense Service Medal
- Korea Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon
- Combat Infantryman Badge
- Iraq Campaign Medal

14. 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.

15. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge. The applicant contends his request is related to his experience of 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 31 January 2003; 2) The applicant engaged in a combat deployment to Iraq from 15 August 2004 to 19 July 2005; 3) On 02 November 2005, the applicant accepted non-judicial punishment for using marijuana and cocaine between 15 August 2005 and 15 September 2005; 4) The applicant continued to test positive for illegal drugs on seven occasions between 22 September and 24 October 2005; 5) The applicant was found to be AWOL from 29 November to 15 December 2005; 6) The applicant was discharged on 13 January 2006, Chapter 14-12c, by reason of misconduct (drug abuse). His character of service was under honorable conditions (general). The applicant completed 2 years, 10 months, and 27 days of net active service this period.

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

c. The applicant asserts he experienced PTSD while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service. On 29 December 2005, the applicant was seen by a psychologist and underwent a Mental Status Exam as part of the administrative separation process. This examination did not result in the applicant being diagnosed with a mental health condition.

d. A review of JLV revealed that the applicant became connected to the VA on 21 July 2008, which has continued until the present primarily for substance use and mental health treatment. His primary treating diagnoses include amphetamine dependence, psychoactive substance abuse, and PTSD, chronic. On a 16 January 2019, the applicant completed a VA Compensation and Pension examination, and the evaluating provider diagnosed the applicant with PTSD attributed to his combat experienced during his deployment. He is currently 70% service connected for PTSD.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence to support 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 misconduct? Yes, the applicant asserts he experienced PTSD, which mitigates his misconduct. He was 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 while on active service, which mitigates his misconduct. He was diagnosed by the VA with service-connected PTSD.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Yes, there is sufficient evidence beyond self-report the applicant has been diagnosed with service-connected PTSD. There is evidence that the applicant was deployed to an active combat zone and is service connected for PTS. The applicant engaged in avoidant and self-medicating behavior such as going AWOL and utilizing drugs. These types of behavior are natural sequelae to PTSD. Therefore, per Liberal Consideration, the applicant's misconduct is mitigatable

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 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 Medical Advisor that there is sufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. The Board determined there is sufficient evidence of in-service mitigating factors to overcome the multiple positive urinalysis results for cocaine and amphetamines, nonjudicial punishment, and a brief period of AWOL

2. The Board noted the applicant's post-service medical documentation and considered the impact of PTSD on his behavior during service. While the misconduct is substantiated, the Board found that the applicant's combat service and documented mental health condition provide sufficient mitigating factors to warrant an upgrade. The applicant's service in a combat zone, coupled with the challenges of reintegration and the long-term effects of PTSD, reflect circumstances not fully addressed at the time of discharge. The Board determined that the applicant's overall service merits recognition as honorable. In light of these circumstances, the Board also determined that the narrative reason for separation should be corrected to reflect "Secretarial Authority" and that the applicant's rank should be restored. Therefore, the Board granted full relief by upgrading the characterization of service to honorable, amending the narrative reason, and reinstating the applicant's rank.

3. Consideration was given to the Kurta Questions:

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BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
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 re-issuing the applicant a DD Form 214 showing his characterization of service as honorable, the narrative reason as secretarial authority and restoration of his rank to SPC/E-4.

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. 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. 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 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). 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 under other than honorable conditions discharge is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

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 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.

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.

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.

//NOTHING FOLLOWS//