

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 January 2025

DOCKET NUMBER: AR20240007540

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (General) discharge
- amend item 8a (Last Duty Assignment and Major Command)
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Statement
- Marriage Certificate, County [REDACTED]
- Three DA Form's 638 (Recommendation for Award) with Certificates
- DA Form 487 (Certificate of Promotion)
- Nurse Assistant Training Certificate, Medical Institute of Technology
- Dean's List Certificates, Community College [REDACTED]
- Welding Technology Certificate, Community College [REDACTED]
- Transcript, Community College [REDACTED] dated 26 February 2024
- Two Certificates of Training, [REDACTED] Training Center
- Certificate of Completion, Compliance Training, 3 November 2014
- Psychosocial Assessment Evaluation, 17 February 2021
- Department of Veterans Affairs (VA) Rating Decision, 5 February 2024
- Character Letter
- [REDACTED] News Article, September 2021

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. On 22 November 2001 while he was serving on active duty as a 93P (Aviation Operations Specialist) with the 5/101st Aviation Brigade, he was attacked by a group while attending a holiday party at Fort Campbell, Kentucky housing area. He was trying to deescalate a disagreement with a group and a Soldier from his battalion when he was hit in the head from behind while walking down a flight of stairs causing him to fall down the stairs and to the ground. While he was on the ground he was stomped and kicked by the group until he was unconscious.

b. Upon regaining consciousness, the military police asked him if he needed medical attention for his injuries. He refused because he was underage and had been drinking. He tried to hide the incident, but people found out. He was humiliated and in constant fear that it would happen again. The assault affected him deeply, he has a scar above his left eyebrow, chronic lower back pain and headaches as a reminder. His left knee and wrist never healed correctly. He currently has severe depression, panic attacks, and remains on edge whenever he sees a group of men. He does not go out and he does not celebrate holidays with others because the attack happened on Thanksgiving.

c. He received a general character of service for misconduct due to wrongfully using marijuana. In June 2009, he applied for a discharge upgrade but did not receive the desired results. He is submitting new evidence which shows that he is service connected for major depressive disorder, post-traumatic stress disorder (PTSD) with generalized anxiety, insomnia disorder, panic disorder and alcohol use disorder and two other incurable medical conditions that directly contributed to his discharge.

3. The applicant provides:

a. The below listed documents as supporting documentation of his achievements:

- Marriage Certificate, County [REDACTED]
- Two Army Achievement Medals with Certificates
- Army Commendation Medal with Certificate
- Certificate of Promotion to Specialist (SPC), 1 November 2002
- Nurse Assistant Training Certificate, Medical Institute of Technology
- Dean's List Certificates, Community College [REDACTED]
- Welding Technology Certificate, Community College [REDACTED]
- Transcript, Community College [REDACTED] dated 26 February 2024
- Two Certificates of Training, [REDACTED] Training Center
- Certificate of Completion, Compliance Training, 3 November 2014

b. A Psychosocial Assessment Evaluation from South Florida Psychological Associates dated 17 February 2021 which shows the applicant was diagnosed with unspecified depressive disorder, social isolation moderate symptoms.

c. A VA rating decision dated 5 February 2024 which shows a 70% disability rating effective on 20 May 2021, for PTSD with generalized anxiety disorder, insomnia disorder, panic disorder and alcohol use disorder, to include persistent depressive disorder.

d. A character reference statement which attests to the applicant being a pleasure to work with. While he worked at the [REDACTED], he saved the life of an unresponsive citizen locked in in a porta potty by administering naloxone. The news article, [REDACTED], September 2021, was provided as supporting documentation. The applicant is a good-hearted, positive person with positive attributes. He has an excellent reputation in the community.

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

a. He enlisted in the Regular Army on 14 September 2000.

b. A memorandum dated 26 August 2003 shows on 13 August 2003, the applicant tested positive for tetrahydrocannabinol (THC) on a random drug screening for the company.

c. A DA Form 4856 (Developmental Counseling Form) dated 8 September 2003, indicated the applicant was counseled for a positive urinalysis for marijuana use during a random company drug screening.

d. MEDCOM Form 4038 (Report of Behavioral Health Evaluation) dated 11 September 2003 shows the applicant underwent a command referred mental status evaluation. The report noted he had no significant mental illness and had the mental capacity to understand and participate in board proceedings. He was psychiatrically cleared for administrative separation.

e. The applicant's record is void of documentation to show if he was enrolled in the Alcohol and Drug Abuse Prevention and Control (ADAPC) Program.

f. The service record includes the applicant's medical evaluation for the purpose of administrative separation which indicated he was generally in good health.

- DD Form 2807-1 (Report of Medical History) dated 12 September 2003
- DD Form 2808 (Report of Medical Examination) dated 12 September 2003

g. On 19 September 2003, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c, for

commission of a serious offense. The reason for his proposed action was for the wrongful use of marijuana. The applicant acknowledged receipt on the same day.

h. On 23 September 2003, 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 a character of service that is less than honorable was issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he will be ineligible to apply for enlistment for a period of 2 years after discharge

i. He elected to submit a statement on his own behalf in which he states that he would like to be granted the opportunity to stay in the military. He knows that soldiers with rehabilitative potential can stay in. He has been in the Army for three years and has had no other adverse action. He performs his job in an excellent matter. He was in Korea and missed the birth of his son, he has sacrificed for the military in numerous ways. He is one of the reasons the unit receive a "green" for their inspection. He regrets his actions that led to the positive urinalysis. He was never referred to ADAPC, he would gladly take a rehabilitation transfer if he were allowed to be retained in the Army.

j. On 29 September 2003, the immediate commander initiated separation action against the applicant under the provisions of AR 635-200, Chapter 14-12c, for wrongful use of marijuana. The commander recommended a general, under honorable conditions discharge.

k. On 6 October 2003, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter 14, paragraph 14-12c for commission of a serious offense. He would be issued an under honorable conditions (General) characterization of service.

l. On 17 October 2003, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 3 years and 1 month and 4 days of active service. He was assigned separation code JKQ and the narrative reason for separation listed as "Misconduct (Serious Offense)," with reentry code 3. It also shows in:

- item 8: Special Operations Aviation Regiment Special Training Platoon (Fort Campbell, KY)
- item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized):

- Army Achievement Medal
- Army Commendation Medal
- Army Good Conduct Medal
- National Defense Service Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Basic Aviation Badge

- item 18 (Remarks) shows he did not complete his first full term of service

5. On 6 May 2010, the applicant was notified the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

6. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

7. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as commission of a serious offense, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

8. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

MEDICAL REVIEW

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) discharge to honorable. The applicant selected PTSD and OMH on his application 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:

- Applicant enlisted in the Regular Army on 14 September 2000.
- A memorandum dated 26 August 2003 shows on 13 August 2003, the applicant tested positive for tetrahydrocannabinol (THC) on a random drug screening.
- On 19 September 2003, the applicant's immediate commander notified him of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c, for

commission of a serious offense. The reason for his proposed action was the wrongful use of marijuana.

- Applicant was discharged on 17 October 2003, under the provisions of AR 635-200, Chapter 14, paragraph 14-12c with a general, under honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 3 years, 1 month, and 4 days of active service with no lost time. Block 18 (Remarks) shows he did not complete his first full term of service. He was assigned separation code JKQ and the narrative reason for separation listed as "Misconduct (Serious Offense)," with reentry code 3.
- On 6 May 2010, the applicant was notified the Army Discharge Review Board (ADRB) denied his request for an upgrade of his discharge.

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 states on 22 November 2001, he was attacked by a group while attending a holiday party at Fort Campbell, Kentucky housing area. He was trying to deescalate a disagreement with a group and a Soldier from his battalion when he was hit in the head from behind while walking down a flight of stairs causing him to fall down the stairs and to the ground. While he was on the ground he was stomped and kicked by the group until he was unconscious. Upon regaining consciousness, the military police asked him if he needed medical attention for his injuries. He refused because he was underage and had been drinking. He tried to hide the incident, but people found out. He was humiliated and in constant fear that it would happen again. The assault affected him deeply, he has a scar above his left eyebrow, chronic lower back pain and headaches as a reminder. His left knee and wrist never healed correctly. He currently has severe depression, panic attacks, and remains on edge whenever he sees a group of men. He does not go out and he does not celebrate holidays with others because the attack happened on Thanksgiving. He received a general character of service for his misconduct of wrongfully using marijuana. In June 2009, he applied for a discharge upgrade but did not receive the desired results. He is submitting new evidence which shows that he is service connected for major depressive disorder, post-traumatic stress disorder (PTSD) with generalized anxiety, insomnia disorder, panic disorder and alcohol use disorder and two other incurable medical conditions that directly contributed to his discharge.

d. No active-duty electronic behavioral health records were available for review. The applicant provides a command referred mental status evaluation for the purpose of separation dated 11 September 2003. The report indicates the applicant had no significant mental illness and he had the mental capacity to understand and participate in board proceedings. He was psychiatrically cleared for administrative separation. However, the report notes Partner-Relational Problem and Occupational Problem.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected, including 70% for PTSD. The available medical record indicates the applicant initially sought behavioral health services on 15 September 2016 when he presented for a walk-in appointment. He was diagnosed with Persistent Depressive Disorder, with anxious distress, and was offered psychotherapy which he declined, and a psychiatry consult for medication. He participated in a psychiatric evaluation on 7 October 2016 and was started on medication to address his symptoms of depression. He participated in a psychiatry follow-up appointment on 1 November 2016 and the record shows he has been treated primarily via medication management. The applicant participated in a C & P evaluation on 3 April 2018, that diagnosed him with Persistent Depressive Disorder. However, the evaluator opined the applicant was diagnosed with Persistent Depressive Disorder in 2016 and his VA depression screens were negative up until that time. In addition, there was no mental health diagnosis in the service record or within one year of discharge from service. The applicant was eventually service connected for PTSD and the treatment record shows ongoing care via medication management with the applicant indicating he receives supportive services via his pastor.

In addition, the applicant provides a psychosocial assessment, dated 17 February 2021, from a civilian provider diagnosing him with Unspecified Depressive Disorder.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his misconduct.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected PTSD and OMH on his application as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 100% service connected, including 70% for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to the wrongful use of marijuana. Given the nexus between PTSD and the use of substances to alleviate/cope with the symptoms of his behavioral health condition, the applicant's use of marijuana is mitigated by his BH condition.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. Discharge Upgrade Request. Grant. 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 selected PTSD and OMH on his application as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 100% service connected, including 70% for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to the wrongful use of marijuana. Given the nexus between PTSD and the use of substances to alleviate/cope with the symptoms of his behavioral health condition, the applicant's use of marijuana is mitigated by his BH condition.

The Board concluded there is sufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his misconduct. Based on a preponderance of the evidence, the Board determined relief was appropriate.

b. Amend item 8a. Deny. The Board determined the major command listed on his DD Form 214 was correct in accordance with regulatory guidance at the time the DD Form 214 was prepared during the applicant's separation. 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.

2. 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

: : : GRANT FULL RELIEF

■ ■ ■ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial 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 17 October 2003, to show his characterization of service as honorable.

2. The Board further determined that 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 amending item 8a (Last Duty Assignment and Major Command) on his DD Form 214.

4/11/2025

X

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. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. 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 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed. Paragraph 14-12c further states commission of a serious offense includes abuse of illegal drugs or alcohol.

4. 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 post-traumatic stress disorder (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.
5. 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, 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, on 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.
6. 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 based on 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.

//NOTHING FOLLOWS//