

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 February 2025

DOCKET NUMBER: AR20240007565

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 28 February 2012, to show:

- item 1 (Name) from [REDACTED]
- item 24 (Character of Service) from Under Other Than Honorable to General

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) documents (6 pages)
- Clinical Psychologist letter
- Superior Court of Arizona in Yuma County court documents, 25 April 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 is requesting a name change to his DD Form 214 and a change of his discharge to a general due to his Post-Traumatic Stress Disorder (PTSD). The actions taken by him were out of character and due to undiagnosed PTSD. He states he had a spotless record before these events and was being promoted to E-7.

3. A review of the applicant's official record shows the following:

a. He enlisted in the Regular Army on 29 June 2004. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States), item 1 (Name (Last, First, Middle)) shows "[REDACTED]"

b. On 3 March 2011, the applicant's unit reported him Absent without Leave (AWOL), and on 19 May 2011, he was dropped from the rolls as a deserter. He

surrendered to military authorities and was returned to military control on 29 August 2011.

c. The service record is void of prior documentation of nonjudicial punishment. Likewise, it is void of any documentation pertaining to the requested name change.

d. On 16 December 2011, court-martial charges were preferred on the applicant for intent to shirk important service, namely: service in support of Operation New Dawn, quit his unit, to wit: Bandit Troop, 1st Squadron, 3d Armored Cavalry Regiment, located at COS KALSU, Iraq, and did remain so absent in desertion until on or about 29 August 2011.

e. On 29 January 2012, after consulting with legal counsel he requested a discharge in Lieu of Trial by Court-Martial under the provisions of chapter 10, Army Regulation 635-200 (Active Duty Enlisted Administrative Separations). He acknowledged:

- He was making the request of his own free will and was not coerced by any person
- Charges had been preferred against him under the Uniform Code of Military Justice which authorizes the imposition of a bad conduct or dishonorable discharge
- Maximum punishment
- he was guilty of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration,
- he may be deprived of his rights and benefits as a Veteran under both Federal and State law
- he may expect to encounter substantial prejudice in civilian life

f. The immediate commander and intermediate commanders recommended disapproval of the chapter 10 request.

g. On 2 February 2012, the separation approval authority approved the applicant's request for discharge in lieu of trial by courts-martial. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted pay grade.

h. On 28 February 2012, he was discharged from active duty with an Under Other than Honorable conditions characterization of service. DD Form 214 shows he completed 7 years, 1 month, and 13 days of active service with 198 days of lost time. Item 1 (Name (Last, First, Middle)) shows [REDACTED]. He was assigned separation code KFS and the narrative reason for separation listed as "In Lieu of Trial by Court-Martial", with reentry code 4. It also shows he was awarded or authorized:

- Iraq Campaign Medal w/three campaign stars
- Army Commendation Medal
- Army Achievement Medal
- Army Good Conduct Medal (2nd Award)
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Noncommissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon (2nd Award)
- Combat Action Badge

4. The applicant provides:

a. VA Benefits Letter dated 26 February 2024, which shows he has one or more service-connected disabilities and a combined service-connected disability rating of 90 percent of which 70 percent was for PTSD.

b. A letter from a clinical psychologist with Southern Arizona VA Health Care System dated 5 February 2024, indicate the applicant suffers from PTSD and recommends he is provided a service animal.

c. Court documents from Superior Court of Arizona in Yuma County dated 25 April 2023 indicate the court ordered and certified the applicant's name change to [REDACTED]

5. The applicant currently has a case (AR20240007566) for adjudication with the Military Review Board. However, he has not applied to the Army Discharge Review Board within its 15-year purview.

6. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to general, and a name change on DD214 to reflect current status.

He contends he experienced an undiagnosed mental health condition, 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 29 June 2004..
- The applicant had court-martial charges preferred against him on 16 Dec 2011 for violations of the Uniform Code of Military Justice. The applicant was charged with going AWOL while deployed to Iraq from 3 Mar 2011-29 Aug 2011.
- On 29 Jan 2012, applicant voluntarily requested a discharge In Lieu of Trial by Court-Martial under Chapter 10 which was disapproved by his commander and intermediate commanders. It was subsequently approved on 2 Feb 2012.
- The applicant was discharged on 28 Feb 2012, and he was credited with 7 years, 1 month and 13 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts his adverse actions were not in keeping with his character, but rather the result of undiagnosed PTSD. A VA document indicated that he was awarded an overall service-connected disability of 90% with a 70% rating for PTSD (6 Nov 2022). The applicant did submit a single behavioral health document with his application. A letter (5 Feb 2024) from a psychologist indicated that applicant was diagnosed with PTSD with depressive symptoms, hypervigilance and guilt. A service animal was recommended as well. There was insufficient evidence that the applicant was diagnosed with any mental health conditions while on active service.

d. The VA's Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed a history of mental health related treatment or diagnoses. The only DOD note in JLV indicated his upcoming court-martial for leaving his deployment prematurely due to marital concerns. He reported being anxious, restless, avoidant of stores and driving, irritability and sleep problems. He claimed he could still function quite normally. He also indicated that he recently was cited for a DUII and placed in the ASAP program. The provider diagnosed him with an Adjustment Disorder with Disturbance of Emotions and Conduct. There was a space of ten years before his next BH session. On 16 Aug 2022, he was screened for suicidal symptoms with a couple of affirmative responses. He confirmed an increase of depression and not being in control. He denied ever seeking treatment before. Applicant was assessed for appropriateness of PTSD treatment on 31 Aug 2022. He reported an episode where his unit did not arrive in time to save a friend of his since high school who had come under fire. He reported numerous PTSD-related symptoms and was diagnosed with PTSD (Chronic). He started attending a cognitive group for PTSD on 31 Aug 2022. Applicant successfully completed his cognitive therapy groups on 18 Jan

2023. He reported on 12 Sep 2023 that he had suicidal thoughts with a gun in hand following an argument with his spouse. He received help from his group therapist, but was still struggling with anger, bad memories, isolation and increased drinking. Applicant met with the same provider 13 more times up to 22 Apr 2024. He reported handling the anniversary of his best friends' death well but had a recent physical fight with his spouse. On 03 Sep 2024, applicant discussed risks and benefits of PTSD treatment via Telehealth. He reported three deployments to Iraq where he had several traumatic incidents that contributed to his chronic physical pain at present. Applicant's most recent BH session (21 Oct 2024) via Telehealth included prolonged exposure therapy (PE) which he appears to have ambivalence toward.

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, PTSD, that mitigates his misconduct. This was established from VA records regarding combat-related trauma, extensive treatment for PTSD, an independent provider's assessment along with diagnosis for PTSD and his service-connected disability rating for PTSD. Specifically, his prolonged AWOL episode during deployment to Iraq can be mitigated. As there is an association between PTSD and avoidant behavior, there is a nexus between this BH condition and going AWOL.

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 behavioral health condition, PTSD, at the time of the misconduct. This was supported by VA documentation, a service-connected disability for PTSD and an independent provider's assessment and diagnosis.

(2) Did the condition exist or experience occur during military service? Yes, the evidence supports applicant's experiencing a behavioral health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. There is sufficient evidence that the applicant experienced a behavioral health condition, PTSD, while on active service. VA records strongly indicate a PTSD diagnosis linked to combat experiences in Iraq, and further substantiated from his service-connected disability for PTSD. His specific misconduct of going AWOL can be mitigated by his combat-related PTSD. Per Liberal Consideration his contention in concert with available evidence of PTSD is sufficient for the board's consideration.

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 medical review, the Board concurred with the advising opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support that the applicant had a condition or experience, PTSD, that mitigates his misconduct.

2. Consideration was given to the 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 behavioral health condition, PTSD, at the time of the misconduct. This was supported by VA documentation, a service-connected disability for PTSD and an independent provider's assessment and diagnosis.

(2) Did the condition exist or experience occur during military service? Yes, the evidence supports applicant's experiencing a behavioral health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. There is sufficient evidence that the applicant experienced a behavioral health condition, PTSD, while on active service. VA records strongly indicate a PTSD diagnosis linked to combat experiences in Iraq, and further substantiated from his service-connected disability for PTSD. His specific misconduct of going AWOL can be mitigated by his combat-related PTSD. Per Liberal Consideration his contention in concert with available evidence of PTSD is sufficient for the board's consideration.

3. The Board determined there is sufficient evidence of in-service mitigating factors to overcome the misconduct. The Board noted the applicant's official military record, and his pending promotion to E-7, which confirmed his honorable service from 29 June 2004 until the onset of misconduct in 2011, with no prior disciplinary actions. Additionally, the Board found based on the applicant's court order, there is sufficient evidence to support correction to the applicant's name. As such the Board granted relief to upgrade the applicant's character of service to general under honorable condition and correct the applicant's name as it appears on the Superior Court of Arizona in Yuma County court order.

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 reissuing the applicant a DD Form 214 showing his characterization of service as General Under Honorable Conditions. Additionally, the applicant's names as shown on the Superior Court of Arizona in Yuma County court order.

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, USC, 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. Title 10, USC, section 1556, 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. Hagel Memorandum, dated 3 September 2014, states liberal consideration will be given in petitions for changes in characterization of service to service treatment records entries which document one or more symptoms which meet the diagnostic criteria of PTSD or related conditions. Special consideration will be given to VA determinations which documents PTSD or PTSD related conditions connected to military service. In cases in which PTSD or PTSD related conditions may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the under other than honorable conditions characterization of service.
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 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.
5. 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.

6. Army Regulation (AR) 635-8 (Separation Processing and Documents), prescribes policy and procedural guidance relating to transition management; it explains separation document preparation, distribution, and correction. Paragraph 5-6 (Rules for Completing the DD Form 214 (Certificate of Release or Discharge from Active Duty) provides detailed instructions for data required in each block of the DD Form 214.

a. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge. The DD Form 214 is a historical document that should reflect the record as it existed at the time the DD Form 214 was created.

b. Block 1 (Name), compare original enlistment contract or appointment order and review official record for possible name changes. If a name change has occurred list other names of record in block 18 (Remarks).

7. AR 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. 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. 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 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

//NOTHING FOLLOWS//