

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 March 2025

DOCKET NUMBER: AR20240007578

APPLICANT REQUESTS: in effect, through counsel, correction to the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) to show in:

- Item 26 (Separation Code): JFF
- Item 27 (Reentry Code): 1
- Item 28 (Narrative Reason for Separation): Secretarial Authority

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

- DD Form 149 (Application for Correction of Military Record)
- Letter of Support from Counsel 17 April 2024
- Army Discharge Review Board (ADRB) Docket Number AR20150015176, dated 30 September 2016
- DD Forms 214
- Department of Veterans Affairs (VA) Decision Letter
- DA Form 3822-R (Report of Mental Status)
- DA Form 8003 (Army Substance Abuse Program (ASAP) Enrollment
- Applicant Personal Statement
- University transcripts
- U.S. Department of Justice Federal Bureau of Investigation Criminal Background Report
- State of Texas, County of Travis, Certification of Criminal History Record Report
- Letter of Reference and Character Reference
- Dean's List Letters for 2014 and 2015

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. Counsel states, in effect:

a. Individuals with Post Traumatic Stress Disorder (PTSD) may engage in reckless or self-destructive behavior such as dangerous driving, excessive alcohol or drug use, self-injurious or suicidal behavior.

b. The applicant experienced traumatic events while deployed to Afghanistan in support of Operation Enduring Freedom (OEF) from July 2008 through June 2009.

c. On 7 September 2010, the applicant tested positive for cocaine use during a routine urinalysis while on assignment in Honduras. He was command referred to the Army Substance Abuse Program (ASAP) and administratively separated from service.

d. The Department of Defense issued guidance regarding correction of military records concerning discharge modifications involving mental health conditions in the Kurta and Wilkie memoranda.

e. In this instance, the applicant's mental evaluation prior to separation reflects symptoms consistent with PTSD. Also, his request for relief answers four Kurta questions affirmatively. Moreover, since his discharge from service the applicant has been diagnosed with PTSD originating in service.

f. Counsel notes the favorable decision made by the Army Discharge Review Board (ADRB) to upgrade the applicant's character of service, separation code, reentry code and narrative reason for separation. However, counsel contends, in effect, the decision was not sufficient due to the bias associated with having an adverse discharge.

3. A review of evidence provided by counsel and the applicant's record shows:

a. The applicant enlisted in the Regular Army 11 September 2006 and reenlisted on 19 November 2008 for a period of four years.

b. He served in Afghanistan from 11 July 2008 through 28 June 2009.

c. On 29 September 2010, the applicant was referred to ASAP because his urinalysis was positive for cocaine.

d. On 17 February 2011, a psychologist determined the applicant was psychiatrically cleared for any administrative action deemed appropriate by command including Chapter 14.

e. On 29 March 2011, the applicant was discharged from service under honorable conditions (general), separation code JKK, reentry code 4, for misconduct (drug abuse).

f. On 30 September 2016, the ADRB in Docket Number AR20150015176 upgraded the applicant's character of service to honorable, with reentry code 3, and modified his narrative reason for separation to misconduct (minor infractions) and changed his separation code to "JKN". The Board accepted the ARBA Medical Officer conclusion that PTSD can be associated with use of illegal substances for self-medication of symptoms; therefore, there is a nexus between the applicant's use of cocaine and his PTSD.

g. On 13 March 2023, the Department of Veterans Affairs sustained the applicant's 50% rating for PTSD.

4. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a change to his narrative reason for separation and other changes to his DD214. He contends PTSD is related to his request. 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 11 September 2006; 2) The applicant deployed to Afghanistan from 11 July 2008-28 June 2009; 3) On 29 September 2010, the applicant was referred to ASAP because his urinalysis was positive for cocaine; 4) On 29 March 2011, the applicant was discharged from service under honorable conditions (general), separation code JKK, reentry code 4, for misconduct (drug abuse); 5) On 30 September 2016, the ADRB upgraded the applicant's character of service to honorable, with reentry code 3, and modified his narrative reason for separation to misconduct (minor infractions) and changed his separation code to "JKN".

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV), military medical documentation, and VA medical documentation were also examined.

c. The applicant asserts he was experiencing PTSD as a result of his deployment, which mitigates his misconduct. He was seen for a Mental Status Evaluation as part of his administrative separation proceedings for misconduct on 17 February 2011. The applicant was diagnosed with diagnosed with cocaine abuse and an Adjustment Disorder. The applicant was cleared from a psychiatric perspective for administrative action deemed appropriate by Command. There is additional evidence the applicant was referred to substance abuse treatment.

d. A review of JLV provided evidence the applicant began to engage with the VA following his discharge. He underwent a Compensation and Pension Evaluation in and was diagnosed with service-connected PTSD (SC 100%) related to his experiencing during his deployment.

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

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct. There is evidence the applicant has been 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 that mitigates his misconduct while on active service. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD.

(3) Does the condition/experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. The applicant did engage in substance abuse, which can be avoidant behavior while on active service. This type of behavior can be a natural sequelae to PTSD. Therefore, per Liberal Consideration, the applicant's misconduct, which led to his discharge is mitigable.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation, the mitigation found in the medical review, and the evidence showing previous actions taken by the ADRB, the Board concluded there was insufficient evidence of an error or injustice warranting further relief. The Board found that the previous actions taken by the ADRB were in line with liberal consideration guidance; thus, no further relief was warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

//SIGNED//

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 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.
 - a. 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to Soldiers 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, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Army policy states that an under other than honorable conditions discharge is normally considered appropriate; however, a general, under honorable conditions or an honorable discharge may be granted.

d. Paragraph 14-12c(2) terms abuse of illegal drugs as serious misconduct. It continues; however, by recognizing relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation under paragraph 14-12a or 14-12b as appropriate.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKN" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Misconduct (Minor Infractions). The SPD Code/RE Code Cross Reference Table shows that a Soldier assigned an SPD Code of "JKN" will be assigned an RE Code of 3.

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records

(BCM/NR) 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 UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

6. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; 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 to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

7. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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 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. PTSD can occur after someone goes through a traumatic event like combat, assault, or disaster. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is published by the American Psychiatric Association (APA) and provides standard criteria

and common language for the classification of mental disorders. In 1980, the APA added PTSD to the third edition of its DSM nosologic classification scheme. Although controversial when first introduced, the PTSD diagnosis has filled an important gap in psychiatric theory and practice. From a historical perspective, the significant change ushered in by the PTSD concept was the stipulation that the etiological agent was outside the individual (i.e., a traumatic event) rather than an inherent individual weakness (i.e., a traumatic neurosis). The key to understanding the scientific basis and clinical expression of PTSD is the concept of "trauma."

9. PTSD is unique among psychiatric diagnoses because of the great importance placed upon the etiological agent, the traumatic stressor. In fact, one cannot make a PTSD diagnosis unless the patient has actually met the "stressor criterion," which means that he or she has been exposed to an event that is considered traumatic. Clinical experience with the PTSD diagnosis has shown, however, that there are individual differences regarding the capacity to cope with catastrophic stress. Therefore, while most people exposed to traumatic events do not develop PTSD, others go on to develop the full-blown syndrome. Such observations have prompted the recognition that trauma, like pain, is not an external phenomenon that can be completely objectified. Like pain, the traumatic experience is filtered through cognitive and emotional processes before it can be appraised as an extreme threat. Because of individual differences in this appraisal process, different people appear to have different trauma thresholds, some more protected from and some more vulnerable to developing clinical symptoms after exposure to extremely stressful situations.

10. The fifth edition of the DSM was released in May 2013. This revision includes changes to the diagnostic criteria for PTSD and acute stress disorder. The PTSD diagnostic criteria were revised to take into account things that have been learned from scientific research and clinical experience. The revised diagnostic criteria for PTSD include a history of exposure to a traumatic event that meets specific stipulations and symptoms from each of four symptom clusters: intrusion, avoidance, negative alterations in cognitions and mood, and alterations in arousal and reactivity. The sixth criterion concerns duration of symptoms, the seventh criterion assesses functioning, and the eighth criterion clarifies symptoms as not attributable to a substance or co-occurring medical condition.

11. 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.

12. Section 1556 of Title 10, U.S. Code (USC), 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//