ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 14 March 2025

DOCKET NUMBER: AR20240008938

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Legal Brief

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 years into his service he tested positive for drug use. He was primarily tasked with parachute rigger operations. A pivotal moment occurred during a training exercise at Fort Benning, where he witnessed the tragic death of a female airborne student whose parachute failed to open. Despite no fault of his own, he grappled' with overwhelming guilt, particularly during the subsequent investigations. He is requesting a discharge upgrade under clemency because this one mistake did not constitute willful and persistent misconduct. His misconduct was due to a mental error made by a bad decision. Although this error was made, his service was honest, faithful, and meritorious.

3. The applicant provides a legal brief that explains reasons in whole and or in part, matters relating to his mental health conditions concerning Post-Traumatic Stress Disorder (PTSD) due to incidents that occurred while serving. The legal brief discusses each of the matters in the following exhibits available for the Boards review in detail.

a. Exhibit 1: Declaration of applicant’s accounts of his experience during his service.

b. Exhibit 2: Character of Discharge Determination (DD-214) shows a record of the applicant’s service.

c. Exhibit 3: News Article regarding Service Member's Death -Cause of PTSD for the applicant.

d. Exhibit 4: VA PTSD Ratings Decisions shows the service connection for PTSD and evaluation rating of 70 percent.

e. Exhibit 5: Military Medical Record of ln-Service Counseling, shows the applicant's medical history and purpose of examination.

f. Exhibit 6: Military Medical Record of ln-Service Back Pain shows the applicant's chronological health record dated 8 April 2005.

g. Exhibit 7: Post Traumatic Stress Disorder (PTSD)- Disability Benefits Questionnaire shows the diagnostic summary by a Board-Certified psychiatrist.

h. Exhibit 8: Discharge Orders 227-2209 shows the applicant was discharge effective 23 August 2005.

i. Exhibit 9: Psychology Evaluation from West Los Angeles VA campus for cognitive therapy to address PTSD shows progress notes from 4 January 2017 to 27 March 2019.

j. Exhibit 10: West Los Angeles VA drug rehabilitation program shows progress notes from 20 April 2015 to 24 June 2019.

k. Exhibit 11: Military Records of death investigation shows progress notes from 20 April 2015 to 27 July 2015.

l. Exhibit 12: Exhibit of doctor's notes stating suicidal ideation from shows progress notes dated 27 July 2015.

m. Exhibit 13: Educational Records that shows the applicant's demonstration of academic excellence with distinction in successful completion of numerous training courses.

n. Exhibit 14: Memorandum for the Secretaries of the Military Departments clarifying guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records considering requests by veterans for modification of their discharge due to mental health conditions, sexual assault, or sexual harassment, dated August 25, 2017.

o. Exhibit 15: Memorandum for the Secretaries of the Military Departments that provides guidance to military Discharge Review Boards and Boards for Correction of Military / Naval Records Regarding Equity, Injustice, or Clemency Determinations.

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

a. He enlisted in the Regular Army on 8 April 2003.

b. On 24 May 2005, the applicant tested positive for cocaine.

c. On 6 June 2005, he was counseled for violation of Article 112A- Wrongful Use, Possession of a Controlled Substance.

d. The U. S. Army Criminal Investigation Command (CID) conducted a report of investigation dated 10 June 2005. The investigation established probable cause to believe the applicant committed the offense of wrongful use of Cocaine, when he tested positive for cocaine on 24 May 2005, during a unit level urinalysis.

e. On 15 June 2005, he accepted nonjudicial punishment for wrongfully use cocaine.

f. On 8 August 2005, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 14, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) for commission of a serious offense. The specific reasons for his proposed recommendation were wrongful use of cocaine on 24 May 2005. The applicant acknowledged receipt the same day.

g. After consulting 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 discharge under other than honorable conditions is issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he is ineligible to apply for enlistment in the Army for 2 years after discharge

h. The immediate commander-initiated separation action against the applicant for commission of a serious offense. The intermediate commanders recommended approval

i. On 11 August 2005, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation, under the provisions of Chapter 14, AR 635-200, paragraph 14-12c for commission of a

serious offense. He would be issued an under other than honorable conditions characterization of service.

j. On 23 August 2005, he was discharged from active duty with an under honorable conditions (General) characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 2 years, 4 months, and 16 days of active service. It also shows he was awarded or authorized the following:

- National Defense Service Medal
- Army Lapel Button
- Army Service Ribbon
- Global War on Terrorism Service Medal

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

6. By regulation, 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.

7. 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.

8. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under honorable conditions (general) to honorable. He contends he experienced an undiagnosed mental health condition 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 8 April 2003.
- The applicant tested positive for cocaine on 24 May 2005, and he accepted NJP for wrongful use of cocaine on 15 June 2005.
- On 8 August 2005, the applicant’s immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 14, Army Regulation (AR) 635-200 for commission of a serious offense. The specific reasons for his proposed recommendation were wrongful use of cocaine on 24 May 05.
- The applicant was discharged on 23 August 2005, and he completed 2 years, 4 months, and 16 days of active service.

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 asserts that he witnessed the tragic death of a female airborne student and had overwhelming feelings of guilt, which led to his misconduct, and he indicated "other mental health" as an issue or condition related to his request. The application included a VA Rating Decision Letter dated 17 October 2017, which showed that the applicant is service connected for PTSD, including symptoms of depression and anxiety, at 70 percent, and a second letter dated 31 July 2019 showed a rating of 100% for the same condition. A Report of Medical History completed by the applicant and dated 29 June 2005 showed he reported depression or excessive worry, illegal drug use, and having received counseling, and it was noted that he was referred to the Army Substance Abuse Program (ASAP). There were 363 pages of VA documentation, which will be included in the summary below. An Initial PTSD Disability Benefits Questionnaire dated 17 September 2017 showed the applicant endorsed the required number and severity of symptoms to warrant a diagnosis of PTSD, and he was diagnosed with Stimulant Use Disorder (in early remission), Cannabis Use Disorder (in early remission), and Major Depressive Disorder, recurrent, severe without psychotic features. The identified trauma was related to the death of a fellow soldier when her parachute did not deploy, and the applicant expressed feelings of guilt "because he packed her shoot (*sic*)." The evaluator concluded, "it is as likely as not, that the veteran has a diagnosis of PTSD incurred in or caused by the death of a soldier due to parachuting accident during service." There was insufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed documentation of a Chapter 14 Separation evaluation conducted on 3 August 2005, but there was no indication of any psychiatric symptoms noted. The applicant initiated mental health treatment through the VA on 20 April 2015, and he extensively discussed the event of the female parachuter's death. He related that his job was "rigger," and he had packed her chute. He discussed feelings of guilt and dread as there was an investigation with the ultimate outcome that he was not at fault. He discussed a history of heavy alcohol use and depression. His next encounter was in June 2015 when he was brought in by ambulance due to concerns that he was a danger to others (i.e. had destroyed property in anger), and he was involuntarily admitted to the psychiatric unit. Through the years, the applicant has had many mental health visits, including medication management, individual and group therapy, residential treatment, substance abuse treatment, and housing for homeless veterans' services. His most recent psychiatric visit was on 28 February 2024 and noted that the applicant was hospitalized in 2024 for methamphetamine induced psychosis, but he was currently sober from all substances and engaged in polysubstance abuse treatment. His diagnoses were PTSD, Stimulant Use Disorder, Psychosis not otherwise specified, and Major Depressive Disorder.

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 that mitigates his misconduct.

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 mental health condition at the time of the misconduct. Documentation from his separation physical in June 2005 showed he reported depression, excessive worry, drug use, and engagement in counseling services. The applicant initiated mental health treatment through the VA in 2015 and is service connected at 100% for PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service. He asserts in his application and his mental health documentation that he witnessed the death of a fellow soldier during a parachuting accident.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. A review of military medical and mental health records revealed the applicant reported symptoms of depression and anxiety while on active service, and he was referred to ASAP following a positive drug screen for cocaine. The applicant has been diagnosed, treated, and service connected through the VA for PTSD. Substance abuse is a common self-medicating strategy for avoiding uncomfortable emotions and memories related to trauma exposure, and substance use can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Given the nexus between trauma exposure, avoidance of emotion, and substance use and in accordance with liberal consideration, the basis for separation is mitigated.

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests.

2. The applicant's misconduct—specifically, a single instance of drug use—occurred in the context of significant, service-related trauma. The applicant has provided compelling evidence, including a 100% VA service-connected disability rating for PTSD, which has been medically linked to a traumatic incident during service involving the death of a fellow Soldier. The Army Review Boards Agency Behavioral Health Advisor concluded that the applicant's mental health condition likely existed during service and directly

mitigates the misconduct that led to separation. The applicant's symptoms of depression, anxiety, and substance use are consistent with the natural sequelae of untreated PTSD, and his positive urinalysis appears to be a manifestation of self-medication rather than willful misconduct.

3. In addition to the medical evidence, the applicant has demonstrated significant post-service rehabilitation and achievement. He has engaged in long-term mental health and substance abuse treatment, participated in VA rehabilitation programs, and pursued educational advancement with distinction. These efforts reflect a sincere commitment to personal growth and accountability.

4. In light of the applicant's honorable service prior to the incident, the mitigating mental health condition, and his post-service conduct, the Board concluded relief was warranted.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:XX	:XX	:XX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant 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 23 August 2005 to show an honorable characterization of service.

[redacted]

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. 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 (General Discharge) states 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.

3. 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.

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. 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//