

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 April 2025

DOCKET NUMBER: AR20240010432

APPLICANT REQUESTS: Upgrade of his under honorable conditions (General) discharge to honorable conditions.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge)

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 has attached a letter of release from Tikrit, Iraq to re-establish his family care plan. His ex-wife was cheating on him, and he was forced to leave his unit. He did not have a problem with the decision, but he wants to go back to school with his son. Lastly, he tested positive for tetrahydrocannabinol (THC) when he first arrived at Fort Hood, TX and he completed 45 days of extra duty in Iraq.
3. On his DD Form 149, the applicant notes mental health issues are related to his request.
4. The applicant enlisted in the Regular Army on 5 January 2004.
5. On 5 August 2004, he received a Field Grade Article 15 for wrongfully using a controlled substance, marijuana, between 14 January 2004 and 12 February 2004. This is in violation of Article 112a, Uniform Code of Military Justice (UCMJ)."
6. On 12 April 2005, the applicant received a Field Grade Article 15 for the following while at Forward Operating Base (FOB) Speicher, Tikrit, Iraq:

- disobeying a lawful order from SFC P, a noncommissioned officer, to clean his room and be prepared for inspection, on or about 30 March 2005
- treat with contempt and disrespect in language toward SFC P, by rolling his eyes and being disrespectful on or about 30 March 2005
- being disrespectful in language toward SFC P, on or about 30 March 2005
- by behaving with disrespect toward CPT G, on or about 30 March 2005
- on or about 8 March 2005, without authority, fail to go at the time prescribed to his appointed place of duty
 - without authority, fail to go at the time prescribed to his appointed place of duty, on or about 14 January 2005

7. On 15 September 2005, the applicant's immediate commander notified him, that he was initiating actions to separate her under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12b, for Pattern of Misconduct. The reason for his recommendation was because on 5 August 2004, he received a Field Grade Article 15 for violation of Article 112a, UCMJ. Also, on 12 April he received a Field Grade Article 15 for violation of Article 91, Article 89, and Article 86.

8. On 15 September 2005, the applicant consulted with legal counsel and acknowledged he had been advised of the basis for the contemplated separation action. Following his consultation, the applicant stated that he would submit a statement in his own behalf.

9. On 21 September 2005, he provided a statement explaining the circumstances surrounding his deployment from 14 December 2005 - 06 June 2005, and how certain situations led to the Article 15 he received while in Iraq. His focus was to convince his chain of command that he should remain in the Army and to also request a rehabilitative transfer to a unit that would be deploying. He would like to go back to Iraq to finish a mission he was not able to complete. He was redeployed because of family care issues, not the Article 15. His family issues had been taken care of, so he would like to deploy as soon as possible.

10. On an unknown date, the applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 14, for misconduct.

11. Consistent with the chain of command's recommendations, the separation authority approved the recommended discharge on 26 September 2005 and directed the issuance of a General Discharge Certificate.

12. The applicant was discharged on 20 October 2005. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the

provisions of Army Regulation 635-200, paragraph 14-12b, for Pattern of Misconduct. He completed 1 year, 9 months, and 16 days of net active service this period.

13. The applicant provided a memorandum from the approving commander, dated 30 May 2005, showing the commander approved his release from the Central Command Area of Responsibility. The applicant was released from theater to reestablish his family care plan, with a flight date of no later than 31 May 2005 to Fort Hood, TX.

14. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

15. 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 5 January 2004.
- The applicant received a Field Grade Article 15 for wrongfully using a controlled substance, marijuana, between 14 January 2004 and 12 February 2004.
- On 12 April 2005, the applicant received a Field Grade Article 15 for the following while at Forward Operating Base (FOB) Speicher, Tikrit, Iraq: disobeying a lawful order to clean his room for inspection, being disrespectful in language, behaving with disrespect toward an officer, failing to be at his appointed place of duty twice.
- On 15 September 2005 the applicant's immediate commander notified him that he was initiating actions to separate him under the provisions of Army Regulation 635-200, Chapter 14-12b, for Pattern of Misconduct.
- The applicant was discharged on 20 October 2005 and completed 1 year, 9 months, and 16 days of net active service. His DD Form 214 showed a deployment to Iraq from 12 December 2004 to 4 April 2005.

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 he was evacuated from Iraq due to infidelity by his wife and family care circumstances, and as a result of a positive drug screen for marijuana, he completed his extra duty while deployed. He indicated "other mental health" as an issue

or condition related to his request. The application was void of any mental health records or documentation. However, in a Memorandum for Record by the applicant dated 21 September 2005, he discussed having seen the combat stress unit, being placed on an antidepressant, and making suicidal threats while deployed. 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 no history of mental health related treatment or diagnoses while on active service. VA records dated 17 March 2006 showed he was admitted to an inpatient psychiatric unit due to suicide attempt (cutting wrist), depression, and feelings of guilt over separation from his children. He was homeless and staying in a hotel. He was diagnosed with Major Depressive Disorder and started on an antidepressant. He discharged five days later to return to Louisiana to live with his mother, and he enrolled in mental health there on 23 March 2006. During that evaluation he denied any deployment related trauma exposure. A Compensation and Pension (C&P) examination for Mental Disorders was conducted on 2 November 2011, and the applicant was diagnosed with Depressive Disorder Not Otherwise Specified (NOS) and Cognitive Disorder NOS. However, the examiner noted no link to his military service for either condition. The applicant is currently 70% service connected for Major Depressive Disorder. He has utilized VA for mental health services with his most recent encounter on 7 April 2025.

e. Additional C&P examinations from 2018, 2021 (two exams), 2022 were obtained. An Initial PTSD exam dated 21 May 2018 showed the applicant did not meet criteria for PTSD and was diagnosed with Other Specified Anxiety Disorder, and although he reported exposure to mortar attacks and small arms fire, he indicated his primary deployment related trauma was his wife's infidelity. Another Initial PTSD C&P exam on 3 September 2021 indicated diagnoses of Other Specified Trauma and Stressor Related Disorder and Major Depressive Disorder. The applicant did not endorse the required number or severity of symptoms to meet criteria for PTSD, but he reported mortar attacks with one hitting close to his FOB and an IED hitting his convoy. A C&P for Mental Disorders other than PTSD was conducted on 13 January 2021 and resulted in a diagnosis of Major Depressive Disorder. There did not appear to be any records from his time in service reviewed, but the evaluator discussed his report of mental health treatment while in Iraq. A follow up evaluation was conducted on 28 September 2022 and showed diagnoses of Major Depressive Disorder (MDD) and Other Specified Trauma and Stress Related Disorder. It was noted that the applicant was 50% service connected for MDD but had worsening social and occupational functioning as well as a history of homelessness.

f. 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 partially 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 asserts he had an undiagnosed mental health condition at the time of the misconduct. There is evidence he was evacuated out of theater due to needing to attend to his family care plan, and he documented having received services from the combat stress unit due to depression and suicidal ideation. The applicant started receiving mental health treatment from the VA in 2006, and he is currently 70% service connected for Major Depressive Disorder.

(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 deployed to Iraq from December 2004 until April 2005 and was evacuated out of theater.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. A review of military medical and mental health records revealed evidence that the applicant was experiencing a level of distress significant enough to require evacuating him from Iraq in order to attend to his family issues. Although records from the combat stress unit are unavailable for review, there is documentation that the applicant reported depression and suicidal ideation while on active service. The applicant's behavior on 30 March 2005, which included disobeying a lawful order, treating with contempt and disrespect in language, and behaving with disrespect, and his failure to be at his appointed place of duty on 14 January 2005 are all behaviors that can be a natural sequelae to mental health conditions associated with exposure to traumatic and stressful events, presenting support for partial mitigation. However, the applicant's positive drug test for marijuana use between January and February 2004 occurred prior to his deployment, and there is no nexus to any report of a mental health condition or trauma exposure.

h. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention 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 not 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 considered the advising official opine 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 partially mitigates his misconduct.

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2. The Board notwithstanding the advising official finding sufficient evidence to support that the applicant had a condition or experience that partially mitigates his misconduct. The Board, however found insufficient evidence of in-service mitigating factors to overcome the pattern of misconduct during his deployment. The applicant did not provide any post service achievement or character letters of support for the Board to weigh a clemency determination. The Board noted, the applicant's service record exhibits numerous instances of misconduct during his enlistment period of 1 year, 9 months, and 16 days of net active service. The applicant was discharged for pattern of misconduct and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Therefore, the Board denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

██████ █████ █████ 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.

[REDACTED]

[REDACTED]

[REDACTED]

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 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

- 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 a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
- c. Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. It states that action will be initiated to separate a Soldier for misconduct when it was clearly established that rehabilitation was impracticable or unlikely to succeed. Paragraph 14-12c (Commission of a Serious Offense) applied to commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense. First time offenders below the grade of sergeant, and with less than 3 years of total military service, may be processed for separation as appropriate.

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 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.

6. 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.

//NOTHING FOLLOWS//