

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 March 2023

DOCKET NUMBER: AR20230005495

APPLICANT REQUESTS: upgrade of the former service member's (FSM) under other than honorable conditions (UOTHC) discharge to honorable.

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

- DD Form 293 (Application for the Review of Discharge)(online)
- Self-Authored Statement
- Marriage Certificate
- Death Certificate
- Character Emails (four)

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, the wife of the FSM, states:

a. She believes the FSM was suffering from undiagnosed mental issues as well as undiagnosed post-traumatic stress disorder (PTSD), which led the FSM to commit the domestic violence that led to his separation. She states they were married and thriving. The FSM deployed to Afghanistan in 2016 for a short time and when he returned, he began to drink and became dependent on alcohol. After the FSM reenlisted, they were stationed in Hawaii, and he became more withdrawn and depressed, Army life had become too much for him to handle. She encouraged him to seek help from friends or his noncommissioned officers (NCOs). The FSM would say he didn't have any real friends and his leadership didn't want to hear about his problems. The FSM stated he struggled with PTSD. He turned to alcohol and video games as coping mechanisms. They had fertility issues and later had a son. The FSM was proud to make sergeant/E-5.

b. The first domestic violence incident occurred while she was pregnant with their second child. The applicant suffered a black eye from the fight. In 2020, the FSM was

hospitalized for pancreatitis. After the birth of their second child, he was suffering with pancreatitis and always complaining about stomach pain and not feeling well in general. She felt like the FSM could not stop drinking even though he knew he was sick. He was very depressed, dissociated, highly irritable and difficult to have conversation with. It was evident that his mental health was declining. They began to argue, the FSM strangled her and put a knife to her neck. She drove to the military police station and told them the FSM tried to kill her. The Criminal Investigation Division interviewed her and took pictures of her injuries. She told them the FSM had her children and might hurt them. She went to the hospital and later she received counseling.

c. The FSM was diagnosed with diabetes and attempted a medical evaluation board (MEB), which was denied because he had an open investigation for the incident. The applicant reached out to the first sergeant to let him know the FSM was experiencing mental struggles. The FSM told her not to contact the unit because the first sergeant threatened to “lock him up in a mental hospital until the day he gets kicked out.” The FSM looked extremely ill and was losing an extreme amount of weight. The separation process was explained to the applicant from a legal officer. In the days leading up to the FSM’s separation the applicant tried, unsuccessfully, to contact the FSM and asked the police to do a wellness check. He was found deceased in the bathtub. The FSM passed away from diabetic ketoacidosis. He was committed to getting his life back on track and regretted his decisions up to that point. The FSM passed away less than a week from his separation from the military.

d. The applicant believes the FSM’s actions that led to his discharge were caused by a mix of childhood trauma along with PTSD. The applicant believes he was struggling with mental health issues that were not under control. Partly because of his own failure to seek help as well as a lack of support from family and leadership. The FSM did not have any other issues in his career. He had no punishments in the military. His legacy should not be tarnished by the issues they had in their relationship. The FSM was never given a chance to redeem himself. The applicant would like her children to be proud of who their father was.

3. The FSM enlisted in the Regular Army on 16 September 2013. His military occupational specialty was 92F (Petroleum Supply Specialist).

4. He served in Afghanistan from 11 November 2015 to 5 February 2016.

5. The FSM reenlisted on 27 July 2016 and again on 19 May 2021.

6. Charges were preferred against the FSM on 3 February 2022 for violations of the Uniform Code of Military justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with:

- intent to inflict bodily harm, commit an assault upon Ms. [REDACTED] the spouse by holding against her neck a dangerous weapon, a knife on or about 12 September 2021
- committing a violent offense against Ms. [REDACTED] by unlawfully striking her on the face with his hand between on or about 1 January 2020 and on or about 15 January 2020
- commit a violent offense against Ms. [REDACTED] by unlawfully striking her on or about 9 May 2021
- commit a violent offense against Ms. [REDACTED] by unlawfully striking her on her chest with his foot on or about 12 September 2021
- assault Ms. [REDACTED] by unlawfully strangling her on her neck with his hand on or about 12 September 2021
- commit a violent offense against Ms. [REDACTED] by unlawfully grabbing her neck with his hand on or about 12 September 2021

7. The FSM consulted with legal counsel on 13 April 2022 and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a UOTHC discharge; the procedures and rights that were available to him.

a. After consulting with legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations-Active Duty Enlisted Administrative Separations), Chapter 10, in lieu of trial by court-martial. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws and he may expect to encounter substantial prejudice in civilian life because of an UOTHC discharge.

b. He was advised he may submit any documents he desired in his own behalf.

8. The Victim Preference for Chapter 10 letter, dated 19 April 2022 shows the applicant explained that she wanted what was more favorable to the FSM and that she did not want to participate in court marital proceedings, however she did state that she would support a Chapter 10.

9. The FSM's commander formally recommended approval of his request for discharge in lieu of trial by court martial on 22 April 2022 and recommended approval of an UOTHC discharge. His chain of command recommend approval.

10. The separation authority approved the FSM's request for discharge in lieu of trial by court-martial on 9 May 2022, and directed his service be characterized as UOTHC.

11. The FSM was discharged on 16 May 2022. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, by reason of in lieu of trial by court-martial. He was assigned Separation Code KFS with Reentry Code 4. His service was characterized as UOTHC. He completed 8 years, 8 months, and 1 day of net active service. His awards include the:

- Army Commendation Medal
- Army Achievement Medal (fourth award)
- Army Good Conduct Medal (2nd award)
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Afghanistan Campaign Medal with campaign star
- Army Service Ribbon
- Overseas Service Ribbon
- North Atlantic Treaty Organization Medal

12. The FSM was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial. A discharge UOTHC is normally considered appropriate.

13. The applicant provides:

a. A marriage certificate and the FSM's death certificate, date of death 25 May 2022.

b. Character emails that attest to the FSM's knowledge, fostering the moral of anyone who was around him, his selfless service, dedication to the mission at hand, hardworking personality, and the treatment of his Soldiers with dignity and respect. He took care of Soldiers and through his adversity still did his job to the best of his abilities. He was limited physically but not mentally, and he was emotional for all he put his wife and kids through. He loved his family wholeheartedly. He should not be judged on his actions but on his whole career and his family deserves the benefits.

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

15. BEHAVIORAL REVIEW:

a. The applicant, the wife of a deceased former service member (FSM), requests an upgrade of the FSM's under other than honorable conditions (UOTHC) discharge to

honorable. The applicant contends the FSM experienced mental health conditions including PTSD, which 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: 1) The FSM enlisted into the Regular Army on 16 September 2013; 2) The FSM served in Afghanistan from 11 November 2015-5 February 2016; 3) Charges were preferred against the FSM on 3 February 2022 for: A) intent to inflict bodily harm by committing an assault upon his spouse by holding a knife against her neck on 12 September 2021; B) committing multiple violent offenses against his spouse by unlawfully striking her 1 January 2020, 9 May 2021, and 12 September 2021; 4) The FSM was discharged on 16 May 2022 Chapter 10, by reason of in lieu of trial by court-martial. His service was characterized as UO THC; 5) The FSM's date of death was 25 May 2022.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and medical records. The Armed Forces Health Longitudinal Technology Application (AHLTA) and the (JLV) were also reviewed.

d. The applicant asserts the FSM was severely and negatively impacted by undiagnosed mental health conditions, including PTSD while on active service, which mitigates his misconduct. The FSM was deployed to Afghanistan for a few months, and the applicant stated he began to abuse alcohol after returning. There is insufficient evidence the applicant was referred to substance abuse counseling or reported excessive alcohol consumption to military behavioral health providers. He was seen initially at the Family Advocacy Program (FAP) after assaulting his wife on 14 September 2021. He reported experiencing depression and anxiety predominantly related to the impact of his actions on his family and military career. He also had consistent medical problems and pain caused by his uncontrolled blood sugar and pancreatitis. He attended regular individual and marital therapy at FAP and anger management group therapy till his discharge. He was diagnosed only with Problems related to primary support group,

e. He was seen initially at the Embedded Behavioral Health Clinic for an intake on 18 October 2021. The FSM continued to deny trauma related his deployment experiences, but he did report abuse during his childhood. He reported depression and anxiety related to his current family and occupational situation again, but he also reported unexplained emotional dysregulation at times and feeling tired. He was found to meet retention standards from a psychiatric perspective, and he was not diagnosed with a mental health condition beyond Problems related to primary support group and stress. and he was recommended for individual cognitive behavioral therapy. He attended a few sessions, but he regularly attended case management appointments and his appointments at FAP. He was not reported to be drinking excessively or diagnosed with

a mental health condition. He did report some depression, pain, insomnia, and excessive tiredness.

f. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence to support the FSM was experiencing a condition that partially mitigated his misconduct.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes, the applicant contends the FSM was impacted by an undiagnosed mental health condition including PTSD, which contributed to his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends the FSM was impacted by an undiagnosed mental health condition including PTSD while the FSM was on active duty.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial, there is evidence the FSM was experiencing significant medical issues, which may have been significantly impacted his ability to emotionally regulate and control his behavior. It is also likely the acute stress of his family and occupational situation had a negative impact on his overall health. However, there is no nexus between the applicant's report of the FSM's mental health condition including PTSD and domestic violence given that: 1) this type of misconduct is not part of the natural history or sequelae of the applicant's report of the FSM's mental health condition including PTSD; 2) the FSM's mental health condition including PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends the FSM's mental health condition and PTSD resulted in his misconduct, and per the Liberal Consideration Policy, his contention is sufficient for consideration.

16. MEDICAL REVIEW:

1. The ARBA Medical Reviewer was asked to review the veteran's case and write a medical review addendum to the ARBA BH advisory concerning the possible contribution of metabolic derangement or specifically his Diabetes Mellitus (DM) condition, to his violent offences against his wife. The following was observed:

a. The veteran committed his first violent offence in January 2020.

b. He was diagnosed with Acute Pancreatitis (idiopathic vs alcohol induced) in April 2020, manifested initially by daily severe abdominal pain with nausea and vomiting. He was hospitalized for over 2 weeks. He went on to develop Necrotizing Pancreatitis

resulting in intermittent exacerbations of acute pancreatitis in May 2020 and July 2020 manifested by severe abdominal pain. For each episode, he was admitted for several days into an outside [REDACTED] hospital. He underwent laparoscopic cholecystectomy in July 2020 for gallstones. Again, in August he presented with severe abdominal pain. At the time, the abdominal CT showed severe acute pancreatitis and a pancreatic pseudocyst— he was admitted for ERCP. In December, he presented again with severe abdominal pain. The abdominal CT showed the pseudocyst was enlarging. Pancreatic duct dilatation due to bile duct stricture was also noted. The duct stricture was surgically treated by placing/exchanging increasingly larger successive stents (Jan, Mar, and Apr 2021) by ERCP (endoscopic retrograde cholangiopancreatography) which was completed at San Antonio Military Medical Center. The veteran was discharged from the April 2021 stent exchange hospitalization on 28Apr2021.

c. The veteran committed the second violent offense 09May2021.

d. The veteran had another bout of abdominal pain in July 2021 which resulted in surgical removal of the stent that was exchanged in April 2021.

e. The veteran ultimately developed chronic pancreatitis in the Dec2020/Jan2021 timeframe manifested by almost daily abdominal pain. The chronic pancreatitis resulted in his developing Diabetes Mellitus. The 15Dec2020 abdominal CT at Fort Polk ACH showed changes consistent with acute on chronic pancreatitis.

f. The veteran's third and final violent offence was committed on 12Sep2021.

g. DM was definitively diagnosed on 16Oct2021. The veteran's blood glucose was 666.3 mg/dl (normal non fasting blood glucose is below 140 mg/dl). The condition required both insulin injection and oral hypoglycemic agent to control blood glucose levels. Review of the treatment record and laboratory profile showed blood glucose was normal (except for during acute pancreatitis exacerbations) until January 2021. Between January 2021 and October 2021, the veteran's blood glucose fluctuated mostly in the prediabetes range (140-199 mg/dl). During the 28Oct2021 Family Practice (Patriot Brigade-Polk) visit for the new DM diagnosis, the veteran reported malaise and low energy symptoms. He also had mild, intermittent abdominal pain at the time.

2. During this review, sources were found which endorsed a relationship between high blood glucose or low blood glucose or fluctuations in blood glucose, and mood. One reference in particular, found that in their study lower levels of glucose predicted aggressive impulses, which, in turn, predicted aggressive behavior (Proc Natl Acad Sci USA. 2014 Apr 29; 111(17): 6254–6257). Review of the veteran's available record documented high blood glucose levels and fluctuations in blood glucose levels. Low blood glucose or hypoglycemia (usually defined as plasma glucose concentration less

than 70 mg/dL), was not documented in the record. The veteran was experiencing fluctuations in blood glucose from January 2021 forward. In addition to the blood glucose changes, the veteran also had chronic intermittent abdominal pain starting approximately in December 2020 due to chronic pancreatitis. More likely than not, the circumstance of fluctuations in blood glucose and chronic intermittent abdominal pain had some impact on the veteran's mood and behavior. Moreover, it was noted that the veteran was discharged from hospitalization for the April 2021 stent exchange procedure, just 11 days before he committed the second violent offence. That notwithstanding, it was also noted that the veteran committed the first violent offence before he developed pancreatitis (the origin of his chronic abdominal pain) and the resultant DM (the origin of the changes in his glucose metabolism). Thus, a definitive cause-and-effect relationship is not established between the veteran's blood glucose levels and his violent offences; however, the Board may consider the possible influence of his elevated blood glucose levels and fluctuating blood glucose levels as well as his chronic, intermittent, severe bouts of abdominal pain, as at least partially mitigating for the second and third violent offences.

3. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The veteran developed Chronic Pancreatitis initially manifested by recurrent bouts of severe abdominal pain which later became chronic abdominal pain. Chronic Pancreatitis resulted in Diabetes Mellitus with associated blood glucose fluctuations and elevated blood glucose.

(2) Did the condition exist, or did the experience occur during military service? Yes. Chronic Pancreatitis and Diabetes Mellitus, Secondary to Chronic Pancreatitis developed while the veteran was in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes, in part. Fluctuations in blood glucose especially from a higher blood glucose level to lower blood glucose level can be associated with mood disturbances and aggressive behavior.

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 Board carefully considered the former service member'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, the former service member’s available military records and medical review, the Board concurred with the advising official finding sufficient evidence to support the FSM was experiencing a condition that partially mitigated his misconduct. The Board noted the opine determination stating there is evidence the FSM was experiencing significant medical issues, which may have been significantly impacted his ability to emotionally regulate and control his behavior. It is also likely the acute stress of his family and occupational situation had a negative impact on his overall health.

2. However, as indicated by the opine, there is no nexus between the applicant’s report of the FSM’s mental health condition including PTSD and domestic violence given the misconduct by the former service member is not part of the natural history or sequelae of the applicant’s report of the FSM’s mental health condition including PTSD. Additionally, the FSM’s mental health condition including PTSD does not affect one’s ability to distinguish right from wrong and act in accordance with what is right. Although the advising opines found partial mitigation for the FSM’s misconduct due to his extensive medical health issues and his ability to regulate his glucose level and chronic abdominal pain. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct. However, during deliberation the Board determined the applicant had prior periods of honorable service that may affect the FSM’s eligibility for post-service benefits is not currently reflected on his DD Form 214 and recommended that change be completed to more accurately show his period of honorable service by granting a partial relief to correct the FSM’s DD Form 214.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 a recommendation for 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 16 May 2022 by adding the following in item 18 (Remarks): CONTINUOUS HONORABLE ACTIVE SERVICE FROM 20130916 UNTIL 20210518.

2. The Board further determined 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 upgrade of the former service member's (FSM) under other than honorable conditions (UOTHC) discharge to honorable.

3/25/2024



 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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows he is authorized additional awards not annotated on his DD Form 214 for the period ending 16 May 2022. As a result, amend his DD Form 214 by adding: Korea Defense Service Medal.

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, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence

and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. AR 635-200 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 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

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 Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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.

5. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and BCM/NRs on 25 July 2018, 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.

//NOTHING FOLLOWS//