

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 March 2024

DOCKET NUMBER: AR20230008014

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) discharge.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Self-authored letters (2)
- [REDACTED] University [REDACTED] certificate
- Course history screen shot

FACTS:

1. The applicant did not file within the three-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 that he was not doing well when he returned home from his second deployment. He went through a week of tests and interviews while being reintegrated into installation life. He was asked questions about his mental health, but it was pressed into him that only the weak have problems. Essentially you are being told to keep it to yourself, so he did. He understands what he did was terribly wrong and not professional in any manner, but he was dealing with other things that he did not understand. Upon his return from being absent without leave (AWOL) for 36 hours, he was never once asked how he was doing or what might be wrong. He was out-processed without anyone in his chain of command trying to help him. That is a lonely road to be on.

a. After returning home, he scheduled an appointment with the local Department of Veterans Affairs (VA) medical center. He told his primary care provider what was going on and they took the proper steps to get him the help he needed. Since then, he was diagnosed with post-traumatic stress disorder (PTSD) and depression. He finished 18 months of therapy and is doing much better. He believes the VA saved his life.

b. Since his separation from the Army, he has done everything in his power to lead a productive and healthy life. He started working on a 500-acre fruit farm and remained on the farm for 10 years. Next, he worked for 2 years in the medical cannabis industry as a grower in western Pennsylvania. He decided to return to school and acquired a certificate in horticulture from [REDACTED] with a 3.88 grade point average. He is currently attending the University [REDACTED] at [REDACTED] campus and is taking the last two classes he needs for a certificate in sustainable and organic agriculture. He has written a business plan and found financial backing to start his own organic market garden. His goal is to be up and running next spring. On his DD Form 149, the applicant indicates that PTSD and other mental health conditions are related to his request.

3. The applicant enlisted in the Regular Army on 29 September 2004, for a period of 3 years and 17 weeks. He served in Iraq from 27 September 2005 to 22 August 2006, and in Afghanistan from 18 January 2008 to 3 January 2009. On 12 July 2008, he reenlisted for a period of 4 years, in the rank/grade of specialist/E-4.

4. The applicant's duty status changed from Present for Duty (PDY) to AWOL on 15 January 2009 and from AWOL to PDY on 17 January 2009.

5. A U.S. Army Criminal Investigation Division Report of Investigation shows the applicant was charged with wrongful use of a controlled substance (cocaine) as the result of a urinalysis conducted on 22 April 2009.

6. A Standard Form 600 (Chronological Record of Medical Care), dated 19 May 2009, shows, in part, the applicant's current medical problems included unspecified psychoactive substance abuse-episodic and cocaine dependence.

7. On 19 May 2009, the applicant was counseled regarding the initiation of action to separate him from the Army, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, Commission of a Serious Offense/Misconduct - Use of Illegal Drugs. He was advised of the potential impact of such a separation and informed of his rights.

8. On 20 May 2009, the applicant underwent a behavioral health evaluation and was found to be mentally responsible and to possess the mental capacity to understand and participate in the proceedings. He was psychiatrically cleared for any administrative action deemed appropriate by his command.

9. From 28 May to 2 June 2009, the applicant underwent a separation medical examination and was determined to be qualified for service and/or administrative separation.

10. On 10 June 2009, the applicant accepted field grade nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for, being AWOL from on or about 15 January 2009 to on or about 17 January 2009; and for wrongfully using cocaine between on or about 13 April 2009 and on or about 22 April 2009. His punishment consisted of reduction from E-4 to private/E-1; forfeiture of \$699.00 pay for 2 months, extra duty for 30 days; restriction for 30 days; Army Substance Abuse Program (ASAP) appointments; and an oral reprimand.

11. A Military Police Report shows the applicant was charged with larceny of a private motor vehicle for stealing the keys to another Soldier's vehicle and using the vehicle without his permission on 1 July 2009.

12. On 9 July 2009, an administrative flag was imposed on the applicant to prevent him from receiving any favorable personnel actions while he was pending elimination.

13. The Army Community Counseling Center informed the applicant's immediate commander that he had only attended the first of 24 scheduled ASAP appointments. On 8 July 2009, the applicant stated he was being administratively separated from the Army and felt he would not be attending any more group sessions. The command was advised that, by regulation, Soldiers who fail to participate in or to respond successfully to rehabilitation would be processed for administrative separation and not provided another opportunity for rehabilitation except under the most extraordinary circumstances.

14. On 22 July 2009, the applicant's immediate commander informed the applicant that separation action had been initiated to separate him from service, under the provisions of Army Regulation 635-200, Chapter 14, for misconduct. The specific reasons cited were the applicant's wrongful cocaine use, wrongful appropriation of another Soldier's vehicle, breaking restriction, and failing to repair. The applicant acknowledged receipt of the notification on the same day.

15. On 29 July 2009, the applicant acknowledged that he was advised of the reasons for separation and of the rights available to him. He consulted with counsel and waived his right to have his case heard by an administrative separation board and to submit statements in his own behalf.

16. On 29 July 2009, the applicant's immediate commander formally recommended that he be separated under the provisions of Army Regulation 635-200, paragraphs 14-12c(1) and 14-12c(2) with a UOTHC discharge. The interim commanders concurred with the recommendation.

17. On 6 August 2009, the separation authority approved the applicant's separation with the issuance of a discharge UOTHC.

18. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show he was discharged on 31 August 2009, under the provisions of Army Regulation 635-200, paragraph 14-12c(1), by reason of misconduct (AWOL). His service was characterized as UOTHC. He was credited with completion of 4 years and 11 months of net active service this period. He had lost time from 15 January 2009 to 16 January 2009.

19. The applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of his discharge. On 1 July 2011, the applicant was informed that after careful review of his application, military records, and all other available evidence, the ADRB had determined that he was properly and equitably discharged and denied his request.

20. The applicant provides the following documents which are available in their entirety for the Board's consideration:

a. A former Soldier who served with the applicant rendered a character reference letter wherein he makes favorable comments about his duty performance. He also noted that following his return from deployment, the applicant began having personal issues that he believes were due to the deployment. The applicant brought this to the attention of the chain of command. Unfortunately, his chain of command failed to step in and help the applicant and chose to take other steps instead. In choosing to discharge the applicant instead of seeking treatment measures, the command treated him inequitably.

b. An acquaintance who has known the applicant for 4 years rendered a letter wherein he makes favorable comments regarding the applicant's perseverance and positive attitude.

c. A VA rating decision shows, in part, the applicant was assigned a 50 percent disability rating due to PTSD.

d. An [REDACTED] certificate shows the applicant completed the requirements for award of a Certificate in General Horticulture on 2 August 2022.

e. A screenshot shows the course history of an unknown student at an unspecified academic institution.

21. 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.

22. MEDICAL REVIEW:

a. The applicant requests and upgrade of his UOTHC discharge to honorable. He contends his misconduct was related to PTSD.

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 applicant enlisted into the Regular Army on 29 September 2004; 2) The applicant's duty status changed from Present for Duty (PDY) to AWOL on 15 January 2009 and from AWOL to PDY on 17 January 2009; 3) A U.S. Army Criminal Investigation Division Report of Investigation shows the applicant was charged with wrongful use of a controlled substance (Cocaine) as the result of a urinalysis conducted on 22 April 2009; 4) On 10 June 2009, the applicant accepted field grade nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for, being AWOL from on or about 15 January 2009 to on or about 17 January 2009; and for wrongfully using cocaine between on or about 13 April 2009 and on or about 22 April 2009; 5) A Military Police Report shows the applicant was charged with larceny of a private motor vehicle for stealing the keys to another Soldier's vehicle and using the vehicle without his permission on 1 July 2009; 6) On 29 July 2009, the applicant's immediate commander formally recommended that he be separated under the provisions of Army Regulation 635-200, paragraphs 14-12c(1) and 14-12c(2) with a UOTHC discharge; 7) On 6 August 2009, the separation authority approved the applicant's separation with the issuance of a discharge UOTHC. He was discharged on 31 August 2009, under the provisions of Army Regulation 635-200, paragraph 14-12c.

c. The military electronic medical record (AHLTA), VA electronic medical record (JLV), ROP, and casefiles were reviewed. A review of AHLTA shows the applicant's initial BH-related engagement occurred on 20 April 2005 whereby the applicant presented to the Aviation Medicine Clinic and admitted to using cocaine the night before. The documentation is sparse on additional detail but shows the applicant was diagnosed with Unspecified Psycho-active Substance Abuse – Episodic. The applicant next BH-related encounter documented in the EMR occurred on 21 December 2007 and reflects the applicant was stable, having no problems with substance use, was in full remission, and denied any other BH concerns. His diagnosis reflected Cocaine Dependence in Full Remission: Return to Full Duty Status. On 12 March 2009 the applicant presented to the BH clinic with a chief complaint of being fed up with his unit. He reported that he was absent from work the day before and when asked why, by command, he refused to answer so they sent him to the clinic. The applicant reported having been in the unit for 4 years and was simply ready to go. He reported that he was soon to PCS to Germany and excited for the opportunity. He denied any BH concerns, and diagnosis was deferred on Axis I.

d. On 13 May 2009 the applicant was referred to ASAP due to a positive UA for cocaine. The provider noted the applicant was previously treated in ASAP but released due to being deployed and was supposed to reengage with ASAP once redeployed. The applicant reported he relapsed following deployment due to deployment related stressors and learning his girlfriend was pregnant by someone else. The applicant reported a history of cocaine use with onset at age 23. He was diagnosed with Cocaine-related Disorder and scheduled for full ASAP intake. The applicant underwent a full intake on 14 May 2009 and was enrolled into the ASAP outpatient treatment program for a period of 10-weeks: his diagnosis continued to reflect Cocaine-Related Disorders. Encounter note dated 20 May 2009 shows the applicant presented for a Chapter 3 MSE. He acknowledged relapsing to cocaine use upon return from deployment in January 2009 and endorsed remorse with the bad decision. He was found to be mentally responsible and to possess the mental capacity to understand and participate in the proceedings. He was psychiatrically cleared for any administrative action deemed appropriate by his command. On 8 July 2009 an ASAP RTM was conducted with the provider, applicant, and applicant's 1SG whereby a discussion was had about the applicant failing to attend his two previous groups therapy session. The applicant acknowledged the absences and shared he would be separated from the Army the following week. The 1SG concurred and communicated the applicant had gotten into additional trouble since ASAP enrollment. The applicant agreed to attend an individual session the following week if still in the Army. Records are void of an associated visit. The final BH-related encounter associated with the applicant was entered on 30 September 2009 and reflects a chart review was conducted and the provider agreed with the recommendation for the applicant to be discharged from the Army noting he did not complete group therapy and had poor progress for the period he was engaged.

e. A review of JLV shows the applicant 50 percent SC for PTSD. Initial PTSD DBQ dated 6 April 2017 shows the applicant was diagnosed with PTSD secondary to trauma experienced during his 2005 deployment, characterized multiple incidents whereby he was exposed to IED, to include one whereby he witnessed a 9-year-old boy torn in half. He also reported an event related to his deployment to Afghanistan, whereby he was on a "hero mission" to pick up the deceased Soldier. He reported that when he arrived, he was handed a shoebox containing the Soldier's remaining parts. He reported the incident was not traumatizing but was depressing. The examiner deemed the applicant endorsed sufficient symptoms to meet criteria for combat-related PTSD. A review of the records suggests the applicant initial BH treatment engagement with the VA occurred on 26 May 2016 whereby he was seen in the PTSD Clinic for a PTSD assessment. The applicant recounted his experience in Iraq whereby he witnessed another Soldier shoot a child holding a cell phone, ripping him in half. It was later learned the child was holding the trigger for a IED pressure plate. He reported current symptoms of intrusive thoughts, negative alteration in cognition and mood characterized by anger, sleep problems, and nightmares. He reported a history of receiving care in the community for depression but discontinued due to cost. He denied current substance abuse but acknowledged a previous history of cocaine, ecstasy, and marijuana use, and history of

DUI with a pending 60-day sentence. The provider also noted the applicant with a previous history of incarceration in 2013 and 2014, requiring VJO assistance. The applicant was diagnosed with Other Specified Trauma and Stress Related Disorder, Cocaine Use Disorder in Remission, Cannabis Use Disorder in Remission, Alcohol Use Disorder in Remission, and Personality Disorder NOS, and scheduled for outpatient follow-up. Records shows the applicant diagnosis was amended to reflect PTSD in June 2016 and he continued to engage in outpatient treatment for PTSD and Depression, intermittently, through September 2018.

f. The applicant requests an upgrade of his UOTHC discharge to honorable. He contends his misconduct was related to PTSD. A review of the records shows the applicant is 50 percent SC for combat-related PTSD. As there is an association between PTSD and avoidance, and PTSD and substance abuse to self-medicate, there is a nexus between the applicant's misconduct characterized by AWOL and the instances of wrongful use of cocaine that occurred after deployment. Records shows the applicant with an initial history of wrongful cocaine use in 2005, prior to his first deployment (Iraq), followed by a period of apparent abstinence that ended after returning from his second deployment (Afghanistan). The applicant's wrongful use of cocaine that occurred in 2005 is not mitigated, as the misconduct occurred prior to deployment and prior the deployment related trauma. Additionally, the applicant misconduct characterized by larceny of a privately owned vehicle is also not mitigated as the behavior is not natural sequela of PTSD or Depression.

g. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence that the applicant had an experience or condition during his time in service 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 is 50 percent SC for PTSD

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. A review of the records shows the applicant is 50 percent SC for combat-related PTSD. As there is an association between PTSD and avoidance, and PTSD and substance abuse to self-medicate, there is a nexus between the applicant's misconduct characterized by AWOL and the instances of wrongful use of cocaine that occurred after deployment. Records shows the applicant with an initial history of wrongful cocaine use in 2005, prior to his first deployment (Iraq), followed by a period of apparent abstinence that ended after returning from his second deployment (Afghanistan). The applicant's wrongful use of cocaine that occurred in 2005 is not mitigated, as the misconduct occurred prior to deployment and prior the deployment related trauma. Additionally, the

applicant misconduct characterized by larceny of a privately owned vehicle is also not mitigated as the behavior is not natural sequela of PTSD or Depression.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service to include deployment, the frequency and nature of his misconduct and the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the Army Review Boards Agency (ARBA) Behavioral Health Advisor.
2. The Board concurred with the conclusion of the ARBA Behavioral Health Advisor that the applicant's misconduct is partially mitigated by PTSD. Based on a preponderance of the evidence, the Board determined the applicant's character of service should be changed to under honorable conditions (general).

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■	■	■	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 his DD Form 214 to show his character of service as under honorable conditions (general).


XCHAIRPERSON


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 three 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 three-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. 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 regulation provides that 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. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing.
4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a provides that 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. Paragraph 3-7b states 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 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

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 (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; TBI; 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.

7. 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.

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//