

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 March 2024

DOCKET NUMBER: AR20230008087

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions (UOTHC) discharge to an honorable discharge
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show:
 - his overseas service in support of Operation Iraqi Freedom (OIF)
 - the awards and decorations to which he is entitled

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- Letter from the Department of Veterans Affairs (VA) homeless clinic

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 states, he got out of the Army at 21 years of age and was struggling with his mental health and substance use disorder at the time. He was diagnosed with post-traumatic stress disorder (PTSD) and has been struggling with substance abuse disorder since his time in the military. He is currently 39 years of age and has suffered the consequences of his past and discharge status for some time. He lost his Iraqi Freedom veteran status due to his discharge and also lost all access to veteran privileges. He is pleading for some leniency as he is getting his life together. He resides at a sober living house for veterans, and they are working with him on his road to recovery. He desires to have his discharge upgraded to honorable so he can have more opportunities afforded to him.

3. On 15 January 2002, the applicant enlisted in the Regular Army for a period of 3 years. Upon completion of initial entry training, he was assigned to a unit in South Korea. He was subsequently assigned to a unit at Fort Sill, OK. He was advanced to specialist/E-4 on 1 May 2003.
4. On 1 March 2004, the applicant reenlisted for a period of 4 years.
5. The applicant's duty status was changed on:
 - 8 July 2004 from Present for Duty (PDY) to Absent Without Leave (AWOL)
 - 9 August 2004 from AWOL to Dropped from Rolls (DFR)
 - 3 November 2004 from DFR to Returned to Military Control/PDY following his surrender to military authorities
6. A DD Form 458 (Charge Sheet) shows on 4 November 2004, court-martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice (UCMJ) by being AWOL from his unit from on or about 8 July 2004 until on or about 3 November 2004.
7. On 5 November 2004, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Active Duty Enlisted Separations), Chapter 10, for the good of the service in lieu of trial by court-martial. He consulted with legal counsel and was advised of the basis for the trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a UOTHC discharge; and the procedures and rights that were available to him. He elected not to submit any statements in his own behalf and not to have a physical evaluation prior to his separation.
8. The applicant's immediate commander recommended approval of his request for discharge with a UOTHC discharge.
9. On 1 December 2004, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial, with his service characterized as UOTHC.
10. Orders and the applicant's DD Form 214 show he was discharged on 30 December 2004, in the grade of private/E-1, under the provisions of Army Regulation 635-200, Chapter 10, by reason of " In Lieu of Trial by Court-Martial" with Separation Code "KFS" and Reentry Code "4." He was credited with completing 2 years, 7 months, and 18 days of net active service this period. He had time lost from 8 July 2004 to 2 November 2004. He did not complete his first full term of service.

11. The applicant's record does not contain, nor did he provide any evidence to show he deployed overseas service in support of Operation Iraqi Freedom (OIF). However, his record does show he was assigned to Korea.

12. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in lieu of trial by court-martial. In doing so, he would have waived his opportunity to appear before a court-martial and risk a felony conviction. A characterization of UOTHC is authorized and normally considered appropriate.

13. The applicant provides a letter rendered by a member of the staff at the VA, Tulsa Outpatient Clinic, VA Homeless Program, Tulsa, OK on 28 April 2023. The author states the applicant was currently participating in a transitional living program for Veterans experiencing homelessness and in recovery from alcohol and drug use. He had been residing at their facility since 7 December 2023 and was currently in compliance with their expectations. The applicant gained insight into past behaviors that resulted in his discharge UOTHC. He had obtained full-time employment and was working toward ending his homelessness and maintaining sobriety. The author requested an upgrade of the applicant's discharge so he could access necessary services for his PTSD, substance disorder diagnosis, and primary care.

14. The ABCMR is not authorized to grant requests for upgrade of discharges solely for the purpose of making the applicant eligible for Veterans' benefits; however, 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.

MEDICAL REVIEW:

1. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable as well as correction of his DD Form 214. This opine will only address his request for an upgrade based on his assertion of PTSD and other mental health condition.

2. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

a. Applicant enlisted in the RA on 15 January 2002.

b. Applicant's duty status was changed on: 8 July 2004 from Present for Duty (PDY) to Absent Without Leave (AWOL); 9 August 2004 from AWOL to Dropped from Rolls (DFR); 3 November 2004 from DFR to Returned to Military Control/PDY following his surrender to military authorities.

c. A DD Form 458 (Charge Sheet) shows on 4 November 2004, court-martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice (UCMJ) by being AWOL from his unit from on or about 8 July 2004 until on or about 3 November 2004.

d. On 5 November 2004, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Active Duty Enlisted Separations), Chapter 10, for the good of the service in lieu of trial by court-martial. He consulted with legal counsel and was advised of the basis for the trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a UOTHC discharge; and the procedures and rights that were available to him. He elected not to submit any statements in his own behalf and not to have a physical evaluation prior to his separation.

e. Applicant's DD Form 214 show he was discharged on 30 December 2004, in the grade of private/E-1, under the provisions of Army Regulation 635-200, Chapter 10, by reason of " In Lieu of Trial by Court-Martial" with Separation Code "KFS" and Reentry Code "4."

3. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, DD Form 214, his ABCMR Record of Proceedings (ROP), self-authored statement, letter from VA homeless clinic, and documents from his service record and separation packet. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

4. The applicant states, he got out of the Army at 21 years of age and was struggling with his mental health and substance use disorder at the time. He was diagnosed with post-traumatic stress disorder (PTSD) and has been struggling with substance abuse disorder since his time in the military. He is currently 39 years of age and has suffered the consequences of his past and discharge status for some time. He lost his Iraqi Freedom veteran status due to his discharge and also lost all access to veteran privileges. He is pleading for some leniency as he is getting his life together. He resides at a sober living house for veterans, and they are working with him on his road to recovery. He desires to have his discharge upgraded to honorable so he can have more opportunities afforded to him.

5. Due to the period of service, no active-duty electronic medical records were available for review. As medical documentation, the applicant provides a letter from the VA, Tulsa Outpatient Clinic, VA Homeless Program. However, there appear to be inconsistencies in the letter since it is dated 28 April 2023, but the author states the applicant has been

residing at their facility since 7 December 2023 which is seven months in the future. The letter further states the applicant was in compliance with the program expectations, obtained full-time employment, and was diagnosed with PTSD. These statements are inconsistent with the available VA electronic record. The VA electronic records available for review indicate the applicant is not service connected but receives services under the eligibility of humanitarian emergency. The focus of services via the VA relate to the applicant's issues with homelessness, problems related to economic stressors, and his extensive substance abuse history. The applicant has received ongoing diagnostic screenings, since connecting with the VA in August of 2022, and no BH diagnosis or condition has been identified.

6. On 1 August 2022, the applicant participated in a Homeless Grant Assessment. He attributed his most recent homelessness to meth use. He shared being homeless in 2019, for approximately four months, and again in April of 2022 with his ex-wife directing him to treatment resources. The applicant reported an extensive substance abuse history. He shared that towards the end of his time in the military he used alcohol and cocaine, after his discharge from military service, he continued to use alcohol and cocaine on the weekends. However, once he divorced in 2017, his cocaine use increased. In 2020, he reportedly started using meth and progressed to daily use, at the height of his addiction using half gram per day, he initially smoked but then progressed to intravenous drug use. Via the Homeless Grant program, the applicant was admitted into Bryce House on 8 August 2022 but was discharged on 8 September 2022 due to AWOL on 5 September 2022 and subsequent relapse on meth. Post discharge, Bryce House staff offered to support the applicant with accessing detox services and subsequent residential treatment, but the applicant initially declined. However, on 24 September 2022, the applicant was admitted to a detox program and was later readmitted to Bryce House on 7 December 2022. The applicant was once again discharged on 20 June 2023 due to AWOL and suspected relapse. On 15 December 2023, the applicant had a phone consultation to schedule an admission screening. On 26 December 2023, he completed the application process for consideration of admission. A case management note, dated 9 January 2024, indicates the applicant was residing in a shelter but remained motivated to obtain housing. On 29 February 2024, the applicant obtained an apartment and continues to receive support via VA case management. A note dated 6 March 2024, indicates a case management visit to the applicant's apartment and supporting him with obtaining supplies; applicant indicated a future goal of obtaining employment.

7. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence the applicant had a BH condition, other than substance abuse. Substance abuse in the absence of a BH condition/diagnosis does not provide mitigation of his discharge.

8. Kurta Questions:

a. Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant asserts a mitigating condition.

b. Did the condition exist, or experience occur during military service? Yes. The applicant asserts PTSD and other mental health condition.

c. Does the condition or experience actually excuse or mitigate the discharge? No. The applicant's available medical record does not indicate a diagnosis of PTSD or any other BH condition. The available medical record indicates the applicant has been provided with support via the VA related to issues with homelessness, problems related to housing and economic stressors, and his extensive history of substance abuse. Substance abuse in the absence of a BH condition/diagnosis does not provide mitigation of his discharge.

BOARD DISCUSSION:

1. The applicant's contentions, the evidence he provided, his military record, the applicable Statutory and regulatory guidance, and various Department of Defense guidance regarding requests for discharge on the basis of liberal consideration and clemency were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted.

2. The Board determined, based on the available information and the opinion of the Agency Behavioral Health Advisor, there is insufficient evidence the applicant had a behavioral health condition, other than substance abuse. Substance abuse in the absence of a behavioral health condition/diagnosis does not provide mitigation of his discharge.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board concurs with making the corrections annotated in Administrative Note(s), but found that 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.

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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 NOTES: administratively correct the applicant's DD Form 214 to add the Korea Defense Service Medal and the Global War on Terrorism Service Medal.

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.

4. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.

b. 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.

c. 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.

d. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

5. Army Regulation 600-8-22 (Military Awards) states -

a. The Korea Defense Service Medal is award to Servicemembers of the Armed Forces of the United States who have served on active duty in support of the defense of the Republic of Korea.

b. The Global War on Terrorism Service Medal is authorized for award to is authorized for award to members of the Armed Forces of the United States who have participated in the Global War on Terrorism operations outside of the designated areas of eligibility (AOE) on or after 11 September 2001 to a future date to be determined. All Soldiers on active duty, including Reserve Component Soldiers mobilized or National Guard Soldiers activated, on or after 11 September 2001 to a date to be determined having served 30 consecutive days or 60 nonconsecutive days are authorized the GWOTSM.

6. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

7. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

8. 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, 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.

//NOTHING FOLLOWS//