

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 April 2024

DOCKET NUMBER: AR20230009354

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) discharge to an honorable discharge, and to appear before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- Letter from the National Personnel Records Center (NPRC), St. Louis, MO, dated 29 May 2023
- DD Form 4 (Enlistment/Reenlistment Document – Armed Forces of the United States)
- Orders 05-199-00073 issued by Headquarters, 89th Regional Readiness Command (RRC), Wichita, KS, on 18 July 2005
- [REDACTED] Death Certification
- Page 11A of The Joplin Globe Newspaper, dated 19 June 2003
- Character reference letter from the [REDACTED] [REDACTED] undated
- Resume'
- [REDACTED] University, [REDACTED] Official Transcript, dated 30 May 2023
- Verification of Membership document, dated 30 May 2023

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 provides a two-page letter that is available in its entirety for the Board's consideration. He states, in part, his discharge should be upgraded to align his military record with the person he has become. He believes an upgrade is justified due to the significant hardships he endured during his service that affected his attendance as well as his personal growth and achievements since his discharge. His commitment to self-

improvement and community service underscores a significant transformation and warrant an upgrade of his discharge.

a. He decided to join the U.S. Army Reserve (USAR) through the Split Option Alternative Training Program (ATP) while still in high school. While he is proud of his decision to serve, he now realizes he may not have been fully prepared for the commitment involved. The hardships he faced at the time compounded the issue and made it challenging for him to fulfill his responsibilities as a Soldier.

b. While attending Basic Combat Training (BCT), he suffered the tragic loss of a close friend on 16 June 2003. This event had a profound impact on him, deeply affecting his emotional well-being and focus. He chose not to inform anyone of his friend's passing and did not leave BCT to attend his funeral. Then, during his senior year of high school, he experienced the devastating loss of his father on 14 January 2004.

c. Around the same time, his unit was deployed, and he was transferred frequently among different units. This caused additional stress and instability in his military life. All these factors left him emotionally overwhelmed. As a result, he stopped attending drills and eventually left the State in a struggle to cope with his grief. The stigma of his discharge UOTHC serves as a constant reminder of a difficult time in his life that does not accurately reflect the person he has since become.

d. He emphasizes that his request for an upgrade is not solely based upon a desire for Department of Veterans Affairs benefits. While those benefits would be appreciated, his primary motivation lies in seeking closure for a challenging chapter in his life and opening a new one that fully recognizes the person he has become.

3. On 14 March 2003, the applicant enlisted into the USAR in the rank/pay grade of private (PV1)/E-1 for a period of 8 years.

a. His DD Form 1966 (Record of Military Processing – Armed Forces of the United States) shows in item 18 (Accession Data) that he was scheduled to enter active duty on 5 June 2003.

b. The Certificate and Acknowledgment USAR Service Requirements and Methods of Fulfillment annex rendered at the time of the applicant's enlistment shows he was contracted to attend Advanced Individual Training (AIT) for military occupational specialty (MOS) 92Y (Unit Supply Specialist). In Section V (Satisfactory Participation) of the annex he acknowledged his understanding that as a member of the USAR, he must participate satisfactorily during the entire period of his enlistment in accordance with the rules and regulations in effect at the time, or which may thereafter be placed in effect, by proper authority. In Section VI (Unsatisfactory Participation) he acknowledged he

also understood that if he failed to participate satisfactorily for any reason cited in Section V above, or which may be placed into effect thereafter by proper authority, he would be declared an unsatisfactory participant and, by law, subject to order to 45 days of active duty for training or a period of active duty that would not cause his total active duty service to exceed 24 months. He would also be subject to separation from the Selected Reserve or the Ready Reserve, as appropriate, either by reassignment or discharge, which could result in a pay grade reduction and a UOTHC characterization of his military service.

c. The Addendum to Certificate and Acknowledgment USAR Service Requirements for Enlistment under the ATP rendered at the time of his enlistment shows he understood enlistment under the ATP provided that:

(1) He must enter on Initial Active Duty for Training (ADT) to undergo the common BCT at an active military installation.

(2) If he failed to successfully complete the BCT program, he would be discharged from the USAR.

(3) Within one year of the last day of separation from ADT (after successful completion of BCT) he would be required to again enter on ADT to successfully complete AIT resulting in qualification in an MOS.

4. The applicant's available record is void of a separation packet, separation orders, or a DD Form 214 (Certificate of Release or Discharge from Active Duty) for his period of active-duty service. There also is no evidence showing the applicant completed either BCT or AIT and was awarded a MOS.

5. Orders 05-199-00036 issued by Headquarters, 89th RRC, Wichita, KS on 18 July 2005, show he was reduced in rank/pay grade from private first class/E-3 to PV1, effective 18 July 2005. The authority for this action was Army Regulation 140-158 (Army Reserve - Enlisted Personnel Classification, Promotion, and Reduction), paragraph 7-12(d-g). These orders show he was assigned to the RRC Trainees, Transients, Holdover, Student (TTHS) account at the time.

6. Orders 05-199-00073 issued by Headquarters, 89th RRC, Wichita, KS, on 18 July 2005, show the applicant was discharged from the USAR under the provisions of Army Regulation 135-178 (Army National Guard and Army Reserve - Enlisted Administrative Separations), effective 18 July 2005. His type of discharge was UOTHC. These orders show he was assigned to the RRC TTHS account at the time.

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

- a. A letter from letter from the NPRC wherein he is informed that a DD Form 214 was not issued to him because he either had no active service or less than 90 consecutive days of ADT.
- b. A [REDACTED] Death Certification shows the applicant's father died of natural causes on 14 January 2004.
- c. Page 11A of The Joplin Globe Newspaper, dated 19 June 2003, shows the applicant's friend died on 16 June 2003.
- d. The President and CEO of [REDACTED] rendered a letter wherein he states the applicant has been a key member in the [REDACTED] Chapter as [REDACTED] University, had completed a rigorous leadership training program through their organization, and was awarded the Foundations of Leadership Certification. In order to achieve this induction in the [REDACTED] the applicant committed to attending leadership training focusing on collaborative teamwork, goal setting, high achievement, leadership skills and styles, self-motivation, and accountability.
- e. The applicant's resume shows a listing of his skills, education, experience, professional memberships, and previous work history.
- f. A transcript from [REDACTED] University, [REDACTED], shows the applicant was awarded a Bachelor of Science degree on 13 May 2023. He majored was Physics and minored in Chemistry and Applied Mathematics. His grade point average was 3.14.
- g. Verification of Membership document shows the applicant is a lifetime member of Sigma Pi Sigma, the national physics honor society.

8. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition. By regulation, an applicant is not entitled to a hearing before the Board. Hearings may be authorized by a panel of the Board or by the Director of the ABCMR.

9. MEDICAL REVIEW:

- a. The applicant requests an upgrade of his UOTHC discharge to Honorable. He contends his misconduct was related Other Mental Health Issues (Personal Hardship).
- 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 in the U.S. Army Reserves on 14 March 2003; 2) His DD Form 1966 (Record of Military Processing – Armed Forces of the United States) shows in item 18

(Accession Data) that he was scheduled to enter active duty on 5 June 2003; 3) The applicant's available record is void of a separation packet, separation orders, or a DD Form 214 (Certificate of Release or Discharge from Active Duty) for his period of active-duty service. There also is no evidence showing the applicant completed either BCT or AIT and was awarded a MOS; 4) Orders 05-199-00036 issued by Headquarters, 89th RRC, Wichita, KS on 18 July 2005, show he was reduced in rank/pay grade from private first class/E-3 to PV1, effective 18 July 2005; 5) Orders 05-199-00073 issued by Headquarters, 89th RRC, Wichita, KS, on 18 July 2005, show the applicant was discharged from the USAR under the provisions of Army Regulation 135-178 (Army National Guard and Army Reserve - Enlisted Administrative Separations), effective 18 July 2005

c. The military electronic medical record (AHLTA), VA electronic medical record (JLV), ROP, and casefiles were reviewed. No military BH-related records were provided for review. A review of JVL was void of any BH treatment history for the applicant and he does not have a SC disability. No civilian BH-related records were provided for review.

d. The applicant is requesting an upgrade of his UOTHC discharge to Honorable and contends his misconduct was related to Other Mental Health Issues (Personal Hardship). A review of the records was void of any BH diagnosis or treatment for the applicant during or after service. While the applicant did not provide medical documentation supporting a BH-related conditions, he did provide self-statements outlining the death of a friend followed by the death of his father. While it is likely that these losses negatively impacted the applicant's mood to include resulting in grief, there is no indication the loss impacted the applicant such that he was unable to differentiate between right and wrong and adhere to the right, and therefore insufficient evidence to support his misconduct was mitigated by his loss. It is reasonable to conclude that the applicant had the capacity to communicate his issues to his command team, instead of acting in a manner that resulted in administrative separation.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence that the applicant had an experience or condition during his time in service that mitigated his misconduct. However, he contends his misconduct was related to Other Mental Health Issues (Personal Hardship), and per liberal guidance his assertion is sufficient to warrant the Board's consideration.

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 his misconduct was related to Other Mental Health Issues (Personal Hardship).

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

(3) Does the condition or experience actually excuse or mitigate the discharge? No.

A review of the records was void of any BH diagnosis or treatment for the applicant during or after service. While the applicant did not provide medical documentation supporting a BH-related conditions, he did provide self-statements outlining the death of a friend followed by the death of his father. While it is likely that these losses negatively impacted the applicant's mood to include resulting in grief, there is no indication the loss impacted the applicant such that he was unable to differentiate between right and wrong and adhere to the right, and therefore insufficient evidence to support his misconduct was mitigated by his loss. It is reasonable to conclude that the applicant had the capacity to communicate his issues to his command team, instead of acting in a manner that resulted in administrative separation.

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 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 finding insufficient evidence that the applicant had an experience or condition during his time in service that mitigated his misconduct. The opine noted on indications the applicant's family loss impacted him such that he was unable to differentiate between right and wrong and adhere to the right, and therefore insufficient evidence to support his misconduct was mitigated by his loss.

2. However, the Board determined there is sufficient evidence of in-service mitigating factors to overcome the misconduct of not attending drills. The Board noted, although the applicant completed his basic training course under the split option program, he did not complete his AIT portion and was not awarded a MOS. Furthermore, the Board agreed the applicant was not afforded the opportunity of understanding what is required to be a Soldier and found his punishment harsh since the applicant had not been in the service over 180 days. Careful consideration was given to the applicant's post service accomplishments and character letters of support. The Board notwithstanding the advising official opine determined clemency is warranted and granted partial relief to amend the applicant's discharge orders to show his characterization of service as uncharacterized.

3. An uncharacterized discharge is not derogatory; it is recorded when a Soldier has not completed more than 180 days of creditable continuous active duty prior to initiation of separation. It merely means the Soldier has not served on active duty long enough for his or her character of service to be rated as honorable or otherwise. As a result, there is no basis for granting the applicant's request.

4. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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 his discharge orders, dated 18 July 2005 to read type of discharge: uncharacterized.

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 an upgrade of his under other than honorable conditions (UOTHC) discharge to an honorable discharge.

[REDACTED]

X [REDACTED]

CHAIRPERSON
[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, 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. Applicants do not have a right to a hearing before the ABCMR.

4. Army Regulation 135-178 establishes policies, standards, and procedures governing the administrative separation of certain enlisted Soldiers of the Army National Guard of the United States and the USAR. Paragraph 2-7 of this regulation provides that at separation, the following types of characterization of service or description of separation are authorized under this regulation:

a. Separation with characterization of service as Honorable, General (under honorable conditions), or Under Other Than Honorable Conditions.

b. Separation with an uncharacterized description of service when separated –

(1) In an entry level status; or

(2) By order of release from custody and control of the Army by reason of void enlistment;

(3) By being dropped from the rolls of the Army.

5. Army Regulation 140-158, in effect at the time, outlined policies and procedures governing the classification, advancement, promotion, reduction, and grade restoration of applicable USAR enlisted Soldiers. The regulation applied to all USAR enlisted Soldiers assigned to the Ready, Selected, Standby, or Retired Reserve. It did not apply to Soldiers assigned to Control Group (ROTC) or those enlisted under the Delayed Entry Program. Additionally, it did not apply to USAR Soldiers assigned to the Active Army and paid from Military Personnel, Army appropriations unless otherwise stated. Paragraph 7-12(d-g), provided for the reduction, of USAR Soldiers for failing to complete school, or erroneous enlistment grade, and/or failure to qualify in MOS.

6. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) in effect at the time set forth the basic authority for the separation of enlisted personnel.

a. Chapter 3 provided that a separation would be described as entry level with uncharacterized service if the Soldier had less than 180 days of continuous active duty service at the time separation action was initiated.

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.

e. Paragraph 3-9, in effect at the time of the applicant's separation, provided that a separation would be described as entry level with uncharacterized service if processing was initiated while a Soldier was in an entry-level status, except when:

(1) a discharge under other than honorable conditions was authorized, due to the reason for separation and was warranted by the circumstances of the case; or

(2) the Secretary of the Army, on a case-by-case basis, determined a characterization of service as honorable was clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization was authorized when the Soldier was separated by reason of selected changes in service obligation, for convenience of the government, and under Secretarial plenary authority.

7. 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.

8. 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.

9. 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//