

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 May 2024

DOCKET NUMBER: AR20230010024

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. Additionally, he requests a personal appearance before the Board.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the U.S.) (two)
- Self-authored letter
- In-service military documents
- Polygraph Examination Report
- Character reference letter (two)
- Digital news articles
- Civilian education documents
- Professional resume and bio

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states:

a. He accepts responsibility for his actions. However, he believes his court-martial was a result of his steps to deal with mental health issues he was suffering from while in active service. He always felt he should practice and follow the words that he often preached, which was to take advantage of resources that the Army provides for mental health. The difficult reality of this is that he got the help he needed; however, the process and details of that path were used against him.

b. He is a Veteran who's military career came to a screeching halt. He was engaged in a very negative divorce and custody battle which lead to him being awarded custody

of his youngest daughter. That did not come without a steep price. His ex-wife accused him of sexual assault in response to the contentious litigation. Despite a passed polygraph and pleas that the accusations were false, he was in fact forced to go through the court-martial process where he was found not guilty of sexual assault, but still dismissed from the Army. Though he regrets that outcome, it was in fact the right decision as he did not live a life above reproach and because of that, he put himself in a position to jeopardize his career.

c. There was a lengthy investigation that looked to unearth any and all wrong doings of his past to support the prosecution. At that time, he was involved with counseling with Army resources and his church. His involvement was with a men's small group that focused on men who had problems maintaining monogamous relationships and worked to correct those errors. As a part of that process, he identified all of his wrong doings to include extra-marital affairs, attending strip clubs, soliciting prostitutes and lying to his family about all of it. This was all captured in his small group journal, which his ex-wife handed to the Criminal Investigation Division. Though he was found not guilty of sexual assault, he fully admitted to all actions covered in his recovery journal which were used against him in the court-martial.

d. Since leaving the Army, he has had a positive impact in his community and zero incidents. He is a leader again in multiple organizations and has the honor of facilitating technology to help the warfighter. He is proud that he can continue to be a value to the Army. He would prefer to wear the uniform. He remains loyal to the Army and thankful for all of the opportunities it has provided for him.

3. On his DD Form 293, the applicant notes post-traumatic stress disorder (PTSD), and other mental health issues are related to his request.

4. The applicant enlisted in the Regular Army on 3 October 2002.

5. The applicant served in Iraq from 26 February 2007 to 24 August 2007, and again from 13 December 2005 to 1 June 2006.

6. He was honorably discharged on 18 June 2008, for appointment as an officer in the Regular Army. He was issued a DD Form 214 (Certificate of Release or Discharge from Active Duty) for this period of service. He was credited with 5 years, 8 months, and 16 days of net active service this period.

7. The applicant was appointed as an officer in the Regular Army Infantry Branch, on 19 June 2008.

8. He served in Iraq a third time, from 9 August 2009 to 26 July 2010.

9. On 22 February 2016, the applicant underwent a computerized polygraph examination regarding two alleged physical altercations with his spouse. The polygraph examiner noted that after careful review of the multiple charts collected that there was a "Non-Deceptive" result to the truthfulness of the specific issue test questions.

10. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice; however, the relevant DD Form 458 (Charge Sheet) is not available for review.

11. Before a general court-martial on 8 March 2017, at Fort Bragg, NC, the applicant was found guilty of one specification of violating a lawful general regulation, by wrongfully engaging in a prohibited relationship with a staff sergeant, between on or about 1 September 2013 and on or about 31 July 2014; and one specification of unlawfully grabbing Mrs. A_R_B_'s arm with his hand, between on or about 1 July 2015 and on or about 31 July 2015.

12. The court sentenced the applicant to forfeiture of all pay allowances and dismissal from the service. The sentence was approved, and the record of trial was forwarded for appellate review.

13. The applicant was discharged on 5 November 2018. He was credited with 10 years, 4 months, and 17 days of net active service this period. His DD Form 214 contains the following entries in:

- item 24 (Character of Service) – UOTHC
- item 25 (Separation Authority) – AR [Army Regulation] 600-8-24 (Officer Transfers and Discharges), paragraph 5-17
- item 26 (Separation Code) – JJD
- item 27 (Reentry Code) – N/A [Non-Applicable]
- item 28 (Narrative Reason for Separation) – Court-martial

14. Additionally, his DD Form 214 shows he was awarded or authorized the:

- Bronze Star Medal
- Joint Service Commendation Medal (3rd Award)
- Army Commendation Medal
- Meritorious Unit Commendation
- Army Good Conduct Medal (2nd Award)
- National Defense Service Medal
- Iraq Campaign Medal with Arrowhead
- Global War on Terrorism Service Medal
- Iraq Campaign Medal with Campaign Star (4th Award)
- Noncommissioned Officer Professional Development Ribbon

- Army Service Ribbon
- Overseas Service Ribbon (3rd Award)
- Combat Action Badge
- Parachutist Badge

15. A DD Form 215 (Correction to DD Form 214) dated 27 November 2019, shows the following corrections to:

- item 12a (Date Entered Active Duty This Period) – DELETE: 20021003
- item 12a (Date Entered Active Duty This Period) – ADD: 20080619
- item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) – DELETE: Army Good Conduct Medal (2nd Award), Iraq Campaign Medal with Campaign Star (4th Award), Overseas Service Ribbon (3rd Award)
- item 13 – ADD: Army Good Conduct Medal, Iraq Campaign Medal with three Campaign Stars, Overseas Service Ribbon
- item 14 (Military Education) – DELETE: DLI Korean, 63 weeks, 2005//Officer Candidate, 1 week, 2008, Officer Candidate Course, 12 weeks, 2008//Sea-Unknown, 1 week, 2008//VCK-Unknown, 1 week, 2008//Airborne, 2 weeks, 2009//INF Officer Advanced, 2012//INF Officer Basic, 1 week, 2008
- item 14 – ADD: Infantry Basic Officer Leader Course, 12 weeks, 2008//Basic Airborne School, 3 weeks, 2009//Maneuver Captains Career Course, 2012, Combatives Level 1, 1 week, 2008//Nothing Follows

16. The applicant provides the following (provided in entirety for the Board):

- a. Self-authored letter detailing the events that led to his discharge, and his post-service accomplishments.
- b. Two character reference letters that collectively attest to the applicant's professionalism, leadership, moral compass, and his selfless service to others.
- c. His resume, bio, and digital articles that highlight his educational and professional accomplishments.

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

18. MEDICAL REVIEW:

- a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the military electronic medical record

(AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, the Army Aeromedical Resource Office (AERO), and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 5 November 2018 under other than honorable discharge. On his DD form 293, he has indicated that PTSD and other mental health conditions are related to his request. He states in part:

“I respectfully request an upgrade of my discharge from commissioned military service. I do accept responsibility for my actions; however, I do believe that my court martial was a result of my steps to deal with mental health issues I was suffering from while in active service.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows the former Officer entered the Regular Army 19 June 2008 and received an under other than honorable conditions discharge on 5 November 2018 under the provisions provided in paragraph 5-17 of AR 600-8-24, Officer Transfers and Discharges: Rules for processing dismissal of an officer due to general courts-martial proceedings.

d. The Department of the Army Report of Result of Trial (DA Form 2707-1) dated 1 September 2016 shows the former officer was found guilty at court martial of “Wrongfully engaging in a prohibited relationship with Staff Sergeant L.T.B.” from 1 September 2013 thru 31 July 2014.

e. Review of the applicant’s EMR records shows during this period of service the applicant was diagnosed with and treated for a non-organic sleep disorder, disruption of family by separation and divorce, and other specified problems related to psychosocial circumstances. He was not placed on any psychiatric medication during this period of active duty.

f. JLV shows the applicant was awarded six VA service-connected disability ratings for musculoskeletal conditions. He does not have a service-connected disability rating for PTSD or any other mental health condition, and there have been on mental health conditions diagnosed by the VA.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant asserts he has PTSD.

(2) Did the condition exist or experience occur during military service? Applicant asserts his PTSD is connected to his Army service.

(3) Does the condition or experience actually excuse or mitigate the discharge? NO. The applicant has submitted no medical documentation indicating a diagnosis of PTSD and/or other mitigating mental health conditions. Review of the VA medical records indicates that the applicant has not been diagnosed with either a service connected or nonservice connected BH condition. Even if the applicant were to have a mitigating mental health condition, it would not mitigate his conviction as it would not have affected his ability to differentiate right from wrong and adhere to the right.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was/was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and the medical review, the Board concurred with the advising official finding no medical documentation indicating a diagnosis of PTSD and/or other mitigating mental health conditions. The opine noted after review of the VA medical records it indicated that the applicant has not been diagnosed with either a service connected, or nonservice connected BH condition.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct. The Board considered the applicant's character letters of support attesting to his professionalism, leadership, moral compass, and his selfless service to others. However, the Board agreed if the applicant were to have a mitigating mental health condition, it would not mitigate his conviction as it would not have affected his ability to differentiate right from wrong and adhere to the right. Based on the preponderance of evidence, the Board denied relief.

3. 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:

<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:

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.



I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, Section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

4. Army Regulation 600-8-24 sets forth the basic authority for officer transfers from active duty (AD) to the Reserve Component and discharge functions for all officers on AD for 30 days or more. The version in effect at the time provided that:

a. An Honorable characterization of service. An officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty.

b. General (under honorable conditions) characterization of service. An officer will normally receive an under honorable conditions characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 5-7 provided that an officer convicted and sentenced to dismissal as a result of general court-martial proceedings will be processed pending appellate review of such proceeding, and retained on AD until the appellate review is completed or placed on excess leave.

5. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September

2014, to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

6. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on 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//