

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 May 2024

DOCKET NUMBER: AR20230011100

APPLICANT REQUESTS: reconsideration of his previous request to upgrade his under other than honorable conditions (UOTHC) discharge to honorable

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

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20080017335 on 15 January 2009.
2. The applicant states he served his country to the best of his patriotic self. Upon return, he had numerous mental health problems. He asks the Board to please help. He is seeking help from his fellow countrymen for whom he went to battle for and with. He has an ongoing battle with post-traumatic stress disorder from the Forward Army Refueling Point Shell and Iraq.
3. The applicant's service record contains the following documents:
 - a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows the applicant enlisted in the Regular Army on 2 November 2011 and entered active duty on 9 January 2002.
 - b. General Officer Memorandum of Record (GOMOR), dated 11 July 2002 wherein the applicant was reprimanded for driving under the influence of alcohol on 3 July 2002. On 11 July 2002, the applicant acknowledged receipt of the GOMOR and did not wish to submit a rebuttal. The applicant's chain of command recommended the GOMOR be filed in his official military personnel file (OMPF) and on 8 August 2002, the commanding general directed the GOMOR be filed in the applicant's OMPF.

c. DD Form 458 (Charge Sheet), dated 28 February 2005 shows the applicant's commander preferred court-martial charges against the applicant, in the rank of specialist for:

- absenting himself from his unit from on or about 17 December 2005 to on or about 19 January 2005
- failing to go to his appointed place of duty on or about 27 January 2005
- absenting himself from his unit on or about 21 February 2005 to on or about 25 February 2005
- wrongful use of cocaine on or about 24 February 2005

d. Memorandum subject Request for Discharge in lieu of (ILO) Trial by Court-Martial, dated 1 March 2005, shows the applicant consulted with legal counsel and voluntarily requested to be discharged ILO trial by court-martial under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), chapter 10. Legal counsel advised him of the basis for his contemplated trial by court-martial and the maximum permissible punishment authorized under the Uniform Code of Military Justice; of the possible effects of a discharge UOTHC if the request was approved; of the procedures and rights available to him, and of his right to submit statements in his own behalf.

e. Memorandum from the Staff Judge Advocate regarding the applicant's request for discharge, dated 3 March 2005 shows the applicant's chain of command recommended approval of his request for discharge ILO court-martial. On 3 March 2005, the appropriate approval authority approved the applicant's request for discharge ILO trial by court-martial with an UOTHC discharge.

f. On 11 March 2005, the applicant was discharged accordingly. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged in accordance with chapter 10 of AR 635-200, in lieu of trial by a court-martial, with an under other than honorable conditions characterization of service. He was assigned Separation Code KFS and Reentry Code 4. He had completed 3 years and 29 days of active duty service. He had lost time from 17 December 2004 through 19 January 2005. A DD Form 215 (Correction to DD Form 214) shows he had service in Iraq from 17 February 2003 through 3 February 2004. He was awarded or authorized the:

- Army Achievement Medal
- Army Commendation Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- National Defense Service Medal
- Army Service Ribbon
- Overseas Service Bar (2nd Award)

- Air Assault Badge
- Driver and Mechanic Badge

g. On 5 October 2006, the applicant petitioned the Army Discharge Review Board (ADRB) requesting an upgrade of his discharge. On 14 December 2007, the ADRB stated after careful review the applicant's application, military records, and all other available evidence, the ADRB determined he was properly and equitably discharged. Accordingly, his request for a change in the character and/or reason of his discharge was denied.

4. On 8 November 2023, the Army Review Boards Agency requested medical documentation from the applicant to show he suffered from PTSD. The applicant did not respond.

5. On 10 September 2008, the applicant petitioned the Board requesting an upgrade of his discharge. On 15 January 2009, the Board denied his request stating, the evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of the case were insufficient as a basis for correction of the applicant's records.

6. Based on the applicant's assertion he suffered from PTSD, the ARBA Medical Section provided a medical review for the Board's consideration.

7. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC). He contends he experienced PTSD that mitigates his misconduct.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted into the Regular Army on 2 November 2001 through the Delayed Entry Program, and he entered active duty on 9 January 2002.
- The applicant received a GOMOR after a driving under the influence (and under-aged drinking) charge in July 2002. He was deployed to Iraq from 17 February 2003 to 3 February 2004. In February 2005 the applicant had court-martial charges preferred against him for two incidents of AWOL, one failure to go to his appointed place of duty, and wrongful use of cocaine.
- The applicant was discharged on 11 March 2005 following approval of his request for discharge in lieu of court-martial. He completed 3 years and 29 days of active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he had PTSD associated with a deployment to Iraq. He did not provide any medical documentation. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed a diagnosis of Panic Disorder without Agoraphobia in December 2004. The documentation does not elucidate the symptom presentation and only stated that the applicant was presenting for refill of alprazolam and escitalopram because "the medication was thrown out the house by the wife." Prescription records show these medications were also prescribed in May and August 2004. There is also a document from 2020 related to care through a civilian provider indicating a history of alcohol dependence, anxiety, and depression.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had PTSD at the time of the misconduct. Records reflect that he was diagnosed with a mental health condition, Panic Disorder, while on active service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service, and there is documentation of treatment for a mental health condition during his active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. There is sufficient evidence that the applicant was experiencing a mental health condition, possibly PTSD, while on active service. There is evidence that the applicant received mental health treatment following his deployment to Iraq, and the symptom presentation of Panic Disorder does have some overlapping symptoms with PTSD. Additionally, drug or alcohol use is a common self-medicating strategy for avoiding uncomfortable emotions, and avoidant behavior, such as going AWOL, can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Given the nexus between trauma exposure, avoidance, and substance use and in accordance with liberal consideration, the basis for separation is mitigated.

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The applicant was charged with commission of an offense (AWOL two times, cocaine, failing to go) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical reviewer's finding sufficient evidence to support the applicant had condition or experience that mitigated his misconduct. The Board determined that in view of his AWOL, cocaine use, and failure to report, his service did not rise to the level required for an honorable characterization; however, a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board determined that such upgrade did not change the underlying reason for separation and thus the narrative reason for separation and corresponding codes should not change.

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 partial amendment of the ABCMR's decision in Docket Number AR20080017335 on 15 January 2009. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 ending on 11 March 2005 to show:

- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change



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. AR 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of

Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to AD.

d. A discharge under other than honorable conditions is an administrative separation from the Service under conditions other than honorable. It may be issued in lieu of trial by court martial.

e. A Soldier who requests discharge as prescribed in chapter 10 may be discharged under other than honorable conditions if he/she has been afforded the opportunity (not less than 72 hours) to consult with a consulting counsel.

(1) The Soldier must certify in writing that he/she understands that he/she may receive a discharge under other than honorable conditions.

(2) The Soldier must understand the adverse nature and possible consequences of such a discharge.

(3) The Soldier must personally sign a request for discharge. A conditional request is not permitted.

(4) The consulting counsel will sign as a witness, indicating that he/she is a commissioned officer of The Judge Advocate General's Corps. A Soldier may waive consultation with a consulting counsel. Counsel will prepare a statement to this effect that will be attached to the file; the Soldier will state that the right to counsel has been waived.

f. A Soldier who has committed an offense or offenses, the punishment for which under the UCMJ and the Manual for Courts-Martial includes a bad conduct or

dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial.

2. AR 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities, reasons for separating Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows code KFS is used for discharge In Lieu of Trial by Court-Martial.

3. AR 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

4 On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) 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.

5. 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 (TBI); 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 sexual assault or sexual harassment was unreported, or 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. 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.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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.

7. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.

//NOTHING FOLLOWS//