

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 July 2024

DOCKET NUMBER: AR20230011969

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show:
 - award of the Purple Heart and Army Commendation Medal
 - service in Iraq

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

- DD Form 296 (Application for the Review of Discharge)
- Self-Authored Statement
- Medical Statement, 22 February 2024
- Standard Form 180 (Request Pertaining to Military Records), 21 March 2023
- Enlistment Documents
- Purple Heart Certificate, Permanent Order (PO) 168-03, 16 June 2004
- Army Commendation Medal Certificate, PO# 021-18, 21 January 2005
- Discharge Documents
- DA Form 2-1 (Personnel Qualification Record – Part II)

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 he is requesting an upgrade of his under other than honorable conditions discharge.

a. He deployed to Iraq with B Company, 9th Engineers out of the 1st Infantry Division in Schweinfurt, Germany. After a 13-month deployment he had some personal issues at home which he had no choice but to handle in person. He is petitioning the

Board for his records, correction of awards, and for an upgrade of his discharge that will enable him to receive benefits from the Department of Veteran Affairs (VA).

b. In early April 2005, the applicant took leave to tend to legal matters regarding his brother's accident in the applicant's vehicle. The vehicle was in his name with no power of attorney or coverage for anyone else while he was away. The court dates were scheduled for dates that took him past his leave dates. He attempted to notify his leadership of the challenges and was informed if he did not appear in formation on Monday, he would be marked absent without leave (AWOL). He attempted to get his leave extended to no avail. He reached out to his unit following the completion of his hearings in hopes of receiving a travel voucher to return to Germany and the unit told him there was nothing they could do. He was 20 years old at the time and the unit stopped communicating with him and refused to return his calls.

c. He spent the first year and a half of his adult life in combat and earned the Purple Heart in addition to the Army Commendation Medal (ARCOM). He was terrified that he was going to go to prison and the unit he just returned from deployment with would not even try to get him back. He talked it over with family members and they recommended he get a job to help him pay for his own return to Germany. He began working to save money and continued communicating with Soldiers in the unit he considered friends. He was informed the leadership advised his friends to cut all communication going forward. In December 2005 he received word that AWOL Soldiers should report to Fort Knox, KY for processing. He woke up one early December morning, packed up his car, and drove to Fort Knox. He was detained and informed he would await a court-martial, stripped of his rank, stripped of pay and benefits, and dishonorably discharged. The unit leadership informed him of the option to be discharged under other than honorable conditions and he elected the discharge to return to his pregnant wife.

d. He was released from Fort Knox after 6 months with a bus ticket. He would receive his paperwork in the mail in the next 2-6 weeks and did not receive anything until 6 months later. The DD Form 214 he received was missing his deployment and awards. He felt hopeless and did not believe anyone would be willing to assist him since the unit had directed everyone to cease communication with him. He attempted to get assistance from former Soldiers to obtain documentation of his deployment, and subsequently reached out to VA for care due to his post-traumatic stress disorder (PTSD). He ran into one brick wall after another.

3. The applicant provides:

a. A medical statement from Dr. [REDACTED] Health, dated 22 February 2024 which states the applicant is a patient under his care and has been diagnosed with PTSD as a result of his military service. The applicant continues to undergo treatment for his condition.

b. A SF 180 dated 21 March 2023, wherein the applicant requests a complete copy of his entire personnel file.

c. The below listed documents, to be referenced in the service record, are copies of the documents the applicant received.

- Enlistment Documents
- Award Certificates
- Discharge Documents
- DA Form 2-1 (Personnel Qualification Record)

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 4 September 2003, for a period of not less than 6 years.

b. The available DA Form 2-1 (Personnel Qualification Record – Part II) does not list his foreign service nor a deployment but did include AWOL dates from approximately 21 July 2005 to 29 December 2005.

c. The service record included two award certificates:

- Purple Heart, Permanent Order #168-03, 16 June 2004 – for wounds received in action in Iraq on 11 May 2004
- Army Commendation Medal, Permanent Order #021-18, 21 January 2005 – for exceptionally meritorious service during Operation Enduring Freedom II while serving as a Combat Engineer from 16 March 2004 to 21 February 2005

d. Orders 4-15 dated 4 January 2006 assigned the applicant to the U.S. Army Personnel Control Facility effective 29 December 2005. Additional instructions further noted the applicant surrendered to military authorities at 1300 hours.

e. A DD Form 458 (Charge Sheet) shows on 12 January 2006, court-martial charges were preferred on the applicant for one specification of absenting himself from his organization from on or about 21 July 2005 to on or about 29 December 2005.

f. On 12 January 2006, after consulting with legal counsel he requested a discharge in lieu of trial by courts-martial under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10. He acknowledged:

- maximum punishment
- he was guilty of the charges against him or of a lesser included offense

- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration,
- he may be deprived of his rights and benefits as a Veteran under both Federal and State law
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he may expect to encounter substantial prejudice in civilian life
- he elected not to submit matters

g. On 25 January 2006, consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge in lieu of trial by courts-martial under the provisions of AR 635-200, Chapter 10. He would be issued an under other than honorable conditions discharge and reduced to the lowest enlisted rank of private (E-1).

h. On 8 February 2006, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 1 year, 11 months, and 161 days of active service with no lost time. He was assigned separation code KFS and the narrative reason for separation listed as "In Lieu of Trial by Court-Martial," with reentry code 4. It also shows he was awarded or authorized:

- National Defense Service Medal
- Army Service Ribbon

5. On 18 July 2024, a representative of the Defense Finance Accounting Services provided verification to confirm the applicant deployed from approximately 12 February 2004 to 23 February 2005; however, the applicant continued to receive Imminent Danger Pay (IDP) through May 2005.

6. A review of the applicant's service record confirms awards and administrative entries were omitted from his DD Form 214. The entries will be added to his DD Form 214 as administrative corrections and will not be considered by the Board.

7. On 27 June 2012, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

8. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged in lieu of trial by court-martial.

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

10. 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) to general or honorable. He contends he experienced undiagnosed 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 4 September 2003.
- The applicant deployed to Iraq from 12 February 2004 to 23 February 2005. He had court-martial charges preferred against him on 12 January 2006 for being AWOL from 21 July 2005 to 29 December 2005. On 25 January 2006 his request for discharge in lieu of trial by court-martial was approved.
- The applicant was discharged on 8 February 2006 and completed 1 year, 11 months, and 161 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 has PTSD from his deployment to Iraq from 2004-2005. The application included a letter from a psychiatrist dated 22 February 2024 stating that the applicant is receiving treatment for PTSD as a result of his military service. A Report of Medical Examination dated 14 January 2003 showed no indication of any pre-military history of mental health conditions. 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 no history of mental health related treatment or diagnoses by DoD or VA. Civilian records showed a diagnosis of PTSD by a primary care physician (the author of the letter included in his application) dated 23 June 2023 and treatment with two antidepressant medications as well as a history of one other antidepressant trial. The most recent documentation dated 17 November 2023 indicated improved control of PTSD symptoms, and documentation

dating back to June 2023 showed primary symptoms of: anxiety, irritability, hypervigilance in public places, and sleep difficulty associated with past traumatic experiences in the military. The applicant also reported a history of excessive alcohol use but more recently was drinking only on occasion.

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.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. He provided documentation of diagnosis and treatment, and JLV records discussed symptoms associated with PTSD.

(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. He had a deployment to Iraq as a combat engineer and received a Purple Heart and the Army Commendation Medal. He has been receiving treatment for PTSD by a civilian provider for symptoms associated with trauma exposure while in the military.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. However, he has a diagnosis of PTSD and is receiving treatment by a civilian physician. The applicant's misconduct of being AWOL can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Given the nexus between trauma exposure and avoidance and in accordance with liberal consideration, the basis for separation is mitigated.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct leading to the applicant's separation and the mitigation found for that misconduct found in the medical review, the Board concluded there was sufficient evidence to upgrade the applicant's characterization of service 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 the applicant a DD Form 214 showing:

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

1/7/2025

X

CHAIRPERSON

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 NOTE(S):

A review of the applicant's service records shows administrative entries were omitted and he is authorized additional awards not annotated on his DD Form 214, for the service period ending 8 February 2006. As a result, correct his DD Form 214 by adding the following:

- Block 12f (Foreign Service) – 0001 00 12 (1 year and 12 days)
- Block 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized):
 - Global War on Terrorism Service Medal
 - Iraq Campaign Medal with two bronze service stars
 - Purple Heart
 - Army Commendation Medal
- Block 18 (Remarks) – “Service in Iraq from 20040212 – 20050223”

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. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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 (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or

dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged in lieu of trial by court-martial.

3. 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.

4. 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; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

5. 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 based on 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.

6. Section 1556 of Title 10, United States Code, 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//