

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 July 2024

DOCKET NUMBER: AR20230012217

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) discharge.

APPLICANT'S SUPPORTING DOCUMENT CONSIDERED BY THE BOARD:
DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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 the possibility that post-traumatic stress disorder (PTSD) was a contributing factor to his misconduct was not considered in the determination of his characterization of service at the time of his discharge. Other Soldiers made fun of him because of his stuttering on a continuing basis. They were told to stop but did not. Instead of taking it higher, he misbehaved and for that, he is sorry. It showed a sign of weakness when he should have been strong. The things he did in the Army were beneficial to him and his family. They are proud of him and his accomplishments, but he cannot excuse his actions that led to his discharge. He desires an upgrade based upon the extenuating circumstances that resulted in his actions.
3. Following a period of honorable service in the Illinois Army National Guard, the applicant enlisted in the Regular Army on 27 July 2000.
4. The applicant's duty status changed from:
 - present for duty (PDY) to absent without leave (AWOL) on 7 August 2000
 - AWOL to PDY on 11 August 2000
 - PDY to AWOL on 10 September 2000
 - AWOL to PDY on 27 September 2000
 - PDY to AWOL on 1 November 2000

- AWOL to dropped from rolls (DFR) on 1 December 2000
 - DFR to PDY on 10 March 2002
5. The applicant served in Kuwait/Iraq from 3 March 2003 until 12 February 2004.
6. The applicant's unit changed his duty status from:
- PDY to AWOL on 15 April 2004
 - AWOL to DFR on 15 May 2004
 - DFR to Confined by Civilian Authorities (CCA) on 27 November 2004 when he was apprehended by civil authorities
 - CCA to PDY on 17 December 2004 when he was returned to military control
7. A DD Form 458 (Charge Sheet) shows on 17 December 2004, court-martial charges were preferred against the applicant for violation of Article 86 of the Uniform Code of Military Justice (UCMJ) for on or about 15 April 2004, without authority, absenting himself from his organization and remaining so absent until he was apprehended on or about 27 November 2004.
8. On 20 December 2004, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), 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.
9. On 13 January 2005, the applicant's military counsel rendered a memorandum wherein he requested the separation authority reconsider his decision to disapprove the applicant's request for separation in lieu of trial by court-martial. The applicant's chain of command also recommended approval of his request.
10. On 18 January 2005, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial, with his service characterized as UOTHC. He further directed the applicant be reduced to the rank/grade of private (PV1)/E-1 prior to the execution of the discharge.
11. He was discharged on 26 January 2005 under the provisions of Army Regulation 635-200, Chapter 10, by reason of "In Lieu of Trial by Court-Martial" with Separation Program Designator code "KFS" and Reentry Eligibility code "4." He was credited with completing 2 years, 6 months, and 18 days of active service this period. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was awarded or authorized:

- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- National Defense Service Medal
- Army Service Ribbon
- Overseas Service Bar (2nd Award)
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)

12. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. A characterization of UOTHC is authorized and normally considered appropriate.

13. 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.

14. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service to Under Honorable Conditions (General). He contends he experienced Posttraumatic Stress Disorder (PTSD) that mitigates his misconduct. Specifically, the applicant asserts he was made fun of by other Soldiers due to his stuttering and instead of taking it to higher he misbehaved. 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) following a period of honorable service in the Illinois Army National Guard the applicant enlisted in the Regular Army on 27 July 2000, 2) the applicant was documented to be absent without leave (AWOL) on three separate occasions in 2000 and was subsequently dropped from rolls (DFR) on 01 December 2000. His duty status was changed from DFR to present for duty (PDY) on 10 March 2002, 3) the applicant served in Kuwait/Iraq from 03 March 2003 until 12 February 2004, 4) the applicant was again documented to be AWOL on 15 April 2004 and was DFR on 15 May 2004. He was apprehended by civil authorities on 27 November 2004 and returned to military control on 17 December 2004, 5) court-martial charges were preferred against the applicant on 17 December 2004 for being AWOL on or about 15 April 2004 until apprehended on or about 27 November 2004, 6) The applicant was discharged on 26 January 2005 under the provisions of Army Regulation (AR) 635-200, Chapter 10 by reason of In Lieu of Court-Martial with a separation code of KFS.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was in use only partially during the applicant's time in service; however, no military treatment records aside from

prescriptions are available for review. The applicant did not provide any military or civilian BH records for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. There are no in-service treatment records available for review. The DoD prescription history available through JLV does not show a history of any BH-related medications.

d. Several VA records were available for review through JLV from 08 May 2013 through 07 August 2023. The applicant is not service connected through the VA for any BH conditions. Documentation available indicates the applicant met with a Health Care for Re-Entry Specialist through the VA in 2018 for assistance with understanding available benefits upon his release from incarceration. He met with another re-entry specialist in August 2023 and it was documented that the applicant had submitted a VA service connected claim but was denied and was seeking assistance with appeal. There is no documentation available specifying the claim. The applicant has not been diagnosed with any BH conditions through the VA.

e. The applicant is petitioning the board to upgrade his UOTHC discharge. He contends his misconduct was related to PTSD. A review of records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of PTSD. In absence of documentation supporting his assertion there is insufficient evidence to establish his misconduct was related to or mitigated by PTSD and insufficient evidence to support an upgrade based on BH medical mitigation. However, he contends his misconduct was related to PTSD, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to PTSD.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition experience actually excuse or mitigate the discharge? No. A review of the records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of PTSD. In absence of documentation supporting his assertion there is insufficient evidence to establish his misconduct was related to or mitigated by PTSD and insufficient evidence to support an upgrade based on BH medical mitigation.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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 Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with being absent without leave from 15 April 2004 to 27 November 2004, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted the applicant's contention of post-traumatic stress disorder; however, reviewed and concurred with the medical advisor's review finding no evidence of a behavioral health condition. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

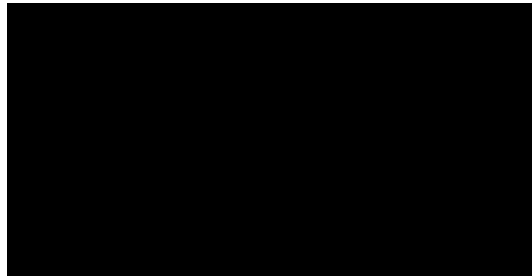
BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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, 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. 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 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.

6. 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.

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, 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//