

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 August 2024

DOCKET NUMBER: AR20230013321

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) character of service to under honorable conditions (general), and a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Service Records (8 pages), dated 13 July 2004 to 10 December 2004
- statement of support, dated 20 September 2020

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, there was a lack of psychiatric care and treatment when he returned from the war in Iraq, despite his mother informing his commander that he was having serious mental health issues, to include delusions, flashbacks, anxiety, and self-destructive behavior. He still suffers from mental health issues.
3. The applicant enlisted in the Regular Army on 7 May 2003 for a 5-year period. Upon completion of initial entry training, the applicant was awarded military occupational specialty 11B (Infantryman).
4. The applicant served in Kuwait and Iraq from 30 December 2003 to 3 February 2004.
5. Court-martial charges were preferred against the applicant on 13 July 2004 for violations of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows the applicant was charged with the following violations:

- absenting himself from his unit, without authority (AWOL), on or about 22 July 2004 until on or about 31 July 2004
- wrongfully using marijuana, between on or about 13 June 2004 and 12 July 2004
- wrongfully using methylenedioxyamphetamine, between on or about 8 July 2004 and 12 July 2004
- wrongfully appropriating a motor vehicle, of a value of more than \$500.00, on or about 15 July 2004

6. The applicant consulted with legal counsel on or about 29 November 2004.

a. He was advised of the basis for the contemplated 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.

b. After receiving legal counsel, he voluntarily requested discharge, in lieu of trial by court-martial, under the provision of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He acknowledged making this request free of coercion. He further acknowledged understanding if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration (VA), and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

c. He was advised he could submit any statements he desired in his behalf. There is no statement available for review in the applicant's service record.

7. In a memorandum from U.S. Army Trial Defense Service, Fort Campbell, KY, dated 29 November 2004, Defense Counsel stated, in effect, the applicant lived in the company dayroom for the past seven months. During that time, his liberty was severely restricted. If his request for a Chapter 10 discharge was approved, with a UOTHC character of service, he would receive adequate punishment for his crimes. He would lose his GI Bill and any other VA benefits; it would be next to impossible for him to find a decent job, go to college, or have his characterization upgraded.

8. On 2 December 2004, the separation authority approved the requested discharge, directed the applicant be reduced to private/E-1 and the issuance of a UOTHC characterization of service.

9. The applicant was discharged on 10 December 2004, under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. His DD Form 214 (Certificate of

Release or Discharge from Active Duty) confirms he received a UOTHC character of service, with separation code KFS and reentry code RE-4. He was credited with 1 year, 6 months, and 10 days of net active service, with lost time from 22 July 2004 to 14 August 2004. He was awarded or authorized the:

- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- National Defense Service Medal
- Army Service Ribbon

10. The applicant provides a statement of support from his mother, dated 20 September 2020, wherein she states:

a. Her son was discharged unjustly and without psychiatric treatment after serving in combat in Iraq. When he returned, he was in obvious distress. He was very anxious, made strange noises at the trees, walked like he was carrying his rifle, and had nightmares, and trouble sleeping. She spoke with his commander and told him she thought her son needed to be tested for psychiatric issues. Her son turned to drugs and became very self-destructive.

b. After returning to base from his period of AWOL, he was held in one of the officer's quarters for several months, like it was jail. He still received no psychiatric treatment. After his discharge, he was homeless for several years. He still has issues stemming from his time in Iraq. She believes he suffers from post-traumatic stress disorder (PTSD).

11. Discharges under the provisions of AR 635-200, Chapter 10, are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC character of service is normally considered appropriate.

12. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

13. MEDICAL REVIEW:

1. 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 Other Mental Health Issues that mitigates his misconduct. More specifically, the applicant contends his mental health deteriorated after returning from combat to include delusions, flashbacks, anxiety, and self-destructive behavior. 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 Regular Army on 07 May 2003 as an 11B

(infantryman), 2) he served in Kuwait and Iraq from 30 December 2003 to 03 February 2004, 3) court-martial charges were preferred against the applicant on 13 July 2004 for being absent without leave (AWOL); wrongfully using marijuana; wrongfully using methylenedioxyamphetamine; and wrongfully appropriating a motor vehicle of a value of more than \$500.00 on or about 15 July 2004, 4) the applicant was discharged on 02 December 2004, Chapter 10, in lieu of trial by court-martial.

2. 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. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

3. In-service BH records available for review were limited to a Sanity Board Evaluation that was conducted over the course of three days between 09-22 November 2004 at the request of JAG and one unscheduled walk-in visit due to homicidal ideation on 15 November 2004.

4. The applicant was not definitively diagnosed with a psychiatric condition at the conclusion of the sanity board assessment in the records available for review; however, the records show the following diagnostic considerations: Adult antisocial behavior with a rule out of Bipolar Disorder with Psychotic features and Schizotypal traits (provisional). On 22 November 2004 the provider documented that his self-report is consistent with a history of Bipolar Disorder though also stated the applicant's tendency towards overreporting his psychiatric symptoms and possible effects of substances on mood bear consideration. At the time of the evaluation the provider documented 'unspecified diagnosis.' Throughout the evaluation, the provider documented the applicant's speech as pressured, rate of speech as slowed and sometimes slurred, and presented with a flat affect. On 09 November 2009, the applicant endorsed the following symptoms: fluctuating appetite, mood as 'up and down,' loss of pleasure, decreased energy, and auditory and visual hallucinations though denied suicidal and/or homicidal ideation. The provider also noted that the applicant was preoccupied with religion and 'crying for no reason.' On 10 November 2004, the provider documented that the applicant's thought content was impaired due to a history of odd beliefs and magical thinking and that his affect was constricted.

5. The provider documented the applicant's self-reported pre-military mental health history and drug use. Prior to joining the military, the applicant reported that he used marijuana on a daily basis (starting at age 15) and MDMA on the weekends (starting at age 17) until he joined the military. It was noted that he endorsed using marijuana a few times in the military prior to deployment and resumed regular use following his return from deployment. Regarding MDMA, it was documented that he did not use in the military until after he returned from deployment on several occasions. It was also documented that the applicant endorsed a history of visual and auditory hallucinations

dating back to childhood, which began prior to practicing his religion. The hallucinations were described as conversations and visions of a woman whom he did not know, seeing images and pictures of family from past generations which he would later see in real life, as well as having dreams about people during his early teenage years and later meeting people in-person who were identical to those in his dreams. It was also documented that the applicant had a history of a suicide attempt by cutting his wrist at age 11 or 12 years old. The applicant stated his best friend suicided two years prior to the evaluation and he was the person who found the body.

6. The provider assessed the applicant's reasons for the misconduct during the sanity board evaluation. Regarding going AWOL, the applicant informed the provider he went AWOL after people in his unit were 'messing with his religion,' which he identified as Pagan. He said when he was told he had to go to the field again he recalled a prior incident where he felt chastised for his religious beliefs and that others were disrespectful towards his religion and decided he did not want to go back. The applicant reported that he felt 'something [come] over him and he reacted by going AWOL.' The applicant described his decision as impulsive and described his overall mood at that time as irritable accompanied by high self-esteem, racing thoughts, problems concentrating, and talkativeness. The provider noted he had been experiencing these symptoms one week prior to going AWOL and they lasted for about one week afterwards. It was also documented that the applicant had asked to borrow the car he was charged with wrongfully appropriating for about 10 days and after seven days the owner had reported it as stolen. It was documented that the applicant reported he was in a motor vehicle accident while AWOL and that his friend told him to walk away from the accident so he did not get in trouble. The applicant self-reported to the provider that he provided a false name and social security number so he would not get in trouble for going AWOL. He was arrested and taken to jail on 31 July 2004 until picked up by his unit on 15 August 2004.

7. The applicant is not service connected through the VA for any conditions. His eligibility is listed as 'not eligible, humanitarian emergency.' A consult was submitted on 14 April 2023 for a PTSD evaluation. There were several notes documenting an inability to reach the applicant to schedule the evaluation and on 18 December 2018 did not show to his appointment. There is no other BH documentation available for review in JLV.

8. The applicant provided a letter dated 20 September 2020 written by his mother as part of his application. She asserts that the applicant was in "severe distress" upon his return from Iraq, noting in public he felt like the enemy was everywhere, that he was making "strange noises at the trees-saying things were talking in the trees," that he was walking as if he was carrying his rifle, was unable to sleep, and was having nightmares. Furthermore, she states that she contacted his commander notifying him that the applicant needed to be evaluated for psychiatric reasons and after his return he turned

to drugs and became self-destructive. Following his discharge from the military, she states that the applicant was homeless for many years and continues to have mental health issues related to his time in Iraq to include agoraphobia, difficulty maintaining employment, and severe anxiety, which she notes is a change in functioning from his pre-deployment functioning.

9. The applicant is applying to the ABCMR requesting an upgrade of his UOTHC characterization of service to under honorable conditions (general). He contends he experienced Other Mental Health Issues that mitigates his misconduct. In-service BH records show the applicant's history and symptoms were consistent with several possible conditions though was not definitively diagnosed with a BH condition. Diagnostic considerations during a sanity board evaluation were noted as Adult antisocial behavior, rule out Bipolar Disorder with Psychotic Features and Schizotypal traits. The applicant is not service connected through the VA for any BH conditions though of note his UOTHC discharge renders him ineligible for services. The applicant did not provide any additional medical records as part of his request. A letter from his mother documented that the applicant's behavior changed following his deployment, most notably that he appeared to experience psychotic or dissociative symptoms, problems with sleep, and nightmares.

10. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he experienced Other Mental Health Issues.

(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? Partially. The applicant's in-service BH medical records were limited to a Sanity Board Evaluation conducted in conjunction with the applicant's separation and one walk-in evaluation due to homicidal ideation. There were not any VA BH records aside from a request for a PTSD evaluation and the applicant did not provide any civilian BH documentation. The in-service BH records documented several diagnostic considerations to include Adult antisocial behavior with a rule out of Bipolar Disorder with Psychotic Features and Schizotypal traits; however, the available records do not show that the applicant was definitively diagnosed with a BH condition and there are no post-service treatment records available indicating that the applicant has been diagnosed or treated for a BH condition.

11. Although the applicant was not definitively diagnosed with a BH condition in-service nor post-discharge, he endorsed symptoms of depression and mania in-service, which the evaluating provider noted his self-report is consistent with Bipolar Disorder. This

connection was caveated due to his tendency to overreport psychiatric symptoms as well as the potential impacts of substance use on mood. While his documented pre-military BH history was also noted to be consistent with Schizotypal traits (which would constitute a personality disorder if diagnosed), it is possible that the applicant had comorbid a mood and personality disorder. Given the applicant's childhood and in-service BH symptoms coupled with his mother's letter stating he was in severe distress following his return from deployment which she noted as a change in functioning, there is an indication that the applicant suffered from severe mental illness in-service, and continued to experience mental illness as well as psychosocial difficulties (e.g., homelessness unemployment) following his discharge. Furthermore, despite evidence of pre-service drug use, a period of abstinence followed by continued use after his deployment suggests that his BH condition(s) may have worsened upon his return from deployment. As there is an association between symptoms of mania (e.g., impulsivity, recklessness, impaired decision making), going AWOL, and using substances to self-medicate, there is a nexus between in-service symptoms consistent with Bipolar Disorder and some of his misconduct. However, as there is no evidence that the applicant was in the midst of a severe manic or psychotic episode at the time of the misconduct, mitigation for wrongfully misappropriating a vehicle would not be supported. As such, mitigation is partially supported.

12. Furthermore, per the Wilkie Memorandum, additional factors regarding clemency should be taken into consideration for this applicant given that the misconduct occurred approximately 20 years ago, there is evidence that he had severe mental illness, and following discharge continued to suffer from mental illness along with difficulty maintaining employment and housing. Due to his UOTHC discharge, he is ineligible for mental health treatment through the VA, which is considered a necessity for diagnoses that fall on the Bipolar spectrum. As there is evidence that the applicant had a BH condition in-service and continues to experience problems related to mental illness 20 years post-discharge, there is support for clemency for BH reasons.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that 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 concurred with the advisory findings, noting evidence of a behavioral health (BH) condition during service and ongoing mental health challenges nearly two decades post-discharge.

2. Kurta Questions:

- (1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he experienced Other Mental Health Issues.
 - (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? Partially. The applicant's in-service BH medical records were limited to a Sanity Board Evaluation conducted in conjunction with the applicant's separation and one walk-in evaluation due to homicidal ideation. There were not any VA BH records aside from a request for a PTSD evaluation and the applicant did not provide any civilian BH documentation. The in-service BH records documented several diagnostic considerations to include Adult antisocial behavior with a rule out of Bipolar Disorder with Psychotic Features and Schizotypal traits; however, the available records do not show that the applicant was definitively diagnosed with a BH condition and there are no post-service treatment records available indicating that the applicant has been diagnosed or treated for a BH condition.
3. The Board determined the applicant's record reflected mitigating in-service factors that outweighed the misconduct involving marijuana use and AWOL. His deployment history and earned awards prior to the misconduct were acknowledged as honorable contributions. Additionally, a character reference from his mother highlighted a noticeable change in demeanor following his return from Iraq. Taking into account the totality of circumstances and the presence of BH-related issues, the Board found sufficient grounds to support clemency. Based on this, the Board agreed an upgrade of the applicant's discharge to under honorable (general) conditions is warranted.
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:

| <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 Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by re-issuing the applicant's DD Form 214 for the period ending 10 December 2004 to show his characterization of service as under honorable (general) conditions.

X

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CHAIRPERSON

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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 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, USC, 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. AR 15-185 (ABCMR), paragraph 2-11 states applicants do not have the right to a hearing before the ABCMR. The Director of the ABCMR may grant a formal hearing whenever justice requires.

4. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. Paragraph 3-7a provides that 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. Paragraph 3-7b provides that 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.

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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) 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. 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.

6. 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//