

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 September 2024

DOCKET NUMBER: AR20230013953

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) characterization of service and an appearance before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 21 September 2002
- DD Form 214, for the period ending 10 May 2006
- two statements of support, dated 5 October and 6 October 2023
- Department of Veterans Affairs (VA) Progress Notes (28 pages), printed on 26 October 2023

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 he was involuntarily recalled from the Inactive Ready Reserve (IRR). He failed a drug test for "weed." He was self-medicating due to undiagnosed, untreated depression and post-traumatic stress disorder (PTSD). He believes his punishment was excessive for a first time offense. He served with distinction prior to the drug test.
3. The applicant enlisted in the Regular Army on 22 September 1998 for a 4-year period. Upon completion of initial entry training, he was awarded military occupational specialty 92G (Food Service Specialist). The highest rank he attained was specialist/ E-4.
4. On 13 September 2000, the applicant received a Letter of Reprimand from the Deputy Commanding General (DCG), Headquarters, U.S. Army Infantry Center, Fort

Benning, GA, for being apprehended on 3 September 2000 for driving under the influence of alcohol while under the age of 21. He was previously cited for driving under the influence on 17 December 1999.

a. The associated Military Police Reports, dated 3 September and 7 September 2000, show the applicant was also cited with the wrongful possession and use of marijuana. A search of the applicant, at the time of his traffic stop, revealed he was in possession of marijuana. Following his apprehension, he rendered a written sworn statement admitting to the possession and use of marijuana.

b. The applicant acknowledged receipt of the administrative reprimand and elected not to submit statements or documents in his own behalf. On 9 January 2001, the acting commander directed the administrative reprimand be permanently filed in the applicant's Official Military Personnel File.

5. The applicant was released from active duty and transferred to the IRR, on 21 September 2002, under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 4, by reason of completion of required active service. His DD Form 214 confirms his characterization of service was honorable. He was credited with 4 years of net active service and was awarded or authorized the:

- Army Achievement Medal (5th award)
- Army Good Conduct Medal
- National Defense Service Medal
- Armed Forces Expeditionary Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Marksman Marksmanship Qualification Badge with Rifle bar

6. The applicant was ordered to active duty in support of Operation Iraqi Freedom on 12 June 2005. He was subsequently promoted to the rank of sergeant/E-5 on 21 July 2005.

7. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing. However, his DD Form 214 shows he was discharged on 10 May 2006, in the rank/grade of private/E-1, under the provisions of AR 635-200, paragraph 14-12c(2), by reason of misconduct (drug abuse). His service was characterized as UOTHC. He was credited with 10 months and 29 days of net active service this period. In addition to his previous awards, he was awarded or authorized the Global War on Terrorism Service Medal and the Armed Forces Reserve Medal with "M" device.

8. Orders D-06-612936, issued by the U.S. Army Human Resources Command, St. Louis, MO, shows the applicant was honorably discharged from the U.S. Army Reserve on 7 June 2006.

9. The applicant provides the following:

a. In two statements of support, dated 5 October and 6 October 2023, two individuals who were mobilized with the applicant from August 2005 to June 2006 state the applicant served virtuously and honorably during that time. He was technically and tactically proficient and always put the mission first. He worked diligently to ensure his tasks were completed with professionalism and set himself above his peers.

b. Progress notes from the VA, printed on 26 October 2023, which will be summarized in the "Medical Review" section of this Record of Proceedings (ROP).

10. Regulatory guidance provides when an individual is discharged under the provisions of AR 635-200, Chapter 14, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. Characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate.

11. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

## 12. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. He contends he experienced Posttraumatic Stress Disorder (PTSD) and Other Mental Health Issues that mitigates his misconduct. More specifically, the applicant asserts that he was self-medicating with marijuana due to depression and PTSD. 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 (RA) 22 September 1998 as a 92G (Food Service Specialist), 2) on 13 September 2000 he received a Letter of Reprimand for being apprehended for driving under the influence of alcohol while under the age of 21. He was previously cited for driving under the influence on 17 December 1999, 3) the associated military police reports dated 03 September and 07 September 2000 shows that the applicant was cited with wrongful possession and use of marijuana, 4) the applicant was released from active duty and transferred to the IRR on 21 September 2002 under the provisions of Army Regulation (AR) 635-200, Chapter 4, by reason of completion of active service. He received numerous awards and medals during his service, 5) the applicant was ordered to duty in support of Operation Iraqi Freedom on 12 June 2005, 6) the applicant's record is void of

the specific facts and circumstances surrounding his discharge processing; however, his DD 214 shows he was discharged on 10 May 2006 under the provisions of AR 635-200, paragraph 14-12c(2), by reason of misconduct (drug abuse). 7) orders issued by Human Resources Command shows the applicant was honorably discharged from the U.S. Army Reserve on 07 June 2006.

b. The Army Review Boards 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.

c. Limited in-service medical records were available for review through JLV. Review of the available in-service records are void of any in-service BH diagnoses, concerns, or treatment history. Review of the applicant's service records shows that he served in Korea from 09 My 2001 through 11 September 2002 and Kuwait from 15 April 1999 through 15 August 1999.

d. Review of JLV shows the applicant is not service-connected through the VA for any conditions. He was referred for BH treatment through the VA on 13 September 2023 by his primary care manager (PCM) for ongoing treatment of depression as he had recently moved and was trying to establish care at his new location. The consult note documented that the applicant reported that he had experienced an increase in depressive symptoms due to several psychosocial stressors (i.e., moving, finances, etc.). Regarding the onset of symptoms, it was documented that the applicant reported his problems started 18 months prior to the appointment when he was 'hiding his alcohol use' which resulted in him attending substance use disorder and BH treatment (there are no records available to this Advisor regarding this episode of treatment). It was documented that once he started treatment, he realized he was using alcohol to cope with depression. At the time of the visit the applicant reported he had been started on medication and was previously diagnosed with Major Depression, PTSD, and insomnia. He also reported experiencing anxiety symptoms to include panic attacks that occur at night which wake him up and indicated his previous psychiatrist prescribed Alprazolam (anxiolytic) to address this concern. He also reported experiencing anhedonia, decreased concentration, difficulty with sleep, increased mood lability and irritability, though denied symptoms consistent with Bipolar Disorder or psychosis. It was documented that the applicant said 'yes' to a history of military trauma and hostile/friendly fire; however, no details were documented in the record. The provider noted that although the applicant reported some symptoms consistent with PTSD, he did not meet full criteria for the condition at the time of the visit. He reported he had been sober from alcohol since April 2022 though reported using THC gummies and occasional marijuana use. He denied using any other illicit substances. It was documented that the applicant reported he hit his head while in service in 2002 and was diagnosed with a concussion though declined care through the TBI clinic. His current

medications were listed as Bupropion, Trazodone, and Alprazolam and it was noted he had previously been prescribed Citalopram, Escitalopram, and Hydroxyzine. The provider documented his diagnoses/problems as Major Depressive Disorder (MDD), Recurrent, Moderate, Panic Disorder, and Sleep Disorder, Unspecified, Alcohol Use Disorder (AUD), Severe, In Sustained Remission. The provider continued his current medications noted above and added Aripiprazole (mood stabilizer) as an adjunct treatment for treatment of depression (prescribed rather than an antidepressant due to previously undesired side effects). He completed a mental health intake on 20 September 2023 and his previous diagnoses were reaffirmed (though did not include AUD, In Sustained Remission). The applicant provided a BH follow-up note dated 12 October 2023 as part of his application which was also available via JLV. During that visit, the applicant reported some improvement in his symptoms though indicated continued problems with sleep without associated fatigue. It was documented that the applicant indicated he did not know if he was waking up from nightmares associated with PTSD, but if he was, he did not remember them. There was no change in the applicant's diagnoses at this visit. On 07 December 2023, the applicant was started on Atomoxetine (used to treat ADHD) due to problems with concentration and completing tasks with a rule out diagnosis of attention deficit/hyperactivity disorder (ADHD) added to his diagnoses. The applicant continued to meet with BH for medication management of his BH symptoms approximately every 1-2 months through the present day. His last BH encounter available for review dated 12 August 2024 documented his diagnoses as MDD, Recurrent, Moderate, Panic Disorder, Sleep Disorder, Unspecified, and Rule out ADHD with current BH medications listed as Aripiprazole and Bupropion. It is noted that the applicant's problem list in JLV also shows a diagnosis of PTSD; however, the available clinical documentation does not indicate that he was diagnosed or treated for PTSD since initiating treatment in 2023, though as previously acknowledged his treatment records prior to engaging with the VA in 2023 were unavailable for review.

e. The applicant is applying to the ABCMR requesting an upgrade of his UOTHC characterization of service. He contends he experienced PTSD and Other Mental Health Issues that mitigates his misconduct. Review of the applicant's available in-service medical records were void of any BH diagnoses or treatment history. The applicant is not service-connected for any BH conditions through the VA. The available records show that the applicant was diagnosed and treated for with MDD, Recurrent, Moderate, Panic Disorder, and Sleep Disorder, Unspecified as of 2023. Although the records indicate he engaged in BH and substance use treatment prior to 2023, those records were unavailable for review. It was also documented that the applicant underwent substance use treatment for alcohol approximately 18 months prior to his VA BH appointment in September 2023 and it was there that he realized he had been self-medicating his depressive symptoms with alcohol. Although the applicant's problem list in JLV shows a diagnosis of PTSD, the available clinical documentation indicates that as of 2023 the applicant did not meet criteria for the condition though he did report some symptoms associated with PTSD. The available documentation does not specify

the date(s) onset of any of his diagnosed conditions nor associate them with his time in service.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he experienced PTSD and 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 or experience actually excuse or mitigate the discharge? Unclear. The applicant's in-service medical records were void of any BH diagnosis or treatment history and he is not service-connected through the VA for any BH conditions. The available records show that the applicant has been diagnosed and treated for Major Depressive Disorder, Panic Disorder, and Sleep Disorder, Unspecified through the VA beginning in 2023; however, the date(s) of onset of these conditions were not specified, they were not documented to be associated with his military service, and there is insufficient evidence that the applicant exhibited symptoms consistent with these conditions in-service. Although the applicant's problem list shows PTSD as a diagnosis, the clinical documentation indicated as of 2023 he did not meet criteria for that condition and did not elaborate on the onset of the condition. As such, while there is evidence that the applicant has been diagnosed with several potentially mitigating BH conditions that would otherwise provide the basis for BH mitigation for his misconduct as there is an association between self-medicating with alcohol and substances and depression and anxiety, there is insufficient information available indicating those conditions existed at the time of the applicant's discharge. As such, BH mitigation is unclear.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service to include deployment, the frequency and nature of his misconduct and the reason for his separation. The Board considered the applicant's behavioral health diagnoses and the review and conclusions of the ARBA Medical Advisor.

2. A majority of the Board found sufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding the applicant having several potentially mitigating behavioral health conditions for his misconduct.

Based on a preponderance of the evidence, a majority of the Board determined the applicant's character of service for the period ending 10 May 2006 should be changed to under honorable conditions (general).

3. The member in the minority found insufficient evidence of in-service mitigating factors and determined the character 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 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 his DD Form 214 for the period ending 10 May 2006 to show his character of service as under honorable conditions (general).

2/26/2025

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.

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. 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. prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.
  - a. 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.
  - b. The regulation provides 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 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.
  - a. 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.



b. Paragraph 3-7b states 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.

c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

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 post-traumatic stress disorder; 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//