

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 September 2024

DOCKET NUMBER: AR20240000166

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) characterization of service.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) service-connected disability compensation letter, 25 October 2013
- VA rating decision letter, 27 April 2023

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 that at the time of his separation from the Army, he was going through the beginning stages of post-traumatic stress disorder (PTSD) and anxiety. Since his separation from the military, he has been diagnosed with PTSD and anxiety and has had the opportunity to get the help that he desperately needed. He was unaware that it was possible to receive an upgrade to his characterization of service due to his disability, which would open many doors for him, including being able to use the post-911 GI Bill for his education. He asks the Board for relief so he can use his education benefits to pursue a degree in electronic engineering.
3. The applicant enlisted in the Regular Army on 13 September 2005, for 4 years and 18 weeks. The highest rank/grade he held was private first class/E-3.
4. The applicant's record shows he deployed to Iraq from 6 August 2006 to 15 October 2007.
5. On 20 June 2007, the applicant underwent a triage mental health assessment. The examining physician noted the applicant was potentially dangerous, was homicidal,

having mild suicidal thoughts, and had anxiety, which was causing chest pains. He also stated the applicant would undergo a complete intake assessment with mental health but felt the applicant's command should explore chaptering him out of the Army. He recommended the applicant be placed on unit watch with full precautions against the applicant's use of weapons, live ammunition, and the use of alcohol.

6. On 22 June 2007, he accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), for being absent without leave (AWOL) from his unit on or about 15 May 2007 and did remain so absent until on or about 12 June 2007. His punishment included reduction to private/E-1, forfeiture of \$650.00 pay per month for two months, 45 days extra duty and 45 days restriction.

7. On 4 July 2007, the applicant underwent a complete mental status evaluation as part of his consideration for discharge due to other designated physical or mental conditions. The examining physician noted the applicant met the retention requirement, was mentally responsible, had the mental capacity to understand and participate in the proceedings, and was psychiatrically cleared for any administrative action deemed appropriate by his command. The applicant was diagnosed with adjustment disorder with mixed anxiety and depression, partner relational problems, and insomnia. The physician strongly recommended administrative separation in accordance with Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), Chapter 5 (Separation for Convenience of the Government), paragraph 5-17 by reason of other designated physical or mental conditions.

8. On 16 August 2007, the applicant underwent a follow-up mental health assessment as part of his consideration for discharge. The examining physician noted that after a change of heart and focus from the applicant, he no longer recommended the applicant be discharged under the provisions of Chapter 5, but stated the unit could consider another form of chapter discharge.

9. A DA Form 4856 (Developmental Counseling Form) dated 17 August 2007, shows the applicant was formally counselled by his first sergeant regarding his positive urinalysis test for marijuana conducted on 17 June 2007.

10. On an unknown date, the applicant's commander notified the applicant of his intent to initiate action to separate him from service under the provisions of Army Regulation 635-200, Chapter 14 (Separation for Misconduct), paragraph 14-12b for a pattern of misconduct. His chain of command recommended the applicant's separation from the service with the issuance of a under honorable conditions (General) characterization of service.

11. On 25 October 2007, the applicant underwent a complete medical examination as part of his consideration for discharge due to his misconduct. His medical examination noted, he was qualified for chapter/separation.

12. On 16 January 2008, court-martial charges were preferred against the applicant. The DD Form 458 (Charge Sheet) shows he was charged with being AWOL from on or about 10 December 2007 and did remain so absent until on or about 15 January 2008.

13. On 15 January 2007 [sic], the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the Uniform Code of Military Justice (UCMJ); the possible effects of a UOTHC discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation 635-200, Chapter 10, discharge in lieu of trial by court-martial. 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 further acknowledged he understood that if his discharge request was 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, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

b. Documentation as to whether the applicant elected or did not elect to submit statements in his own behalf are not available for review.

14. The applicant's chain of command recommended approval of the applicant's request for discharge under the provision of Chapter 10 vice trial by general court-martial.

15. On 24 January 2008, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial and directed the issuance of an UOTHC discharge.

16. A DA Form 4187 (Personnel Action) shows, effective 26 February 2008, the applicant's unit reported him AWOL.

17. The applicant was discharged on 3 March 2008, in the grade of E-1, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. His service was characterized as UOTHC, with separation code "KFS" and reentry code "4." He was credited with 2 years, 4 months, and 11 days of active service and 2 years,

1 month, and 6 days of foreign service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) contains the following entries in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized):
 - Marksman Marksmanship Qualification Badge with Grenade Bar
 - National Defense Service Medal
 - Global War on Terrorism Service Medal
 - Iraq Campaign Medal
 - Army Service Ribbon
 - Marksman Marksmanship Qualification badge with Rifle Bar (M-4)
 - Overseas Service Bar (2nd Award)
 - Shoulder Sleeve Insignia for Former Wartime Service
- Item 18 (Remarks):
 - SERVICE IN IRAQ: 6 August 2006 thru 15 October 2007
 - MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE
- Item 29 (Dates of Time Lost During This Period):
 - 15 January 2008 thru 16 January 2008
 - 26 February 2008 thru 3 March 2008

18. On 29 September 2008, the applicant was issued a DD Form 215 (Correction to DD Form 214) correcting item 29 by:

- deleting the dates 15 January 2008 thru 16 January 2008
- adding the dates 15 May 2007 thru 12 June 2007 and 10 December 2007 thru 15 January 2008

19. The applicant provides a VA benefits letter and rating decision, which are available in their entirety for the Board's review within the supporting documents, showing the VA twice granted the applicant an increased service-connected disability rating for dysthymic disorder (previously shown as anxiety disorder, not otherwise specified) from 0 percent (%) to 30% effective 4 May 2010 and from 30% to 50% effective 24 August 2022. The VA decision to increase the applicant's rating to 50% was based on:

- anxiety
- chronic sleep impairment
- depressed mood

- difficulty in establishing and maintaining effective work and social relationships
- disturbances of motivation and mood
- forgetting names
- forgetting recent events
- mild memory loss
- occupational and social impairment with reduced reliability and productivity
- panic attacks more than once a week
- suspiciousness

20. The applicant petitioned the Army Discharge Review Board (ADRB) for upgrade of his service characterization. On 27 February 2009, he was notified that after careful consideration the ADRB determined he was properly and equitably discharged. However, during the Boards review they determined that the applicant's characterization of service for separation should be changed from "UOTHC" to "under honorable conditions (General)." His original DD Form 214 and DD Form 215 were voided, and he was issued a new DD Form 214 reflecting all corrections effective 27 February 2009.

21. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

22. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

23. 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 honorable. He contends he experienced an undiagnosed mental health condition, including 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 13 September 2005.
- The applicant accepted NJP for being AWOL from 15 May to 12 June 2007. On 17 June 2007 he tested positive for marijuana, and separation actions due to a pattern of misconduct were initiated by his command. On 16 January 2008 court-martial charges were preferred against the applicant for being AWOL from 10 December 2007 to 15 January 2008. The applicant voluntarily requested

discharge under the provision of Army Regulation 635-200, Chapter 10, discharge in lieu of trial by court-martial. He was reported as AWOL again on 26 February 2008.

- The applicant was discharged on 3 March 2008, and he was credited with 2 years, 4 months, and 11 days of net 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 undiagnosed PTSD at the time of discharge, and he would like to have an honorable discharge so he can utilize the G.I. Bill, which he paid into while on active service. The application included a VA notice of disagreement letter dated 25 October 2013 showing a change in his rating for Anxiety Disorder to Dysthymic Disorder with a rating of 30%. A VA Rating Decision letter dated 27 April 2023 showed an increase in rating from 30% to 50% for Dysthymic Disorder. A document dated 20 June 2007 showed that the applicant had been evaluated by mental health at FOB Warrior-Kirkuk, Iraq, and he was deemed to be a threat to himself and others and was placed on unit watch. Notation stated a triage assessment found the applicant to be homicidal and suicidal, and it suggested that the command may want to explore pursuing discharge. A Report of Mental Status Evaluation dated 4 July 2007 showed the applicant was diagnosed with Adjustment Disorder with mixed anxiety and depression (rule out), Partner Relational Problems, and Insomnia, but he was determined to meet retention standards and have capacity to understand and participate in administrative proceedings. The Remarks section outlines the clinician's strong recommendation to discharge the soldier through administrative channels, and it states that the soldier does not warrant separation through an MEB/PEB. Additional documentation from mental health dated 16 August 2007 showed that the clinician was rescinding the recommendation for separation because of improvement in the stressors in the applicant's life. A Report of Medical Examination dated 25 October 2007 did not indicate the presence of any psychiatric symptoms. 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), which includes records from DoD and VA, was also reviewed and showed the applicant was referred to mental health on 16 June 2007 due to anxiety-induced chest pain. The next encounter with mental health was on 13 September 2007 where the applicant completed a brief screening evaluation through the Army Substance Abuse Program (ASAP). Documentation outlined the history of events, noting that the applicant was referred to ASAP due to the positive marijuana screen after returning to Iraq following a 15-day leave (and 29 days of AWOL) because of the death of his grandfather. The applicant admitted to using marijuana "for about 30 days" while he was on leave, and it was noted that he reported two additional failed drug screens prior to this. He had started ASAP prior to deployment but did not finish the program because of the deployment. The applicant also reported he had seen mental health for depression while deployed and was prescribed an antidepressant and

a sleep medication. A full assessment was conducted on 18 September 2007, and he was diagnosed with Cannabis Dependence.

e. The applicant initiated mental health treatment through the VA on 6 February 2009, and he reported symptoms of depression, sleep difficulty, nightmares, and daily marijuana use. He was prescribed a medication to help with sleep and was scheduled for a full evaluation as well as a traumatic brain injury assessment, but he did not show up for these appointments. On 14 September 2012, the applicant completed a psychological evaluation, and he reported symptoms of depression, anxiety, anger outbursts, emotional numbing, and hypervigilance dating back to his time in Iraq. He also discussed a childhood history of ADHD diagnosis, unstable home life, neglect, and physical abuse.

f. A Compensation and Pension (C&P) evaluation was conducted on 9 March 2013, and the applicant reported symptoms of depression and PTSD. Documentation discussed his initial C&P evaluation, dated 13 June 2011, where he was diagnosed with Anxiety Disorder, not otherwise specified, and although symptoms of PTSD were present, his pre-military experiences were noted as the primary trauma, which was exacerbated by his military experiences. The evaluation concludes with the opinion that "it is more likely than not that the claimant's Dysthymic Disorder is related to mental health symptoms noted during service and the documented mental health treatment he had during this time." The report goes on to explain that the rule out diagnosis, Adjustment Disorder, that the applicant received while on active service "did not concede combat, it did concede service in a hostile environment." Another C&P examination was conducted on 26 September 2013, and the applicant continued to endorse symptoms of depression and nightmares associated with deployment. He reported three distressing deployment related experiences, which included being shot at while on patrol and another soldier being killed; IED explosions and damage to Humvees; and witnessing the death of his battalion commander. However, the evaluator concluded that he did not meet full criteria for PTSD.

g. In 2017 the applicant was inpatient at the VA for opioid detoxification and was started on suboxone, and this was discontinued in 2019. In March 2020 the applicant was evaluated for ADHD, and the report discussed his childhood history of the diagnosis as well as current stressors including chronic instability in relationships, housing insecurity, poor nutrition, and history of polysubstance abuse. In June 2021 the applicant underwent neuropsychological testing for ADHD, and the diagnosis was confirmed.

h. The applicant currently utilizes the VA's housing program (since February 2020) and has regular contact with a case worker. He is prescribed a stimulant medication for ADHD and a blood pressure medication to help with sleep. He is completing an associate degree, working part-time, and has custody of one of his three sons. He is

diagnosed with ADHD, Major Depressive Disorder, and PTSD, but his treatment is primarily targeting ADHD.

i. 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 mental health condition while on active service, and his condition partially mitigates his misconduct.

j. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had a mental health condition, including PTSD, at the time of the misconduct. Documentation from his deployment to Iraq showed he was evaluated and endorsed symptoms associated with depression and anxiety. C&P examinations by the VA show subthreshold symptoms of PTSD and a diagnosis of Dysthymic Disorder.

(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. The applicant reported trauma exposure while on deployment, and he was seen by mental health for symptoms associated with depression and PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. The applicant was seen by mental health while on active duty, and he is service connected through the VA for a mental health condition. The applicant's history of marijuana abuse, both while in service and following discharge, is a common self-medicating strategy for avoiding uncomfortable emotions and memories related to trauma exposure. Additionally, avoidant behavior, such as going AWOL, can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. However, documentation indicates that the applicant was referred to ASAP following two positive drug tests prior to his deployment, and the C&P evaluation indicates that it is more likely that his condition preexisted his deployment and was exacerbated by his military experiences.

k. Given the nexus between trauma exposure, avoidance, and substance use and in accordance with liberal consideration, his contention is sufficient for the board's consideration.

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 10 December 2007 to 15 January 2008, 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 his condition partially mitigated his misconduct. The Board noted the applicant applied to the Army Discharge Review Board and was granted relief in the form of an upgrade from other than honorable conditions to under honorable conditions (General). The Board determined no additional relief is warranted.

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, 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. Title 10, U.S. Code, Section 1556, 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.

3. Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), in effect at the time, set forth the primary authority for separating enlisted personnel.

a. Chapter 10 states in part, a member who has committed an offense or offenses, the punishment for any of which, under the UCMJ and the Manual for Court-Martial, include bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. In addition, the request for discharge may be submitted at any stage in the processing of the charges until the court-martial convening authority's final action on the case. Commanders will also ensure that a member will not be coerced into submitting a request for discharge in lieu of trial by court-martial. The member will be given a reasonable time (not less than 72 hours) to consult with a consulting counsel and to consider the wisdom of submitting such a request for 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.

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 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 (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.

5. 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//