

IN THE CASE OF [REDACTED]

BOARD DATE: 24 October 2024

DOCKET NUMBER: AR20240001374

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) character of service to under honorable conditions (general) and correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his period of honorable service from 20 March 1997 through 21 April 2001.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- List of Supporting Documents
- Summary of Treatment, [REDACTED], dated 17 November 2023
- Five statements of support, dated 7 April 2023 to 4 October 2023
- Army Service Records (46 pages)
- Service Treatment Records (6 pages), dated 25 January 2001
- Record of Honorable Discharge, dated January 1945
- Certificate of Death, dated [REDACTED]
- Post Service Accomplishments, dated 16 September 2005 to 31 December 2024
- Determination and Facts, Department of Social Services, dated 14 March 2003 to 4 December 2003
- Medical documents, [REDACTED] (9 pages)
- Child Custody documents (13 pages), dated 10 May 2000 to 17 April 2003
- Offender Information Report, dated 22 June 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 his discharge was related to post-traumatic stress disorder (PTSD) which was undiagnosed during his service. Prior to being stationed at Fort Jackson, SC, his service was honorable. During a 2-year period, his life went downhill

with no support from his chain of command. Upon his discharge, he experienced homelessness, suicidal thoughts, and loss of employment, benefits, and hope. It was not until he sought mental health treatment through the Department of Veterans Affairs (VA) that he learned he had PTSD. He believes his discharge was inequitable and unjust for the following reasons:

a. While serving in South Korea, he was involved in an incident where two service members physically assaulted him. He was treated for a head injury and began to have episodes of irritable behavior, nightmares, sleep paralysis, involuntary leg movement while sleeping, night sweats, and hypervigilance.

b. He was awarded temporary custody of his son. He became a single father and a team leader. No one in his chain of command thought to have him produce a family care plan which would have allowed him to concentrate more fully on his Army mission. As a single parent, he struggled to juggle all of his duties as a noncommissioned officer (NCO).

c. He did not abuse his son. He improperly disciplined him. He spanked his son on the buttocks with a belt two days in a row. He did not hide it. Army personnel made him believe the injuries to his son were more severe than they actually were. He completed parenting classes as directed by his unit and the Department of Child and Family Services (DSS/DCF). The Criminal Investigation Division (CID) found no evidence of child abuse. However, his unit would later use the incident as grounds for court-martial charges.

d. He had a sexual relationship with a junior Soldier in his unit. They were not on the same team, squad, or platoon. The day after he had sexual relations with her, he was called in to be the patrol supervisor for a shift she was working on. She was late and tried to flirt off her tardiness. Later that day, she reported him for sexual harassment and eventually accused him of rape. CID determined there was no evidence to support the allegation. His chain of command inappropriately gave the appearance that he was the direct supervisor of the Soldier and used the allegations as grounds for a court-martial.

e. His request for a Chapter 10 discharge was under duress. He was directed to sign the request, or he would be subject to court-martial and possibly lose custody of his son. He was not afforded the opportunity to provide a statement nor was he provided a copy of the court-martial packet. He did not read the paperwork and was not aware he was admitting guilt by signing it.

f. He was subjected to prejudicial acts by persons within his chain of command, whom he reported. He observed a new Soldier being hazed by his platoon sergeant; observed a Caucasian military policeman (MP) pulling over African American Soldiers for speed violations without the radar being turned on; and he saw people in his platoon

firing blanks at undocumented immigrants. He even called in a police emergency and no other patrol responded. His chain of command used his mistakes and improper decisions to punish him as retaliation.

g. He was a single parent, raising a child with emotional, mental, and physical issues, who was subjected to drugs and a violent lifestyle by his mother. His chain of command took no action to assist him. He was not allowed to travel to his grandfather's hospital bed and subsequent funeral even though his grandfather was an Army Veteran. The stress of these events placed him in a suicidal and depressed state. He felt a sense of failure from the Soldier he was in South Korea.

h. Following his discharge, it took months before anyone would hire him. After a period of homelessness, he enrolled in school to study criminal justice and received his Bachelor of Science degree. He has been married for 18 years and had two children. He has an extensive work history which led to him opening his own private investigating company. Throughout his years of employment, he has received many positive evaluations, letters of recognition and appreciation, and certificates of achievement. He is finally in a better place as a person, husband, father, community member, and U.S. Army Veteran.

3. The applicant enlisted in the Regular Army on 20 March 1997. Upon completion of initial entry training, he was awarded military occupational specialty 95B (MP). the highest rank he attained was sergeant/E-5.

4. The applicant's first duty station was in the Republic of Korea, where he reenlisted on 22 March 1999 and 10 October 2000. He reported to Fort Jackson, SC, on or about 12 April 2001.

5. The applicant was formally counseled on 26 March 2003 and 4 April 2003 regarding allegations of child abuse from the Department of Social Services (DSS). On 25 March 2003, DSS concluded there was substantial evidence of child abuse, inflicted by the applicant upon his son, which required action to prevent another incident. No criminal charges were recommended by DSS, and the unit would not seek criminal charges. The applicant was required to attend parenting classes, anger management sessions, and individual counseling sessions. He was notified he could be processed for separation if his performance or behavior further deteriorated. His squad leader further informed him that he had the support of his squad and would be allowed to continue as a team leader.

6. Court-martial charges were preferred against the applicant on 6 May 2003 for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with unlawfully striking [REDACTED] a child under the age of 16 years, on the buttocks and legs with a belt, on or about 12 March 2003, and for

maltreatment of Private [REDACTED] a person subject to his orders, by having sex with her, on or about 30 March 2003.

7. He consulted with legal counsel on or about 14 May 2003.

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 provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10. In his request for discharge, he acknowledged making the 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 Department of Veterans Affairs, 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. He elected not to provide a statement.

8. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 15 May 2003. He further directed the applicant be reduced to the lowest enlisted grade and the issuance of an UOTHC discharge.

9. Accordingly, the applicant was discharged on 6 June 2003, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. His DD Form 214 shows his character of service was UOTHC. He completed 6 years, 2 months, and 17 days of net active service. He was awarded or authorized the following:

- Army Achievement Medal (3rd award)
- Air Force Achievement Medal
- Army Good Conduct Medal
- National Defense Service Medal (2nd award)
- Noncommissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon (2nd award)
- Sharpshooter Marksmanship Qualification Badge with Pistol bar
- Marksman Marksmanship Qualification Badge with Rifle bar
- Driver and Mechanic Badge with Driver-W bar

10. The Army Discharge Review Board considered the applicant's request for an upgrade of his service characterization on 10 March 2004. After careful consideration,

the Board determined the applicant was properly and equitably discharged. His request for relief was denied.

11. The applicant provides:

a. A summary of services from [REDACTED], dated 17 November 2023.

b. Five statements of support, dated 7 April 2023 to 4 October 2023, in which the authors attest to the applicant's values and character as a father, spouse, Soldier, NCO, and friend. His wife has witnessed the mental and medical issues he has firsthand to include night sweats, nightmares, and hypervigilance. He spoke to her about the hardships he experienced at Fort Jackson. The Soldiers who worked with him recall his mentorship and leadership as an NCO. He strives for greatness in all he does. He was a Soldiers' leader. All while trying to raise his son in the barracks as a single father. The Army lost a good NCO and even better person. If anyone is deserving of saying he served honorably, it is him. In his civilian life he continues to be an ethical, honest, dedicated individual. He is a loyal husband and father to be admired. His life revolves around his wife and children.

c. 13 pages of Army Service Records are summarized, in pertinent part, in the ROP above. 33 additional pages of Army Service Records include numerous awards, training certificates, evaluations, and letters of recommendation highlight the applicant's accomplishments during his period of active duty service.

d. Six pages Service Treatment Records, dated 25 January 2001, which the applicant states are related to the incident which caused his PTSD, will be summarized in the "Medical Review" section of this ROP.

e. An Enlisted Record and Report of Separation (Honorable Discharge), dated January 1945 and a Certificate of Death, dated [REDACTED], which the applicant states belong to his grandfather.

f. 32 pages of documentation show some of the applicant's post service accomplishments, to include his Bachelor of Science in Criminal Justice from [REDACTED], dated 27 March 2010, multiple professional certifications, certificates of achievement, letters of appreciation, and employment evaluations which the applicant details in his self-authored statement.

g. Documentation from the Department of Social Services, South Carolina, dated 14 March 2003 to 4 December 2003, shows the findings and determination regarding the Child Protective Services investigation which was initiated on 28 February 2003. The case was closed on 4 December 2003.

h. Nine pages of medical documentation, which the applicant states belong to his son, [REDACTED]

i. Child custody documents, dated 10 May 2000 to 17 April 2003.

j. An Offender Information Report, dated 22 June 2023, which the applicant states shows the criminal history of his son's mother.

12. Administrative separations under the provisions of Army Regulation 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.

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

14. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) discharge and correction of his DD Form 214 to show his period of service from 20 March 1997 through 21 April 2001 as honorable. He contends he experienced mental health conditions including PTSD that mitigates his misconduct. 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 20 March 1997; 2) Court-martial charges were preferred against the applicant on 6 May 2003 for: A) unlawfully striking a child under the age of 16 years, on the buttocks and legs with a belt and for B) maltreatment of a lower enlisted Soldier, a person subject to his orders, by having sex with her; 3) The applicant was discharged on 6 June 2003, Chapter 10, in lieu of trial by court-martial. His character of service was UOTHC.

b. The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) and civilian and military medical documents provided by the applicant were also examined.

c. The applicant asserts he experienced mental health conditions including PTSD, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service. There is sufficient evidence the applicant received an injury to his head while serving in South Korea.

d. A review of JLV provided sufficient evidence the applicant has been diagnosed with service-connected PTSD and receives disability for this condition (70%SC) since 2023. He also been diagnosed with an Anxiety Disorder Unspecified related to his military service and a history of suicidal ideation after his discharge. He also provided civilian medical documentation, dated 17 November 2023, from a licensed psychologist located in [REDACTED]. The applicant was reported to have been exposed to trauma during his military service and meets criteria for PTSD. He was in treatment with that provider from January 2022-Novemeber 2023.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions including PTSD while on active service that mitigates his misconduct. The applicant was diagnosed with service-connected PTSD by the VA. He has also been diagnosed with an Anxiety Disorder and had a history of suicidal ideation after discharge. A civilian provider also diagnosed him with PTSD related to his military service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD while on active service that mitigates his misconduct. The applicant was diagnosed with service-connected PTSD by the VA. He has also been diagnosed with an Anxiety Disorder and had a history of suicidal ideation after discharge. A civilian provider has also diagnosed him with PTSD related to his military service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is sufficient evidence beyond self-report the applicant was experiencing mental health conditions including PTSD while on active service. However, there is no nexus between the applicant's diagnosed mental health conditions including PTSD and his misconduct of striking a child and maltreatment of a lower enlisted Soldier, a person subject to his orders, by having sex with her: 1) these types of misconduct are not a part of the natural history or sequelae of his mental health conditions including PTSD; 2) the applicant's mental health conditions including PTSD do not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record and published Department of Defense guidance for consideration of discharge upgrade requests, the Board majority found that relief was warranted.
2. The Board carefully considered the applicant's contentions, his record of service, the frequency and nature of his misconduct, investigation outcomes, his request for discharge, the reason for his separation and the character of service he received upon separation. The Board considered his statement regarding him being assaulted, having undiagnosed PTSD, letters of support and his post-service academic and professional achievements. The Board considered the review and conclusions of the ARBA medical advisor to include the applicants diagnoses of PTSD.
3. The Board found: (1) the applicant asserts he experienced mental health conditions including PTSD while on active service that mitigates his misconduct and that he was diagnosed with service-connected PTSD by the VA; (2) the condition existed, or the experience occurred during military service; (3) the Board majority concluded that his condition and experience mitigated his misconduct sufficiently to warrant and upgrade. The Board minority concurred with the medical reviewer and determined that there was not a nexus between his condition and the misconduct and that an upgrade was not warranted. Based on a preponderance of evidence, a majority of the Board members determined that an upgrade of the applicant's character of service was warranted as a matter of liberal consideration. The Board concurs with the correction stated in the Administrative Notes below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■	:	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	■	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board majority determined the evidence presented is sufficient to warrant relief. As a result, in addition to the correction stated in the Administrative Notes that follow, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 6 June 2003 to show in item 24 (Character of Service): Under Honorable Conditions, General.

6/10/2025

X

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214, for the period ending 6 June 2003 is missing an important entry that may affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following entry in item 18 (Remarks): "CONTINUOUS HONORABLE SERVICE FROM 19970320 UNTIL 20001009"

REFERENCES:

1. Title 10, U.S. Code (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 the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and 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, advisory opinions, and reviews to ABCMR applicants and/or their counsel prior to adjudication.

3. Army Regulation 635-5 (Separation Documents) establishes the standardized policy for preparing and distributing the DD Form 214. Regulatory guidance provides for an additional entry for continuous honorable active service when a Soldier who previously reenlisted without being issued a DD Form 214 was discharged with any characterization of service except honorable.

4. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), 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. 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.

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. 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.

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//