

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 October 2024

DOCKET NUMBER: AR20240001540

APPLICANT REQUESTS: an upgrade of his Under Other Than Honorable Conditions (UOTHC) characterization of service.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- University transcript
- Remote Pilot certification card
- Character reference letters (5)

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, in effect, he did not adapt well to the military. He received company grade nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for being drunk in airborne school. He also received field grade NJP under Article 15, UCMJ at his duty station because of an alcohol-related incident. These incidents ultimately led to a failed drug screening. The applicant indicated on his DD Form 293 that mental health issues/conditions are related to his request.
3. The applicant enlisted in the Regular Army on 16 May 2006 in the rank/pay grade of private (PV1)/E-1 for a period of 4 years and 19 weeks. Upon completion of initial entry training and airborne training, he was assigned to a unit at Camp Ederle, Italy. He was advanced to private (PV2)/E-2 on 1 April 2007, the highest rank he held.
4. On 16 April 2007, the applicant was ordered by his company commander to submit to a breathalyzer test to determine his blood alcohol content due to suspicion that he was drunk on duty.

5. On 16 April 2007, the applicant was counseled by his squad leader regarding being drunk on duty, being disrespectful toward noncommissioned officers (NCOs), accountability of sensitive items, and cleanliness of his barracks room. He was advised that continued misconduct could result in punishment under the UCMJ and/or administrative separation.

6. On 16 April 2007, the applicant was counseled by his section leader regarding being disrespectful toward NCOs, loss of his identification card, and being drunk on duty. It was noted that the identification card was located later that day. He was advised that continued misconduct could result in punishment under the UCMJ and/or administrative separation. The section leader provided the following plan of action to the applicant:

- You will wear from now on only approved military uniforms
- You will not imbibe alcohol
- You are restricted to the company and battalion area, the dining facility and are not allowed to use the post exchange unless you are escorted by an NCO, and you are not allowed to leave the post
- You will report to the Charge of Quarters desk at times to be specified when not on duty for accountability

7. On 17 April 2007, the applicant was counseled by his first sergeant regarding the plan of action developed by his section leader because it specified some punishments that only the company commander could initiate. He was advised that continued misconduct could result in punishment under the UCMJ and/or administrative separation. The first sergeant provided the following revised plan of action to the applicant:

- You are to remain under constant supervision by your leadership
- You are to ensure that your room is kept at a level of cleanliness that meets the Army standard
- You will correct the deficiencies in your room under the supervision of your immediate supervisor
- You understand that it is possible to lose leave/pass privileges concerning block leave
- UCMJ actions will be recommended to the company commander concerning your actions

8. On 7 May 2007, the applicant was counseled regarding results of a urine sample he provided on 11 April 2007 testing positive for cocaine. He was reminded that illegal drug use of any kind was not tolerated under any circumstance. He was advised that this finding would be investigated, and he would have an opportunity to answer the charges should any be brought against him under the UCMJ.

9. On 12 May 2007, the applicant was counseled for failing to obey a direct order of no consumption of alcohol and for going to work drunk on duty. He was reminded again that continued misconduct could result in punishment under the UCMJ and/or administrative separation.

10. The applicant underwent a separation medical examination and was found to be qualified for administrative separation.

11. The applicant underwent a mental status evaluation. It was determined that he had the mental capacity to understand and participate in the proceedings, was mentally responsible, and met regulatory retention requirements. There was no evidence of any psychiatric condition which would warrant disposition through medical channels. He was psychiatrically cleared for any administrative action deemed appropriate by command.

12. On 19 June 2007, an administrative flag was imposed upon the applicant to prevent him from receiving any favorable personnel actions while he was pending adverse action.

13. On 20 June 2007, the applicant's immediate commander notified the applicant of his intent to initiate action to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, for commission of a serious offense. He was advised that he was being recommended for a discharge UOTHC. The specific reasons for this action were:

- a. Having received a lawful command from a superior commissioned officer, then known by him to be his superior commissioned officer, to not consume alcohol, or words to that effect, he did, on or about 12 May 2007, willfully disobey the same.
- b. On or about 16 April 2007, he was disrespectful in deportment toward an NCO, then known by him to be a superior noncommissioned officer, who was then in the execution of his office, by not standing at the position of parade rest.
- c. On or about 12 May 2007, he was found drunk on duty as a Soldier.
- d. Between on or about 8 April 2007 and about 11 April 2007, he wrongfully used cocaine, a controlled substance.
- e. On or about 16 April 2007, as a result of wrongful previous overindulgence in intoxicating liquor or drugs he was incapacitated for the proper performance of his duties.

14. On 20 June 2007, the applicant acknowledged receipt of the notification and that he was advised of the reasons for separation and of the rights available to him. He elected

not to submit statements in his own behalf. He requested the command consider separating him with a general, under honorable conditions service characterization.

15. On 28 June 2007, the applicant's immediate commander formally recommended his separation prior to the expiration of his term of service, under the provisions of Army Regulation 635-200, paragraph 14-12c by reason of commission of a serious offense. The intermediate commander concurred with the recommendation the same day.

16. On 2 July 2007, the separation authority approved the recommendation. He directed the applicant's service be characterized as UOTHC. He further directed the applicant be reduced to the lowest enlisted grade.

17. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show he was discharged in the rank/pay grade of PV1/E-1 on 7 July 2007, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of Misconduct (Serious Offense). His service was characterized as UOTHC. He was credited with completion of 1 year, 1 month, and 9 days of net active service this period. He had time lost from 20 June 2007 to 2 July 2007. He did not complete his first full term of service.

18. On 27 June 2024, a staff member of the Case Management Division of the Army Review Boards Agency (ARBA) requested the applicant to provide medical documents that support his mental health issues/conditions and allotted him a period of time during which to respond. To date, the applicant has not provided a response.

19. The applicant provides the following documents which are available in their entirety for the Board's consideration.

- a. A transcript from a university which shows the applicant was awarded an Associate of Science degree in Liberal Arts on 19 December 2020.
- b. A U.S.A., Department of Transportation, Federal Aviation Administration Remote Pilot certification card issued on 6 June 2022.
- c. Five character reference letters wherein the authors rendered favorable accolades about the applicant's path to sobriety as well as his integrity, loyalty, passion, thoughtfulness, devotion to his religious beliefs, and willingness to help others.

20. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

21. MEDICAL REVIEW:

- a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) character of service. He contends mental health conditions are related to his request. 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 16 May 2006; 2) The applicant was counseled for being drunk on duty and other misconduct in April 2007; 3) The applicant was counseled in May 2007 for testing positive for cocaine and again being drunk on duty; 4) The applicant was discharged on 7 July 2007, Chapter 14-12c, by reason of Misconduct (Serious Offense). His service was characterized as UOTHC.
- b. The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the available supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical records were provided for review.
- c. The applicant asserts he was experienced mental health conditions while on active service, which mitigates his misconduct. There is evidence the applicant was seen by behavioral health starting in December 2006 related to his alcohol use/abuse. The applicant reported a history of alcohol related misconduct at that time. He reported some sadness for a few days as a result of the recent death of a family member. He was seen on 23 May 2007 as an emergency referral from ASAP due to anger. He reported using alcohol two weeks ago, and he was undergoing a Chapter 14-12c. His unit was currently deployed, and he was angry about being restricted to post till his Chapter was complete. The applicant was noted for having an ongoing difficulty following orders and regulations. He also was not compliant with any previously prescribed psychiatric medication or non-command ordered therapy. At this appointment, he agreed to attempt medication to assist with sleep. He denied depressive symptoms or alcoholism. He was diagnosed with alcohol dependence with episodic drinking. He was seen again on 30 May 2007 and continued to report insomnia. He was diagnosed with a personality disorder. On 04 June 2007, he underwent a mental status exam as part of his administrative separation proceedings, and he was cleared from a psychiatric perspective for any administrative action deemed appropriate by command.
- d. A review of JLV was void of medical documentation related to a mental health condition, and the applicant does not receive any service-connected disability. He has received assistance for homelessness. No additional medical documentation was provided for review.

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 which mitigates his misconduct. The applicant did report some days of sadness related to grief while on active service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions while on active service, which mitigates his misconduct. The applicant did report some days of sadness related to grief while on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant experienced a mental health condition, while he was on active service. The applicant did abuse alcohol and use illegal drugs, which could be avoidant behavior and a natural sequela to some mental health conditions. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. Yet, the applicant contends he was experiencing a mental health condition that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for the board's consideration.

BOARD DISCUSSION:

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, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's mental health claim and the review and conclusions of the ARBA Behavioral Health Advisor. A majority of the Board found evidence of post-service achievements and letters of reference the applicant provided insufficient to support clemency considering the brevity of his service and his constant misconduct. A majority of the Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct not being mitigated by a mental health condition. Based on a preponderance of the evidence, a majority of the Board determined the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:Mbr 1 Mbr 2 Mbr 3

:	<input type="checkbox"/>	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
<input type="checkbox"/>	:	<input type="checkbox"/>	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.

4/1/2025

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 three years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or

Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body.

4. Army Regulation 635-200 (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. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

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//