

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 November 2024

DOCKET NUMBER: AR20240002741

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to a more favorable characterization of service.

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

- DD Form 149 (Application for Correction of Military Record), 11 July 2024
- e-mail correspondence, 9 July 2024

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 defers to his counsel. His counsel states in effect, the underlying reason the applicant was separated with a character of discharge of UOTHC was due to conduct in service which he now realizes was due to the beginning symptoms of post-traumatic stress disorder (PTSD). His PTSD was service connected during the period from 2002 to 2005, but his service connection was severed due to his characterization of discharge.
 - a. In a self-authored e-mail to his counsel, the applicant states, in effect, his time from 1996 to 2002 timeframe was in the U.S. Army Reserve and he did not encounter traumatic experiences until his mobilization for service in Iraq from 2003 to 2005.
 - b. While mobilized, he slid down an entire flight of stairs at the barracks due to ice and snow and now suffers from back, neck, and shoulder pain. He was unable to get medical attention for this issue while in service because he was so close to shipping out for Iraq.
 - c. While deployed, to Tikrit Iraq, he found himself under extreme stress, with anxiety and depression. Many convoys were getting hit hard by roadside improvised explosive

devices (IEDs) and suffering casualties. Before going out on a convoy, after being briefed that the roadside which he and his unit had to take was attacked, he learned he was in the last truck, the “gun truck” of which was briefed to be most likely to get targeted. He remembers the stress of while on this main highway in Iraq, with the .50 caliber machine gun mounted and being responsible for rear security. His unit reached their destination, their home for the next year, and once they parked, they had rockets and mortar rounds fired at them.

d. The events of having rockets and mortars fired went on the whole time he was there. He remembers on New Year’s Eve of 2004; they had a rocket fired at them and he almost got hit. He believes if he had timed his walk by 10 minutes he would have been killed.

e. Later in his tour, he drove a tractor trailer to haul what was left of a blown up burned Iraqi civilian fuel truck, when he arrived on site the Iraqi fuel truck was burnt to a crisp. He and the team set up in a perimeter and took defensive positions in a vulnerable spot. He remembers seeing the Iraqi guy who had been driving the truck was severely wounded in the back of a pickup truck. It was a haunting vision,

f. Mid 2004, his tour to Iraq was taking a toll on him due to frequent rocket and mortar attacks and being away from his family. When on a phone call to his spouse, he learned of his grandfather’s passing, which devastated him due to his grandparents raising him. He was suffering anxiety, stress, and now major depression.

g. He suffered loss of his friends who were fellow Army Soldiers. He lived in a constant heightened state of awareness and fear of imminent death every day for over a year. He has been shot at and had artillery dropped near him, to name a few and the experiences have left a devastating effect on him. He believes what he suffered was out of character for him.

3. The applicant enlisted in the U.S. Army Reserve on 20 November 1996, for a period of 8 years. He entered active duty in support of Operation Iraqi Freedom on 7 December 2003, in the military occupational specialty of 63B (Light Wheel Vehicle Mechanic).

4. The applicant’s official military personnel file is void of the facts and circumstances leading to his discharge. However, his DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 10 (Discharge in Lieu of Trial by Court-Martial), in lieu of trial by court-martial, in the grade of E-1. His characterization of service was UOTHC, with separation code of KFS, and reentry code of 4. He served 1 year, 3 months, and 3 days of net active service with 4 months and 8 days of prior active service. He served in

Kuwait/Iraq in an imminent danger pay area from 7 February 2004 to 28 February 2005. He was awarded or authorized the following decorations, medals, badges, citations, and campaign ribbons:

- Army Reserve Components Achievement Medal (2nd award)
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Armed Forces Reserve Medal with Mobilization Device
- Army Service Ribbon

5. The issuance of a discharge under the provisions of Army Regulation 635-200, Chapter 10, required the applicant to have requested from the Army, voluntarily, willingly, and in writing, a discharge in lieu of trial by court-martial. It is presumed that all requirements of law and regulation were met, and the rights of the applicant were fully protected throughout the separation process. No evidence to the contrary has been provided.

6. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his characterization of service of under other than honorable conditions (UOTHC). He contends he experienced 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 United States Army Reserve on 20 November 1996; 2) The applicant deployed to Iraq from 07 February 2004-28 February 2005; 3) The applicant's official military personnel file is void of the facts and circumstances leading to his discharge; 4) The applicant was discharged, Chapter 10 (Discharge in Lieu of Trial by Court-Martial). His characterization of service was UOTHC.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service records. The VA's Joint Legacy Viewer (JLV) was examined. No additional medical documentation was provided for review.

c. The applicant asserts he experienced PTSD as a result of his combat deployment to Iraq that mitigates his misconduct. There is insufficient evidence the applicant

reported or was diagnosed with a mental health condition including PTSD while on active service.

d. A review of JLV provided sufficient evidence the applicant was diagnosed with service-connected PTSD related to his deployment to Iraq in 2021 (70%SC). The applicant has been engaged in treatment since late 2024. The applicant, during his mental health consult appointment at the VA, reported while deployed to Iraq he “got in trouble for sending gun parts home resulting in a less than honorable discharge.” The applicant is scheduled to attend individual behavioral health treatment and medication management appointments for PTSD.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence beyond self-report the applicant has been diagnosed with service-connected PTSD as a result of his deployment to Iraq. However, there is insufficient evidence surrounding the events which resulted in the applicant’s discharge to provide an appropriate opine on possible mitigation as the result of his mental health condition or experience.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No. There is sufficient evidence beyond self-report the applicant has been diagnosed with service-connected PTSD as a result of his deployment to Iraq. However, there is insufficient evidence surrounding the events which resulted in the applicant’s discharge to provide an appropriate opine on possible mitigation as the result of his mental health condition or experience. Yet, the applicant contends he experienced mental health condition while on active service, which mitigates his misconduct. The applicant’s contention alone is sufficient for consideration per the Liberal Consideration Policy.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

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 applicant’s separation packet is not available for review. However, other evidence shows the applicant was charged with commission of an offense punishable under the

UCMJ with a punitive discharge. After being charged, he presumably consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in the applicant's available separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's determination of inability to establish mitigation without the specific facts and circumstances that led to his discharge. Also, the applicant provided insufficient evidence of a persuasive nature of post-service achievements or letters of reference in support of a clemency determination. Therefore, based on a preponderance of available evidence, the Board determined that 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 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.

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

REFERENCES:

1. Title 10, 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. 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 (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. 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 (Personnel Separations – Active Duty Enlisted Administrative Separations), in effect at the time, provided guidance for the administrative 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 in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. Paragraph 3-7a provides that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

c. Paragraph 3-7b provides that a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

6. 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 DRBs and BCM/NRs 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. 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.

7. 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//