

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 November 2024

DOCKET NUMBER: AR20240003413

APPLICANT REQUESTS: Reconsideration of his request for upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable.

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

- DD Form 293 (Application for the Review of Discharge)
- Self-authored letter
- Character reference letters (2)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20220001077 on 24 June 2022.

2. The applicant states he does not know why he went absent without leave (AWOL). He had been back from Iraq for a couple of months, he went to formation and just left. Every day, he regrets leaving. He has kept his nose pretty much clean since that day. He is a father to five children and a grandfather to five grandchildren. He has always kept a job; he attends church, but not as much as he should. He went to junior college and got his welding license. He is not a bad person; he has always had a good heart.

3. On his DD Form 293, the applicant notes that post-traumatic stress disorder (PTSD) and other mental health issues are related to his request.

4. On 11 January 1999, the applicant enlisted in the Regular Army. The highest grade he attained was E-4.

5. The applicant began service in Kuwait/Iraq on 27 February 2003.

6. He reenlisted on 25 January 2004.

7. The applicant departed Kuwait/Iraq on 21 February 2004.

8. On 21 July 2004, the applicant was reported as AWOL and remained absent until he returned to military authorities on 2 August 2004.
9. On 22 October 2004, the applicant tested positive for marijuana.
10. On 23 November 2004, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ), for wrongfully using marijuana between on or about 30 August 2004, and 29 September 2004. His punishment included reduction to E-1, 45 days extra duty, and an oral reprimand.
11. On 24 November 2004, the applicant was reported as AWOL a second time, and remained absent until he returned to military authorities on 22 July 2005.
12. The applicant began service in Kuwait/Iraq, on 9 September 2005.
13. Court-martial charges were preferred against the applicant on 13 September 2005, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with two specifications of going AWOL.
14. Before a summary court-martial at Camp Buehring, Kuwait, on 21 September 2005, the applicant was found guilty of two specifications of going AWOL between on or about 21 July 2004 and 2 August 2004 and on or about 24 November 2004 and 22 July 2005. The court sentenced him to forfeiture of \$500.00 and 30 days confinement. The sentence was approved, and the record of trial was forwarded for appellate review.
15. On 26 October 2005, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
16. The applicant's commander formally recommended his separation, prior to his expiration term of service, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, paragraph 14-12c, for commission of a serious offense. He noted the applicant's positive test for marijuana and two offenses of being AWOL.
17. The applicant's commander notified the applicant on 3 November 2005, that he was initiating actions to separate him under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c, for commission of a serious offense.
18. On 7 December 2005, the applicant acknowledged that he had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to him.

a. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a under honorable conditions (general) discharge was issued to him.

b. He waived consideration of his case by an administrative separation board.

c. He declined to submit a statement in his own behalf.

19. Consistent with the chain of command's recommendations, the separation authority directed the applicant's separation from the Army on 7 December 2005, with an UOTHC characterization of service.

20. The applicant departed Kuwait/Iraq, on 27 December 2005.

21. The applicant was discharged on 12 January 2006. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c(2), for misconduct (drug abuse). His service was characterized as UOTHC. He was assigned Separation Code JKK and Reentry Code 4. He completed 6 years, 3 months and 24 days of net active service this period with 251 days of time lost.

a. He was awarded or authorized the: Army Good Conduct Medal, National Defense Service Medal, Army Service Ribbon, Air Assault Badge, Global War on Terrorism Expeditionary Medal, Global War on Terrorism Service Medal, and the Iraq Campaign Medal.

b. The Remarks block listed his immediate reenlistment as well as his continuous honorable service.

22. The applicant petitioned the ABCMR requesting upgrade of his UOTHC discharge. On 24 June 2022, the Board voted to deny relief and determined the overall merits of this case were insufficient as a basis for correction of the applicant's records.

23. The applicant provides two character reference letters that collectively attest to his faith, character, family values, and work ethic.

24. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

25. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration of an upgrade to his characterization of service from under other than honorable

conditions (UOTHC) to under honorable condition (general) or 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 11 January 1999 and reenlisted on 25 January 2004.
- The applicant deployed to Kuwait/Iraq from 27 February 2003 to 21 February 2004 and again from 9 September 2005 to 27 December 2005.
- The applicant was AWOL from 21 July 2004 until 2 August 2004, and on 22 October 2004 he tested positive for marijuana. He received NJP for wrongful use of marijuana on 23 November 2004 and the following day he was reported as AWOL until he returned to military authorities on 22 July 2005. While deployed at Camp Buehring, Kuwait, the applicant went before a summary court-martial and was found guilty of two specifications of going AWOL.
- The applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c, for commission of a serious offense. He noted the applicant's positive test for marijuana and two offenses of being AWOL.
- The applicant was discharged on 12 January 2006 and completed 6 years, 3 months and 24 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts PTSD and mental health as mitigating factors in his misconduct, and he related having gone to formation but "just left" for no known reason. The application included a Report of Medical Examination and a Report of Medical History dated 25 October 2005, which showed the applicant did not endorse any psychiatric symptoms and was considered qualified for service. A Report of Mental Status Evaluation dated 26 October 2005 showed that the applicant met retention standards and had the mental capacity to understand the proceedings. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed no history of mental health related treatment or diagnoses. The

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that 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 discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. The application did not include any mental health records, and there were no medical or mental health records available through JLV. A Mental Status Evaluation in October 2005 showed no indication of any mental health symptoms.

(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 deployed to Kuwait/Iraq from February 2003 until February 2004, prior to his misconduct. He then deployed again from September to December 2005.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service, and the application did not include any records. Avoidant behavior, such as going AWOL, can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Additionally, substance use is a common self-medicating strategy for avoiding uncomfortable emotions and memories related to trauma exposure, and substance use can also be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Yet, the presence of misconduct alone is not sufficient evidence of a mitigating mental health condition during active service. However, the applicant contends he was experiencing a mental health condition that mitigates his misconduct, and per 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 partial relief was 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 evidence shows the applicant committed serious misconduct (AWOL and illegal drugs). As a result, his chain of command initiated separation action against him. He was discharged for misconduct (drug abuse) and his service was characterized as under other than honorable conditions. The Board found no error or injustice in his 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 finding insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. However, the applicant provided character reference letters in support of a

clemency determination. Given the fact that he twice deployed to a combat theater and given his clemency-related submission, the Board determined that his service did not rise to the level required for an honorable discharge; however, a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board determined that such upgrade did not change the underlying reason for separation and thus the narrative reason for separation and corresponding codes should not change.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial amendment of the ABCMR's decision in Docket Number AR20220001077 on 24 June 2022. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant a DD Form 214 for the period ending 12 January 2006 as follows:

- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to an honorable characterization of service.

11/18/2024

X [REDACTED]

CHAIRPERSON
[REDACTED]

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 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. 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.

2. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

3. Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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. 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 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. It states that action will be initiated to separate a Soldier for misconduct when it was clearly established that rehabilitation was impracticable or unlikely to succeed.

4. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions 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.

5. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating 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 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//