

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 December 2024

DOCKET NUMBER: AR20240003463

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) character of service.

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

- DD Form 149 (Application for Correction of Military Record), with self-authored statement
- letter, Veteran Services Office, dated 31 January 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 states, in effect:

a. He suffered from a mental health condition and substance abuse during his active service. He did not receive appropriate mental health treatment or due process. His negative experiences in the Army paved the path of his life. His first contract was violated; he lost his first marriage while deployed; he was betrayed by his team leader and received no support from his squad leader. He had a vengeful first sergeant (1SG) and received written statements against him by his own team; and he was coldly removed from the Army with no mental health assistance.

b. His marital issues began in February 1999 while he was deployed to Sinai, Egypt. He felt alone and betrayed, began drinking, kept to himself, and was severely depressed. He attempted suicide while on guard duty. However, his weapon misfired. Following an incident where he was inappropriately touched by his team leader, he stopped trusting people. His drinking increased; he developed paranoia, episodes of rage, and began having panic attacks. In December 1999, his car broke down while he was on leave. He contacted his squad leader, who was not supportive. He felt betrayed

again. After a couple of weeks of drinking and drug use, he sobered up and returned to his unit.

c. While deployed to Kosovo in 2001, he testified against his previous team leader who was court-martialed for molesting a Soldier. He was sent home from Kosovo in April 2002 to attend pre-Ranger school. He could not control his behavioral health issues and began drinking and doing hard drugs. He showed up to his physical fitness test drunk and failed. He told his command he failed because he was sick.

d. One evening a fight broke out in the barracks while he was drinking. His first sergeant told him he would suffer the consequences for defending one of the Soldiers involved. Although he was not on duty, he was taken to the military police (MP) station for a breathalyzer. He was charged with drunk on duty, disorderly conduct, and fraternization. He was placed in the Alcohol and Drug Abuse Prevention and Control Program. It was determined he was severely depressed, and he was prescribed Prozac.

e. Prior to a deployment to Korea, he had a mental breakdown while on leave. He ran out of Prozac and leave days. He went to Hanscom Air Force Base (AFB) and spoke with a mental health specialist who encouraged him to turn himself in. After arriving at Fort Drum, he was sent to Fort Knox, KY, where he was out-processed. No one asked him how he was doing. Nor did he receive a physical or mental health exam. He felt lost, alone, and angry.

f. Since his discharge, he has been in unsafe situations, used drugs and alcohol, and suffered with rage, anxiety, depression, and trust issues. His work life has suffered, as he can go weeks at a time feeling useless, anxious, and depressed, and cannot physically get out of bed. He needs help with his drinking, behavioral health issues, and inability to be a fully functioning member of society.

3. The applicant enlisted in the Regular Army on 23 January 1988. Upon completion of initial entry training, he was awarded military occupational specialty 11B (Infantryman). He reenlisted on 26 July 2001. The highest rank he attained was sergeant/E-5.

4. The applicant was formally counseled by his platoon sergeant (PSG) on 24 February 2003 for failure to report, being drunk on duty, and fraternization. While assigned to funeral detail, he did not report for regular duty. The PSG found him in his bed and escorted him to the 1SG's office. The 1SG smelled alcohol on his breath and sent him to the MP station for a breathalyzer. The incident occurred following a pay per view event the applicant had in his room. He and junior Soldiers were drinking alcohol, and a fight broke out. In response to the counseling, the applicant stated he was unaware that he was required to report for duty when he had no funeral tasks. He believed fraternization was considered to be for gain or preferential treatment.

5. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 11 April 2003, for two specifications of failure to obey a lawful order, on or about 23 February 2003, and for failure to go at the time prescribed to his appointed place of duty and wrongful overindulgence of intoxicating liquor incapacitating proper performance of his duties, on or about 24 February 2003. His punishment consisted of reduction to specialist/E-4, forfeiture of \$874.00 pay per month for two months, and extra duty and restriction for 45 days.

6. The applicant was reported absent without leave (AWOL) on 21 September 2003, after failing to report for movement to Korea. He was subsequently dropped from the rolls (DFR). He surrendered to military authorities at Hanscom AFB, MA, on 30 January 2004 and was pending the determination of his AWOL/DFR status.

7. Court-martial charges were preferred against the applicant on 11 March 2004 for a violation of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows the applicant was charged with being AWOL, from on or about 21 September 2003 until on or about 30 January 2004.

8. The applicant consulted with legal counsel on 11 March 2004.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, 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 courts-martial, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10. 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 acknowledged making this 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 Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

c. In an attached statement, the applicant requested a general discharge. He stated, in effect, he served for five plus years, had multiple deployments, received multiple awards, and graduated on the commandant's list from the Primary Leadership Development Course. He served honorably and did not want his whole career to be judged by his period of AWOL.

9. On 12 March 2004, the applicant's immediate commander recommended approval of the request for discharge in lieu of court-martial and further recommended the issuance of an UOTHC discharge.

10. On 17 March 2004, the separation authority approved the recommended discharge, directed a UOTHC service characterization, and reduction to private/E-1.

11. The applicant was discharged on 26 March 2004, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his character of service was UOTHC, with separation code KFS and reentry code RE-4. He completed 5 years, 9 months, and 23 days of net active service, with lost time from 21 September 2003 to 29 January 2004. He was awarded or authorized the National Defense Service Medal and Army Service Ribbon. The Remarks Block listed his continuous honorable service

12. The Army Discharge Review Board reviewed the applicant's request for an upgrade of his character of service on 14 January 2009. The Board concluded his discharge was proper and equitable and subsequently denied his request for relief.

13. The applicant provides a letter from his county Veterans Services Officer, dated 31 January 2024, wherein he states the applicant underwent some difficult circumstances while in the Army which affected his mental health. His records reveal he was not afforded appropriate mental health care. [The applicant] acknowledges he did not always handle himself in accordance with good order and discipline, but he would like the Army to reconsider the mitigating factors.

14. Discharges 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.

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

16. 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 something more favorable. 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 23 January 1988 and reenlisted on 26 July 2001.
- The applicant accepted NJP on 11 April 2003 for two specifications of failure to obey a lawful order on 23 February 2003 and for failure to go at the time prescribed to his appointed place of duty and wrongful overindulgence of intoxicating liquor incapacitating proper performance of his duties on 24 February 2003.
- Court-martial charges were preferred against the applicant on 11 March 2004 for being AWOL from 21 September 2003 until 30 January 2004. He failed to report for movement to Korea. He voluntarily requested discharge in lieu of trial by courts-martial.
- The applicant was discharged on 26 March 2004 and completed 5 years, 9 months, and 23 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 he suffered from a mental health condition and substance abuse, and he did not receive appropriate treatment. He contends this experience mitigates his misconduct, and he offers an extensive history of the events leading to his discharge, which includes alleged military sexual trauma (MST). The application did not contain any medical or mental health records. There was insufficient evidence that the applicant was diagnosed with a 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. There was indication of a prescription for Prozac on 8 April 2003.

e. 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 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 resulting from MST at the time of the misconduct. Records from his time in service show a prescription for Prozac in April 2003, but no medical or mental health documentation is available. The application was void of any mental health documentation.

(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, and he attributed this to MST.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service, but there was documentation of a prescription history. No records since his time in service were provided. While there is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service, the applicant asserts a fully mitigating BH experience, MST. As there is an association between MST and avoidant behavior, such as going AWOL, and alcohol use, there is a nexus between his experience of MST and his pattern of misconduct.

g. The applicant contends he had an MST and was experiencing a mental health condition that mitigates his misconduct, and per Liberal Consideration his assertion of MST alone 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 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 commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he 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 his separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical official's finding sufficient evidence to support the applicant had a condition or experience that mitigated his misconduct. Thus, the Board determined that in view of his AWOL, his service clearly did not rise to the level required for an honorable characterization; 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 his separation and thus the narrative reason for separation and corresponding codes should not change.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, 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 26 March 2004, showing:

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

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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 (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 Army Board for Correction of Military

Records (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 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 ABCMR applicants (and/or their counsel) prior to adjudication.

3. 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. 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.

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; 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.

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, 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//