

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 January 2025

DOCKET NUMBER: AR20240004288

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

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), with self-authored statement

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 it has been 16 years since his discharge. He is aware he is supposed to apply to the Board using a DD Form 149 (Application for Correction of Military Records). Due to the COVID 19 government shutdown, he was unable to file sooner. He hopes this minor discrepancy can be overlooked. He notes post-traumatic stress disorder (PTSD) and other mental health as conditions related to his request.
3. The applicant enlisted in the Regular Army on 11 July 2007, for a 4-year period. Upon completion of initial entry training, he was awarded military occupational specialty 92Y (Unit Supply Specialist). The highest rank he attained was private first class/E-3.
4. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 14 December 2007, for four occasions of failing to go at the time prescribed to his appointed place of duty between on or about 26 October 2007 and 7 November 2007. His punishment consisted of forfeiture of \$150.00 pay, 14 days of extra duty, and 14 days restriction.
5. The applicant was reported absent without leave (AWOL) on 28 February 2008 and was subsequently dropped from the rolls on 29 March 2008. He was apprehended by civil authorities in Erie, PA, and returned to military control at Fort Knox, KY, on 29 June 2008.

6. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 28 August 2008, for being AWOL, from on or about 28 February 2008 until on or about 28 June 2008; for two occasions of failure to obey orders or regulations, on or about 11 July and 18 July 2008; and for assault, due to a physical altercation with another Soldier, on or about 16 July 2008. His punishment consisted of forfeiture of one month's pay, 45 days of extra duty, and 45 days restriction.

7. The applicant underwent a mental status evaluation on 15 September 2008. The evaluating provider noted there was no evidence of an emotional or mental disorder of psychiatric significance of such severity to warrant disposition through medical channels. The applicant was psychiatrically cleared for administrative proceedings.

8. The applicant underwent a medical examination on 21 September 2008. The relevant DD Form 2807-1 (Report of Medical History) and corresponding DD Form 2808 (Report of Medical Examination) show the applicant did not note any issues or conditions in his medical history. The examining provider determined the applicant was medically qualified for chapter.

8. On 29 September 2008, the applicant's immediate commander notified the applicant of his intent to initiate separation action under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c, for commission of a serious offense. The commander noted the applicant's period of AWOL and additional violations of the Uniform Code of Military Justice as reasons for the action. On that same date, the applicant acknowledged receipt of the notification.

9. The applicant consulted with counsel on 9 October 2009. He was advised of the basis for the contemplated action to separate him and its effect; of the rights available to him; and the effect of waiving his rights. He acknowledged understanding that he may expect to encounter substantial prejudice in civilian life if he were issued a UOTHC or general discharge. He elected not to submit a statement in his own behalf.

10. On 15 October 2008, the commander formally recommended the applicant's separation from service, prior to his expiration term of service, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of commission of a serious offense. The commander requested rehabilitative requirements be waived and further recommended an UOTHC character of service. The intermediate commander concurred with the recommendations.

11. The separation authority approved the recommended separation action on 14 November 2008 and directed the issuance of an UOTHC discharge.

12. The applicant was discharged on 3 December 2008, under the provisions of Army Regulation 635-200, paragraph 14-12c (1), by reason of misconduct (AWOL). His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his character of service was UOTHC, with separation code JKD and reentry code RE-3. He completed 1 year and 22 days of active service, with lost time from 28 February 2008 to 28 June 2008.

13. Regulatory guidance provides when an individual is discharged under the provisions of Chapter 14, by reason of misconduct, an UOTHC characterization of service is normally appropriate. However, the separation authority may direct a general discharge of such is merited by the Soldier's overall record.

14. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

15. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) character of service. He selected PTSD and OMH on his application as related to his request.

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:

- Applicant enlisted into the Regular Army on 11 July 2007.
- Applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 14 December 2007, for four occasions of failing to go at the time prescribed to his appointed place of duty between on or about 26 October 2007 and 7 November 2007.
- Applicant was reported absent without leave (AWOL) on 28 February 2008 and was subsequently dropped from the rolls on 29 March 2008. He was apprehended by civil authorities in Erie, PA, and returned to military control at Fort Knox, KY, on 29 June 2008.
- Applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 28 August 2008, for being AWOL, from on or about 28 February 2008 until on or about 28 June 2008; for two occasions of failure to obey orders or regulations, on or about 11 July and 18 July 2008; and for assault, due to a physical altercation with another Soldier, on or about 16 July 2008.
- Applicant was discharged on 3 December 2008, under the provisions of Army Regulation 635-200, paragraph 14-12c (1), by reason of misconduct (AWOL). His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his

character of service was UOTHC, with separation code JKD and reentry code RE-3. He completed 1 year and 22 days of net active service, with lost time from 28 February 2008 to 28 June 2008.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant does not provide any rationale for his selection of PTSD and OMH on his application as related to his request. He states it has been 16 years since his discharge. He is aware he is supposed to apply to the Board using a DD Form 149 (Application for Correction of Military Records). Due to the COVID-19 government shutdown, he was unable to file sooner. He hopes this minor discrepancy can be overlooked.

d. Active-duty electronic medical records available for review show on 15 September 2008, the applicant participated in a mental status evaluation for the purpose of separation. The evaluating provider noted there was no evidence of any mental disorder or condition, and the applicant was psychiatrically cleared for administrative proceedings.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and there is no evidence he has been diagnosed with any behavioral health condition. On 27 October 2008, the applicant presented to the VA following his discharge from service and, contrary to his service record, reported being a combat veteran with PTSD who experienced a blast/explosion of an IED, a vehicular accident/crash, and a fall due to a blow to the head while in combat. He was homeless and reported residing at [REDACTED] in their healing bed since he had no place to go upon his military discharge. He shared due to his injury he was able to stay at [REDACTED] as long as he needed. He further reported suffering from reoccurring nightmares "related to a man he shot and killed while at war." The applicant was flagged for the polytrauma treatment team until confirmation of his eligibility status could be confirmed. The applicant's ineligibility was confirmed in March 2009 and no further service was provided. On 3 May 2011, the applicant met with a provider while incarcerated as part of the jail outreach for veterans in custody. He was informed that he was not eligible for VA services.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected PTSD and OMH on his application as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant selected PTSD and OMH as related to his request, he did not provide a rationale or explanation for his assertion of PTSD or OMH. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses and the VA has not service-connected the applicant for any BH condition. The VA electronic record indicates the applicant attempted to fraudulently access benefits by claiming to be an injured combat veteran. All services were discontinued when the applicant's ineligibility was confirmed, and he has not been diagnosed with any mental health condition. And while the applicant selected PTSD and OMH on his application, he did not provide any medical documentation substantiating any BH diagnosis.

h. Per Liberal Consideration guidelines, his selection of PTSD and OMH on his application is sufficient to warrant consideration by the Board.

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 Department of Defense 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 separated for commission of a serious offense. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant's contention of PTSD and other mental health; however, reviewed and concurred with the medical advisor's review finding insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

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.

4/10/2025

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

3. 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.

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//