

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 January 2025

DOCKET NUMBER: AR20240004290

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

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge)
- Self-authored letter
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 he has been diagnosed with post-traumatic stress disorder (PTSD) since his discharge. He was not able to logically assess his responsibilities in the military because of mental illness. During his last tour in Iraq, he remembers his life passing before him as he witnessed bombs in the sky. He feared losing his life. Following several attacks he recalls sitting in shock, just shaking.
3. On 17 August 2001, the applicant enlisted in the Regular Army for 5 years. The highest grade he attained was E-4.
4. He served in Southwest Asia from 26 March 2002 to 27 September 2002, and from 8 March 2003 to 26 August 2003.
5. On 5 March 2004, the applicant tested positive for marijuana.
6. Court-martial charges were preferred against the applicant on 6 May 2004, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge

Sheet) shows he was charged with four specifications of wrongfully using marijuana, on or about 3 February 2004, 26 February 2004, 1 March 2004, and 15 March 2004.

7. On 27 May 2004, the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a bad conduct discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 10, request for discharge in lieu of trial by court-martial. In his request for discharge, he acknowledged his understanding of the elements of the offenses charged, and he was admitting guilt to one or more of the specifications against him, or of a lesser included offense which also authorized the imposition of a bad conduct discharge. He further acknowledged he understood that if his discharge request was approved, he could be deprived of several Army benefits, he could be ineligible for some 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.

b. The available record is void of a statement in his own behalf.

8. On 2 June 2004, the applicant's commander recommended approval of his request for discharge in lieu of trial by court-martial with his discharge characterized as UOTHC.

9. The separation authority approved the applicant's request for discharge on 3 June 2004. His discharge was characterized as UOTHC, and he was reduced to E-1.

10. The applicant was discharged on 15 June 2004. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He completed 2 years, 9 months, and 29 days of active service.

11. Additionally his DD Form 214 shows he was awarded or authorized the National Defense Service Medal, Global War on Terrorism Expeditionary Medal, Global War on Terrorism Service Medal, Army Service Ribbon.

12. On 5 November 2024, the ABCMR staff requested that the applicant provide medical documents to support his other mental health issues. He was advised that he could contact the doctor that diagnosed him or his Veterans Affairs regional office for assistance. He did not respond.

13. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

14. 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.

15. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable. The applicant selected PTSD 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 in the Regular Army on 17 August 2001.
- He served in Southwest Asia from 26 March 2002 to 27 September 2002, and from 8 March 2003 to 26 August 2003.
- On 5 March 2004, the applicant tested positive for marijuana.
- Court-martial charges were preferred against the applicant on 6 May 2004, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with four specifications of wrongfully using marijuana, on or about 3 February 2004, 26 February 2004, 1 March 2004, and 15 March 2004.
- The applicant was discharged on 15 June 2004. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He completed 2 years, 9 months, and 29 days of net active service this period.

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 states he has been diagnosed with post-traumatic stress disorder (PTSD) since his discharge. He was not able to logically assess his responsibilities in the military because of mental illness. During his last tour in Iraq, he remembers his life passing before him as he witnessed bombs in the sky. He feared losing his life. Following several attacks he recalls sitting in shock, just shaking.

d. Active-duty electronic behavioral health records available for review show the applicant was diagnosed with Cannabis Abuse and participated in eight behavioral health encounters from 17 March 2004 to 20 April 2004.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected, likely due to the characterization of his service. The applicant sought mental health services in May 2010. He participated in an intake session on 25 May 2010 and requested treatment for his reported symptoms of PTSD and a possible TBI. He appeared to have symptoms consistent with PTSD and was referred for further assessment as well as a consult to explore his possible TBI. A TBI evaluation dated 28 May 2010, indicates the applicant was negative for mild TBI but did appear to have symptoms of PTSD and he was referred to the PTSD specialty clinic. However, given his extensive substance abuse history, the applicant was also assessed for a substance use disorder on 16 June 2010. He was diagnosed with Substance Abuse Disorder, Cannabis Abuse, and Alcohol Abuse. However, he was found ineligible for service and the note indicates he was "only eligible for Humanitarian Emergency Services with the exception of Knee/Feet/PTSD". The applicant had no further services past 15 July 2010. In April 2016, he was psychiatrically hospitalized due to suicidal ideation but was discharged the next day since he was not deemed to be at acute risk. His discharge diagnosis was: Depression, NOS; Anxiety Disorder, NOS; Cannabis Use Disorder; and Rule-out possible Substance Induced Mood Disorder. On 24 January 2024, the applicant was admitted into a VA residential program for homeless veterans. However, he tested positive for THC upon admission and was informed prior to admission that he would not be able to continue to use marijuana while in the program. He agreed at that time to comply with the regulations. He was placed on a behavior modification plan and informed if he violated the plan he could be discharged from the facility. On 17 June 2024, he was discharged from the program due to his continued use of marijuana and lack of participation in treatment.

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

g. Kurta Questions:

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

(2) Did the condition exist or experience occur during military service? Yes. The applicant deployed to a combat zone while in service. The available electronic medical record shows the applicant was diagnosed with Cannabis Abuse while in service but no other BH condition.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to four specifications of wrongfully using marijuana. The available VA electronic medical record shows the applicant is not service connected, but he has been diagnosed with Depression, Anxiety Disorder, Substance Abuse Disorder, and Cannabis Abuse. In addition, the applicant appeared to have symptoms of PTSD upon assessment in May 2010 and he was referred to a PTSD specialty clinic, but services were not provided due to issues with eligibility. Given the nexus between PTSD, Depression, and Anxiety Disorder with the use of substances to alleviate/cope with the symptoms of his behavioral health conditions, the applicant's use of marijuana is mitigated by his BH conditions.

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 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 charged with wrongfully using marijuana, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned by his commander during separation. The Board reviewed and concurred with the medical advisor's review finding sufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his misconduct. Based on the applicant's contention and medical review, the Board granted relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant 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 15 June 2004 to show an honorable characterization of service.

4/10/2025

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, 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. 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.

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 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

4. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy 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//