

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 January 2025

DOCKET NUMBER: AR20240004879

APPLICANT REQUESTS: 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
- DD Form 214 (Certificate of Release or Discharge from Active Duty) - 2
- Veterans Affairs (VA) decision letter

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 severe post-traumatic stress disorder (PTSD) after two deployments to Iraq. While on permanent change of station leave, he found that his three children were abandoned by their mother. He quickly went to his children; he knew this issues would take longer than the amount of leave he was authorized. He attempted to get an extension of his leave; but was denied by his new duty assignment. He called his old unit for assistance without any success. He had no choice but to stay. He served his country honorably on two deployments to a combat zone. He had to protect his children and that is why he was absent without leave (AWOL).
3. On 25 August 2000, the applicant enlisted in the U.S. Marine Corps. He served in Iraq; however his period of service there is undetermined. He was honorably discharged on 24 August 2004. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he completed 4 years of net active service this period.
4. The applicant enlisted in the Regular Army on 24 April 2006 for 3 years. He reenlisted on 29 May 2008.

5. The applicant served in Afghanistan from 8 May 2010 to 7 May 2011.
6. A DD Form 553 (Deserter/Absentee wanted by the Armed Forces) prepared on 7 March 2013, shows that the applicant was reported as AWOL on 26 May 2012. Item 19 (REMARKS) reflects "Caution: suicidal ideation."
7. On 5 April 2016, the applicant was apprehended and returned to military control.
8. Court-martial charges were preferred against the applicant on 25 May 2016, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL.
9. On 25 May 2016, 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 at least one of the charges or of a lesser included offense, which also authorizes the imposition of a punitive 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.
10. His commander recommended approval of the applicant's request for discharge.
11. Consistent with the chain of command's recommendations, the separation authority approved the applicant's request for discharge on 8 June 2016, with a characterization of service UOTHC.
12. On 10 August 2016, the applicant underwent a medical examination and indicated he had frequent trouble sleeping because of nightmares that keep playing over and over in his head. He had been having these issues since his deployment in 2003. However, he was deemed medically qualified for separation.

13. The applicant was discharged on 26 August 2016. 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 characterized as UOTHC. He completed 5 years, 10 months, and 25 days of net active service this period with 1,622 days of time lost.

14. Additionally his DD Form 214 shows he was awarded or authorized the Afghanistan Campaign Medal with Campaign Star, Army Achievement Medal, U.S. Navy Achievement Medal, U.S. Navy/U.S. Marine Corps Presidential Unit Citation, Army Good Conduct Medal (2nd Award), National Defense Service Medal, Global War on Terrorism Expeditionary Medal, Overseas Service Ribbon (2nd Award), and U.S. Navy Sea Service Deployment Ribbon.

15. The applicant provides a VA decision letter that shows his evaluation of PTSD, alcohol use disorder, and cocaine use disorder was increased to 70% effective 30 November 2016.

16. 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.

17. 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.

18. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. 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 the Regular Army on 24 April 2006 after serving in the USMC; 2) The applicant deployed to Iraq and Afghanistan; 3) The applicant was found AWOL from 24 April 2006 to 29 May 2012; 5) The applicant was discharged on 26 August 2016, Chapter 10, in lieu of trial by court-martial. His service characterized as UOTHC.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also reviewed.

c. The applicant asserts he was experiencing PTSD after his deployments, which mitigates his misconduct. There is insufficient evidence the applicant was diagnosed with a mental health condition including PTSD while on active service. However, there is evidence the applicant did experience significant alcohol dependence and substance abuse during his Army active service. He also sought assistance at Family Advocacy for marital therapy and parenting classes. There is also evidence the applicant reported difficulty with anger and stress management, insomnia, and nightmares related to deployment while on active service when engaged in substance abuse treatment and marital therapy.

d. A review of JLV provided evidence the applicant began to engage with the VA for treatment for PTSD and substance abuse and alcohol dependence in 2015. He was diagnosed and treated by the VA for service-connected PTSD related to his experiences during his deployments. The applicant does receive service-connected disability for this condition.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence to support 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 experienced PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed with and treated for service-connected PTSD related to his deployments starting in 2015 by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed with and treated for service-connected PTSD related to his deployments starting in 2015 by the VA.

(3) Does the condition/experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing PTSD while on active service as a result of his deployments. The applicant did go AWOL after his second deployment. This type of avoidant behavior can be a natural sequelae to PTSD. Therefore, per Liberal Consideration, the applicant's misconduct is mitigatable.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Although the medical review made the following findings related to liberal consideration:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes,

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition/experience actually excuse or mitigate the discharge? Yes.

the Board concluded that the 1,622 days of AWOL outweighed any mitigation warranting a discharge upgrade request.

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.



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/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//