

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 February 2025

DOCKET NUMBER: AR20240005029

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) characterization of service and to appear before the Board via video/telephone.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- Statement from former supervisor
- Statement from mother
- Statement from wife
- Statement from sister
- Secretary of Defense, Pentagon, Washington, DC memorandum, Subject Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder (Commonly known as the Hagel Memo)
- Mental Health Progress Note
- Program for Banquet
- Annual Performance Reviews for 2020-2022
- Bachelor of Science diploma

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 provides a three-page statement wherein he provides a synopsis of his service, with focus on his deployment to Afghanistan in support of Operation Enduring Freedom (OEF). He states, in part, his unrecognized post-traumatic stress disorder (PTSD) symptoms influenced his actions that led to his discharge UOTHC.

a. He believes his discharge was inequitable per the Hagel Memorandum because he was suffering from undiagnosed PTSD. He also believes he would have received a different discharge status if these errors had not been made, and his PTSD was properly diagnosed during his time in service.

b. As a Reservist, he was a good Soldier and completed his duties in his unit and was never cited for misconduct. His good service was recognized, and he was promoted to the rank/grade of specialist (SPC)/E-4 in less than 2 years. As a civilian, he was attending college and working to complete his general education classes as an underclassman.

c. He was ordered to deploy to Afghanistan to support OEF in 2005. His military occupational specialty (MOS) was 42L (Admin Specialist) which was subsequently changed to 42A (Human Resources Specialist), with a postal designator. As an early career Soldier and reserve postal worker, he had not been deployed to a combat theater before or been in a hostile environment where his safety and life were threatened.

d. While 42A was not a combat MOS, he would frequently leave the Kandahar Air Base to deliver mail to the outlying Forward Operating Bases (FOB) traveling by vehicle convoy. It was not uncommon for convoys to be engaged by enemy fighters or encounter roadside bombs and improvised explosive devices (IED). They were always on alert and scanning for threats. Some of the Soldiers in his postal platoon encountered this directly and described the events in detail to their unit. Having an attack nearby caused his hypervigilance to increase. The enemy would frequently fire mortars at the troops directly and also into the base. Many times, these randomly aimed mortars would land and not injure anyone, or they would land and only damage a road or the airstrip. But they did not always miss; there were several times where the mortars would hit structures or barracks tents, injuring, or killing the people inside. As a result of a mortar attack near his post in the base, he was awarded the Combat Action Badge.

e. The constant threat of enemy attack, the trucks hit by roadside bombs, and the rocket mortar attacks caused him to develop undiagnosed PTSD. He was mentally struggling in Afghanistan, but it was not Soldier-like to admit it back then; you were considered weak if you could not handle the sandbox. It was not the Army way to show weakness. At one point, his suffering peaked, and he stuck his rifle in his mouth and nearly committed suicide while deployed. Fortunately, something stopped him, and he did not follow through.

f. His PTSD, hypervigilant mental state, constant fear, and anxiety continue to this day, but fortunately he has been receiving mental health help at the local Veterans Affairs (VA) Hospital which has been lifesaving.

g. He bonded and found comradery with several of the other Soldiers in his postal unit, but never admitted his mental struggles to them. At some point during the deployment, some of these Soldiers got involved with stolen packages. Many items went missing, including electronics and other things. He knew this was going on and he knew that it was wrong, but he did not say anything because those were his battle buddies and also his roommates in the barracks. He felt that if he turned them in, he would lose the only human connections he had with anyone in Afghanistan.

h. At one point, he gave into the peer pressure and participated in the wrongdoing. He stole a laptop computer. He knew this was wrong, but again, he did not want to do anything to alienate the only people that he had to support him. Every day since then, he has lived with regret. There was an inquiry into the missing packages and there was an inspection of all of the Soldiers' sleeping quarters. No one would talk to give up their buddies, so they were all split up and given other assignments outside of their unit at the post office. He was moved around some and was eventually assigned as gate security and local personnel search for the main entrance gate.

i. His mental condition worsened after the reassignment to gate security and personal search. His duties were to search the incoming local workers for weapons or suicide vests. The search point was set up away from the x-ray machine at the main gate. His duty was to pat them down and search for explosives before they got close enough to the Soldiers and x-ray equipment in the base to do major damage with a suicide vest. He was quite literally a sacrificial lamb. Each person he searched caused him to wonder "Is this the person with an explosive vest?"..."Will I trigger the vest by searching them?"..."Is this when I die?"

j. He and the other Soldiers under investigation were not permitted to leave the desert and see family. He was both physically and mentally confined with stress for the entire deployment. Once the deployment ended, around April 2006, he was not released back to civilian life, but instead stationed in Vicenza, Italy with the 38th Personnel Service Detachment until the investigation was completed. While he was stationed there, he did his best to perform admirably and honorably; and his performance was recognized by his supervisor.

k. Around September 2006, the Army offered him an administrative discharge, and he accepted it. Shortly after being discharged and returning home, he turned to alcohol to cope with his mental condition, which he now knows was PTSD. He was also trying to cope with the stigma of an UOTHC discharge. It was not long before alcohol was a staple in his life, and he became a problem drinker and alcoholic. He did not know where to turn for help for his alcoholism, anxiety, flashbacks, and PTSD because he did not believe that he would be welcomed at a VA hospital because of his discharge characterization.

l. Eventually, his friends and family convinced him to talk to a therapist about his symptoms. He started seeing a civilian therapist, and she helped him realize he had PTSD and was also an alcoholic. He reflected on his life at that time, and decided he did not want his children to have that type of role model for a father. It was then that he decided to quit drinking. It was not easy, and it still isn't, but it is the right thing to do for his family. He has been sober for 3 years now. He is currently being treated for PTSD.

m. Since being discharged, he has worked hard to do the right thing and give back to the community. He went to college and now has 13 years of gainful employment, 10 at his current employer. He is married and has two young children. In his local community, he has volunteered as a Cub Scout leader, soccer coach, and baseball coach. He attends church and helps with the Sunday School classes. He also donates time and money to organizations in his community.

n. He is hopeful that this letter and the included supporting documentation will help the Board see that he served honorably before and after the event in Afghanistan while in the Army. He is not proud of the mistake he made, but it was a temporary lapse in judgement, and only a small part of his overall positive military service. Although he continues to suffer from the invisible wounds of war, he has acted as an upstanding citizen and will continue to try to make a positive impact on the people around him.

3. On 2 January 2003, the applicant enlisted in the U.S. Army Reserve for a period of 8 years in the rank/grade of private (PV1)/E-1.

4. Orders show the applicant was ordered to active duty for a period of 545 days with a reporting date of 17 January 2005.

5. The applicant was promoted to the rank/grade of sergeant (SGT)/E-5 effective 27 July 2005.

6. The applicant was ordered to active duty for a period of 6 months and assigned to a unit in Italy with a reporting date of 25 April 2006. The purpose of this action was to undergo processing under the provisions of the Uniform Code of Military Justice (UCMJ). The Additional Instructions portion of the orders state he was relieved from Reserve Component assignment on the day preceding the effective date of the orders. He would be retained on active duty in his current grade and was included in the Active Army end strength.

7. A DD Form 458 (Charge Sheet) shows on 5 May 2006, court-martial charges were preferred against the applicant for violation of the UCMJ for:

a. at or near Kandahar, Afghanistan, between about 27 September 2005 and about 31 December 2005, wrongfully stealing certain mail matter, to wit: a package addressed

to C.M., which said package was then in the Kandahar Airfield Post Office, before said package was delivered to the addressee.

b. on or about 11 October 2005, with intent to deceive, making to Sergeant First Class G.M.W an official statement, to wit: "I acquired the camcorder in July 2005," or words to that effect, which statement was totally false, and was then known by him to be so false.

8. On 12 June 2006, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10, in lieu of trial by court-martial. He consulted with legal counsel and was advised of the basis for the trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a UOTHC discharge; and the procedures and rights that were available to him. The applicant indicated that he elected to submit statements in his own behalf, but no such statements are filed in his available personnel file.

9. The applicant's immediate commander recommended approval of his request for discharge with his service characterized as UOTHC.

10. On 30 August 2006, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial. He directed his service be characterized as UOTHC, and further directed that the applicant be reduced to the lowest enlisted grade prior to execution of the discharge.

11. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show he was discharged on 13 September 2006, under the provisions of Army Regulation 635-200, Chapter 10, by reason of "In Lieu of Trial By Court-Martial" with Separation code "KFS." His service was characterized as UOTHC. He was credited with completing 1 year, 5 months and 6 days of net active service this period. He served in Afghanistan from 8 April 2005 to 1 April 2006. His DD Form 214 also shows he was awarded or authorized the:

- Army Achievement Medal
- National Defense Service Medal
- Afghanistan Campaign Medal
- Global war on Terrorism Service Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Combat Action Badge

12. The applicant provides the following documents which are available in their entirety for the Board's consideration.

a. Character reference letters from his former supervisor, mother, wife, and sister, each of whom rendered favorable comments about the applicant's work ethic, devotion to his family, and contributions within his community. They also describe the noticeable changes in the applicant's behavior following his deployment and subsequent separation.

b. Secretary of Defense, Pentagon, Washington, DC memorandum, Subject Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder (Commonly known as the Hagel Memo) which is discussed in the Reference portion of this Record of Proceedings.

c. A Mental Health Progress Note provides a synopsis of treatment the applicant received at a VA medical center.

d. A program for a Cub Scout Pack banquet shows the applicant and his wife were Den Leaders.

e. The applicant's annual performance reviews rendered for 2020-2022 show his supervisors rendered favorable comments regarding his performance and potential.

f. A diploma shows the University of Connecticut conferred a Bachelor of Science in Engineering-Electrical Engineering degree upon the applicant on 8 May 2011.

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 shall consider the applicant's petition, available records and/or submitted documents in support of the petition. By regulation, an applicant is not entitled to a hearing before the Board.

15. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. He contends PTSD is related to his request for an upgrade. 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 U.S. Army Reserve on 2 January 2003; 2) The applicant was ordered to active duty for a period of 545 days with a reporting date of 17 January 2005 to deploy to Afghanistan; 3) On 5 May 2006, court-

martial charges were preferred against the applicant for wrongfully stealing and with intent to deceive making a false official statement; 4) The applicant was discharged on 13 September 2006, Chapter 10, by reason of "In Lieu of Trial By Court-Martial." His service was characterized as UOTHC.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) and hard-copy VA medical documentation provided by the applicant were also examined.

c. The applicant contends he experienced PTSD, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition, including PTSD while on active service.

d. A review of JLV provided evidence the applicant began engaging with the VA in 2023. He has been diagnosed and treated for PTSD related to his experiences during his deployment. He does not receive any service-connected disability for a mental health condition including PTSD.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient 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 misconduct? Yes, the applicant asserts he was experiencing PTSD, which mitigates his misconduct. He was diagnosed in 2023 by the VA with PTSD as a result of his experiences in combat.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing PTSD, while on active service. He was diagnosed in 2023 by the VA with PTSD as a result of his experiences in combat.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is sufficient evidence the applicant was diagnosed by the VA with PTSD as a result of his experiences in combat. However, there is no nexus between the applicant's PTSD and his misconduct of stealing mail and making a false statement in that: 1) these types of misconduct are not a part of the natural history or sequelae of the applicant's PTSD; 2) PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's request, available military records and medical review, the Board concurred with the advising opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct.

2. Consideration was given to the Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he was experiencing PTSD, which mitigates his misconduct. He was diagnosed in 2023 by the VA with PTSD as a result of his experiences in combat.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing PTSD, while on active service. He was diagnosed in 2023 by the VA with PTSD as a result of his experiences in combat.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is sufficient evidence the applicant was diagnosed by the VA with PTSD as a result of his experiences in combat. However, there is no nexus between the applicant's PTSD and his misconduct of stealing mail and making a false statement in that: 1) these types of misconduct are not a part of the natural history or sequelae of the applicant's PTSD; 2) PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

3. The Board noted the applicant's assertion that his misconduct was influenced by undiagnosed post-traumatic stress disorder (PTSD) resulting from his deployment to Afghanistan in support of Operation Enduring Freedom. He described experiencing combat-related stress, hypervigilance, and suicidal ideation, and contends these symptoms contributed to the actions that led to his discharge. The Board acknowledged the applicant's honorable service in a combat zone, his award of the Combat Action Badge, and his commendable post-service rehabilitation, including sustained sobriety,

community involvement, and professional achievements. The Board also reviewed character reference letters from family members and colleagues attesting to his integrity and personal growth since separation.

4. However, after thorough review, the Board determined that the available evidence does not establish sufficient in-service mitigating factors to outweigh the misconduct. There is no medical documentation confirming a diagnosis of PTSD during his period of service or directly linking his misconduct to a behavioral health condition. The Board found that the discharge was both proper and equitable, given the seriousness of the offenses and the circumstances surrounding his separation. In the absence of new medical evidence substantiating a service-related condition at the time of discharge, the Board agreed that the characterization of service remains appropriate and denied relief.

5. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

| <u>Mbr 1</u> | <u>Mbr 2</u> | <u>Mbr 3</u> |                      |
|--------------|--------------|--------------|----------------------|
| :            | :            | :            | GRANT FULL RELIEF    |
| :            | :            | :            | GRANT PARTIAL RELIEF |
| :            | :            | :            | GRANT FORMAL HEARING |
| XXX          | XXX          | XXX          | 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.

X //SIGNED//

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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, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

4. 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 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.

b. 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. 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.

d. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised Post-Traumatic Stress Disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC 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.

6. 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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

7. 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, BCM/NRs 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//