

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 March 2025

DOCKET NUMBER: AR20240006477

APPLICANT REQUESTS:

- upgrade of his under other than honorable conditions (UOTHC) character of service to under honorable conditions (general)
- a change to his narrative reason for separation, presumably more favorable
- and an appearance before the Board

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 from the Armed Forces of the United States)
- self-authored statement
- statements of support (4)
- Medical documents (28 pages), dated 22 April 2022 to 20 May 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 was involved in a convoy accident while he was in Iraq which resulted in a foot injury. He was placed on quarters for one month and then returned to duty with no restrictions. These challenging circumstances began to wear on his resilience. He performed his duties for 6.5 months before going on rest and recuperation (R&R) leave.

b. While on R&R, he numbed the pain with over the counter medication and marijuana. He experienced a "psychotic episode" due to post-traumatic stress disorder (PTSD) while he was at the airport, preparing to return to Iraq. He believed he had enough with life and was willing to die rather than return to Iraq. The airport police were

notified, he was placed in an ambulance, and taken to Fort Gordon for psychiatric evaluation. He was later transported back to Fort Hood where he was eventually separated. He was misdiagnosed with personality and adjustment disorders. It was clear he was dealing with PTSD. He served honorably while he was in Iraq.

3. The applicant enlisted in the Army National Guard of the United States on 6 December 2001. He was ordered to active duty for the completion of initial entry training. He was released from active duty on 14 August 2002. His DD form 214 (Certificate of Release or Discharge from Active Duty) shows his service was uncharacterized [See Administrative Notes] He was awarded military occupational specialty (MOS) 63B (Light Wheeled Vehicle Mechanic). He completed 4 months and 26 days of net active service.

4. A National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows the applicant was discharged from the Army National Guard and as a Reserve of the Army on 30 September 2003, under the provisions of National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), paragraph 8-26e(2), by reason of acts or patterns of misconduct, with an under honorable conditions (general) character of service.

5. The applicant enlisted in the Regular Army on 26 January 2004. The highest rank he attained was private first class/E-3.

6. The applicant served in Iraq from 21 February 2004 1 October 2004.

7. The applicant was reported absent without leave (AWOL) on 4 October 2004, when he failed to return for duty following his period of rest and recuperation (R&R) leave from Iraq. He was admitted to the inpatient psychiatric ward at Fort Gordon, GA, and subsequently reported as present for duty on 15 October 2004.

8. He underwent a psychiatric evaluation during his hospitalization. The evaluating provider noted the diagnoses of adjustment disorder with mixed disturbance of emotions and conduct (malingering); personality disorder not otherwise specified with antisocial features; and left foot pain. The provider further recommended the applicant be administratively separated from service as expeditiously as possible.

9. He underwent a medical examination on 18 October 2004. The relevant DD Form 2807-1 (Report of Medical History) and corresponding DD Form 2808 (Report of Medical Examination) show the applicant reported foot trouble. The examining provider determined he was medically qualified for service/chapter.

10. The applicant's service record contains a DA Form 2823 (Sworn Statement), dated 22 October 2004, wherein he states he did not return to Iraq because he was scared.

He was in a lot of pain from a convoy accident which resulted in his left foot being crushed. He was extremely stressed and told authorities he would kill himself if he was sent back. However, he had no intention of doing so.

11. A memorandum for record from the staff psychiatrist at Headquarters, U.S. Army Medical Department Activity, Fort Hood, TX, dated 28 October 2004, notes the applicant was diagnosed with adjustment disorder with depressed and anxious mood. The psychiatrist recommended the applicant be separated under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-17, by reason of adjustment disorder (condition, not a disability).

12. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows he was charged with:

- desertion and missing movement, on or about 4 October 2004
- wrongful use of marijuana, between on or about 4 October and 14 October 2004
- feigning mental derangement for the purpose of avoiding his duty to redeploy, on or about 14 October 2004

13. The applicant consulted with legal counsel on 8 February 2005.

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 court-martial, under the provisions of Army Regulation 635-200, Chapter 10. In his request for discharge, he acknowledged 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 memorandum, defense counsel requests the applicant's request be approved and that his mental health condition be considered in the determination of his discharge.

14. On 17 February 2005, the separation authority approved the request for discharge, directed the issuance of a UOTHC character of service, and reduction to the lowest enlisted grade.

15. The applicant was discharged on 3 March 2005, under the provisions of Army Regulation 635-200, Chapter 10, with the narrative reason "in lieu of trial by court-martial." His DD Form 214 shows his character of service was UOTHC, with separation code KFS and reentry code 4. He completed 1 year and 27 days of net active service.

16. The Army Discharge Review Board considered the applicant's request for an upgrade of his service characterization on 6 January 2012. After careful consideration, the Board determined the applicant was properly and equitably discharged. His request for relief was denied.

17. The applicant provides:

a. In four statements of support, the authors attest to the applicant's character. He is a motivated, hard-working individual who is committed to bettering his circumstances. He is respectful and kind and tries to help others while working diligently to achieve his goals. He displays the Army Values.

b. 28 pages of medical documents, dated 22 April 2022 to 20 May 2024, will be reviewed and summarized in the "Medical Review" portion of this Record of Proceedings (ROP).

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

19. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) character of service to under honorable conditions (general) as well as a change in his narrative reason for separation to a more favorable option. He selected PTSD and OMH 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 Army National Guard of the United States on 6 December 2001. He was ordered to active duty for the completion of initial entry training. He was released from active duty on 14 August 2002.
- A National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows the applicant was discharged from the Army National Guard and

as a Reserve of the Army on 30 September 2003, under the provisions of National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), paragraph 8-26e(2), by reason of acts or patterns of misconduct, with an under honorable conditions (general) character of service.

- Applicant enlisted in the Regular Army on 26 January 2004.
- Applicant served in Iraq from 21 February 2004 to 1 October 2004.
- Applicant was reported absent without leave (AWOL) on 4 October 2004, when he failed to return for duty following his period of rest and recuperation (R&R) leave from Iraq. He was admitted to the inpatient psychiatric ward at Fort Gordon, GA, and subsequently reported as present for duty on 15 October 2004.
- He underwent a psychiatric evaluation during his hospitalization. The evaluating provider noted the diagnoses of adjustment disorder with mixed disturbance of emotions and conduct (malingering); personality disorder not otherwise specified with antisocial features; and left foot pain. The provider further recommended the applicant be administratively separated from service as expeditiously as possible.
- Applicant's service record contains a DA Form 2823 (Sworn Statement), dated 22 October 2004, wherein he states he did not return to Iraq because he was scared. He was in a lot of pain from a convoy accident which resulted in his left foot being crushed. He was extremely stressed and told authorities he would kill himself if he was sent back. However, he had no intention of doing so.
- Court-martial charges were preferred against the applicant on 7 July 2004 for violations of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows he was charged with:
 - desertion and missing movement, on or about 4 October 2004
 - wrongful use of marijuana, between on or about 4 October and 14 October 2004
 - feigning mental derangement for the purpose of avoiding his duty to redeploy, on or about 14 October 2004
- Applicant was discharged on 3 March 2005, under the provisions of Army Regulation 635-200, Chapter 10, with the narrative reason "in lieu of trial by court-martial." His DD Form 214 shows his character of service was UOTHC, with separation code KFS and reentry code 4. He completed 1 year and 27 days of net active service.

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 states, he was involved in a convoy accident while he was in Iraq which resulted in a foot injury. He was placed on quarters for one month and then returned to duty with no restrictions. These challenging circumstances began to wear on his resilience. He performed his duties for 6.5 months before going on rest and recuperation (R&R) leave. While on R&R, he numbed the pain with over-the-counter medication and marijuana. He experienced a "psychotic episode" due to post-traumatic stress disorder (PTSD) while he was at the airport, preparing to return to Iraq. He believed he had enough with life and was willing to die rather than return to Iraq. The

airport police were notified, he was placed in an ambulance and taken to Fort Gordon for psychiatric evaluation. He was later transported back to Fort Hood where he was eventually separated. He was misdiagnosed with personality and adjustment disorders. It was clear he was dealing with PTSD. He served honorably while he was in Iraq.

d. Active-duty electronic medical records available for review show a medical encounter dated 18 October 2004, indicating: "views of the left foot demonstrate no evidence of a fracture, dislocation or other significant abnormality". A more intensive follow-up appointment, dated 22 February 2005, states: "Following intravenous administration of radiotracer, delayed whole body planar images and images of the lower extremities were obtained. The delayed whole body planar images show no abnormal focal increased tracer activity in the axial and appendicular bones including feet to suggest bone pathology." Once again indicating no evidence of injury or abnormality of the applicant's left foot which he contends was a factor in his misconduct.

e. The applicant submitted hardcopy documentation evidencing a personnel action form, dated 15 October 2004, indicating he was hospitalized and "admitted he had lied about being suicidal in order to miss the plane back to Iraq." A memorandum dated 18 October 2004, states the applicant underwent a psychiatric evaluation during his hospitalization due to reported suicidal ideation. Upon assessment, the applicant admitted he was never suicidal, and he did not wish to remain in the military. He was diagnosed with Adjustment Disorder with Mixed Disturbance of Emotions and Conduct (Malingering) and Personality Disorder, Not Otherwise Specified, with Antisocial Features. The Chief of Inpatient Psychiatry recommended the applicant be administratively separated from service as expeditiously as possible. A memorandum from the staff psychiatrist at Headquarters, U.S. Army Medical Department Activity, Fort Hood, TX, dated 28 October 2004, notes the applicant did not have a serious psychiatric disorder, however, was likely to perform sub-optimally, "require inordinate supervision, incur disciplinary action, and remain a command liability". Administrative separation was recommended.

f. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. The applicant was briefly screened on 25 April 2022, when he was seen as a walk-in appointment and requested to resume treatment with antidepressant medication which he reported previously taking. The applicant noted a history of PTSD, Major Depressive Disorder, and Anxiety Disorder which is noted by the provider. Based on his self-report he was started on the medication and was referred for a same day intake appointment to gather his treatment history and further assess his reported symptoms. Based on that assessment, the applicant did not meet criteria for PTSD and was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood. Follow-up encounters in July 2022, show the applicant was primarily focused on having applications completed in order to obtain benefits. In an encounter on 7 July

2022, the applicant reported “past felony charges cost me my job in the oilfield” and he had made multiple attempts to get the governor, congressmen, and senator’s assistance with getting the felony removed from his record. The applicant appeared to discontinue services in July 2022. In January 2024, the applicant reconnected with the VA in a different state, via homeless services, and was provided with supportive case management services with a goal of helping him obtain housing. However, the applicant’s focus was on obtaining benefits and again he appeared to discontinue services in June 2024.

g. 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.

h. 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. Medical documentation available for review indicates the applicant was diagnosed with Adjustment Disorder with Mixed Disturbance of Emotions and Conduct (Malingering) and Personality Disorder, NOS, with Antisocial Features; 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, there is insufficient evidence of any mitigating BH condition. There is evidence of in-service diagnoses of Adjustment Disorder with Mixed Disturbance of Emotions and Conduct (Malingering) and Personality Disorder, NOS, with Antisocial Features, which would not provide mitigation of his misconduct. In addition, the VA has not service-connected the applicant for any BH condition, and available VA electronic medical records indicate he has been treated for Adjustment Disorder with Mixed Anxiety and Depressed Mood. An adjustment disorder is a transient reaction to stress and does not provide mitigation in the absence of another mitigating BH condition. Applicant’s Adjustment Disorder diagnosis does not provide mitigation for any of the misconduct that led to his separation. In addition, consistent with the applicant’s diagnosis of Personality Disorder, NOS, with Antisocial Features; he evidenced problematic behavior during his time as a reservist resulting in an under honorable conditions (general) character of service, by reason of acts or patterns of misconduct. His personality disordered behavior continued when he joined the Army and was separated due to malingering, wrongful use of marijuana, and desertion. The applicant’s problematic behaviors continued post military

service; with documentation he submitted indicating felony charges caused him the loss of employment.

i 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 and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. One potential outcome discussed was to deny relief based upon the misconduct leading to the applicant's separation and the lack of any mitigation found in the medical review. However, based upon the period of honorable service completed prior to any misconduct, including a deployment to Iraq, the character evidence provided by the applicant and the guidance on liberal consideration, the Board concluded there was sufficient evidence to grant clemency by upgrading the applicant's characterization of service to General, Under Honorable Conditions.

Based upon a lack of justification for changing the narrative reason for separation, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's narrative reason for separation.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:XXX	:	:XXX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:XXX	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

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

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to changing the applicant’s narrative reason for separation.

3. Prior to closing the case, the Board noted the administrative note below from the analyst of record and recommended executing that change as well, to more accurately reflect the military service of the applicant.

//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.

ADMINISTRATIVE NOTE(S):

The applicant completed a period of initial active duty for training (IADT). He was awarded an MOS at the completion of training and returned to the control of the Army National Guard. Regulatory guidance provides that when a Reserve Component Soldier successfully completes IADT, the characterization of service is Honorable unless directed otherwise by the separation authority. Please reissue him a DD Form 214 for the period ending 14 August 2002, showing his character of service as Honorable.

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 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, advisory opinions, and reviews to ABCMR applicants and/or their counsel prior to adjudication.
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. The regulation provides that 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 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. It states that the appropriate narrative reason to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 10, with SPD code "KFS" is "for the good of the service – in lieu of court-martial."
5. Army Regulation 635-8 (Separation Processing and Documents), currently in effect, prescribes the transition processing function of the military personnel system. It states a DD Form 214 will be prepared for Reserve Component (RC) Soldiers awarded a military occupational specialty (MOS) even if active duty is less than 90 days. RC Soldiers completing active duty that results in the award of an MOS, even when the active duty period was less than 90 days. When a RC Soldier successfully completes IADT the character of service is Honorable unless directed otherwise by the separation approval authority.
6. 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. Paragraph 5-13, provides that Soldiers may be separated for personality disorder not amounting to disability that interferes with assignment or with performance of duty

b. Paragraph 5-17, states commanders who are special court-martial convening authorities may approve separation under this paragraph based on other physical or mental conditions not amounting to disability that potentially interfere with assignment to or performance of duty. A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition. Members may be separated for physical or mental conditions not amounting to disability, which is sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired.

c. 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.

d. 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.

7. 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. 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.

8. 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//