

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 February 2025

DOCKET NUMBER: AR20240006756

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions (UOTHC) characterization of service
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show a different narrative reason for separation, presumably more favorable
- and a personal appearance before the Board

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)
- DD Form 214 (2 copies), for the period ending 16 September 2005
- statements of support (5), dated 2 April 2024 to 10 April 2024
- medical documents (10 pages), dated 18 March 2004 to 24 December 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 his discharge was based upon one serious offense during an otherwise honorable period of service. He served in combat in Iraq and received multiple awards. He understands he had a terrible misstep. One mistake should not overshadow all the other great things he did for his unit. Prior to his offense, he was doing more than what was expected from his leadership. He let them down, but he has more than paid the punishment by being denied benefits this last 20 years. He wishes there would have been more assistance in getting counseling back then. He notes post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and other mental health as conditions related to his request. He is currently going to counseling.

3. The applicant enlisted in the Regular Army on 17 October 2001, for a 4-year period. Upon completion of initial entry training, he was awarded military occupational specialty 13F (Fire Support Specialist). The highest rank he attained was sergeant/E-5.
4. The applicant served in Iraq in support of Operation Iraqi Freedom from 13 March 2003 to 7 February 2004.
5. Court-martial charges were preferred against the applicant on 2 August 2005 for violations of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows the applicant was charged with the wrongful use of cocaine on two occasions, between on or about 19 June 2005 and 22 June 2005.
6. The applicant consulted with legal counsel on 26 August 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(Active Duty Enlisted Administrative Separations), 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 statement in his own behalf, the applicant noted he served two separate combat deployments. He maintained a clean record and always tried to do the right thing. He admitted that what he did was wrong. He was a good Soldier and hoped to maintain the things he worked and fought extremely hard for to include his memories and earned benefits.
 - d. In a character reference, Chief Warrant Officer (CW2) E.J.D, stated he served in combat with [the applicant] for approximately 10 months. The applicant was a dedicated young man who put the combat mission first. He was always ready to put his life on the line if needed and earned the CW2's complete trust. When given proper leadership, he excelled at every task put in front of him. Although he hit a bump in his career, CW2 E.J.D. had no doubt that the applicant had the motivation and drive to recover and have

a long, successful career. He further stated he had complete faith and confidence in the applicant and his abilities.

e. In an additional statement, Defense Counsel requested that the applicant receive an under honorable conditions (general) character of service. He served in the 82nd Airborne Division as a forward observer for nearly four years. The enclosed letter from his chief attested to his outstanding dedication and duty performance. He was diagnosed with anxiety disorder due to stress during his first tour in Iraq. He recognized that PTSD did not excuse his misconduct; however, it was certainly a contributing factor. A record of the applicant's diagnosis from the division psychiatrist was enclosed.

f. An intake evaluation from Womack Army Medical Center, Mental Health Services, dated 23 November 2004, shows the applicant was diagnosed with adjustment disorder with depressed mood. An additional mental health record, dated 10 August 2005, shows the applicant was experiencing anxiety following his positive test result for cocaine.

7. The Staff Judge Advocate and the applicant's chain of command recommended the applicant's request for discharge in lieu of trial by court-martial be approved with the issuance of a UOTHC discharge.

8. On 26 August 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.

9. The applicant was discharged on 16 September 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 RE-4. He completed 3 years and 11 months of net active service. He was awarded or authorized the following:

- Army Commendation Medal
- Army Service Ribbon
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Iraqi Campaign Medal
- Parachutist Badge

10. The applicant provides:

a. In response to a request for medical documents to support his contentions of PTSD, TBI, and other mental health conditions, 10 pages of medical documents, dated 18 March 2004 to 24 December 2024, will be reviewed and summarized in the "Medical Review" portion of this Record of Proceedings (ROP).

b. In five statements of support, dated 2 April to 10 April 2024, the authors attest to the applicant's dedication as a Soldier during his numerous combat patrols under very adverse conditions. His isolated mistake in no way takes away from his sacrifice or bravery. He was an extremely capable and competent forward observer; and a tough, disciplined paratrooper. He demonstrated leadership, professionalism, selfless service, and good character while experiencing countless gunfights, improvised explosive devices, indirect fire attacks, and every other gruesome combat scenario imaginable. He continued to meet the demands of his job even after experiencing the symptoms of PTSD and TBI. He is a good man, who seeks counseling at the Vet Center. He deserves and needs support from the Department of Veterans Affairs.

11. Administrative separations under the provisions of Army Regulation 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of trial by court-martial. An UOTHC character of service is normally considered appropriate.

12. Regulatory guidance provides when an individual is discharged under the provisions of Army Regulation 635-200, Chapter 10, with separation code KFS, the appropriate narrative reason is "in lieu of trial by court-martial."

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

14. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR for an upgrade of his under other than honorable conditions (UOTHC) characterization of service. He contends he experienced a traumatic brain injury (TBI) and mental health conditions including 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 17 October 2001; 2) The applicant deployed to Iraq from 13 March 2003-07 February 2004; 3) On 2 August 2005, court-martial charges were preferred against the applicant for use of cocaine on two occasions; 4) The applicant was discharged on 16 September 2005, Chapter 10-in lieu of trial by court-martial. His character of service was 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) and medical documentation provided by the applicant were also reviewed.

c. The applicant asserts he was experiencing a TBI and mental health conditions including PTSD as a result of his deployment, which mitigates his misconduct. There is

evidence the applicant was seen for a behavioral health intake evaluation on 23 November 2004. He described being stressed, experiencing insomnia, depressed, and irritable. The applicant reported being prescribed psychiatric medication without reported improvement. He also described experiencing two closed head injuries with a loss of consciousness. He was diagnosed with an Adjustment Disorder with Depressed Mood, and his symptoms were attributed to stress related to an upcoming board. Later, on 10 August 2005, the applicant was seen for symptoms of anxiety related to his positive urinalysis for cocaine. He was diagnosed with Adjustment Disorder with Anxiety and recommended to continue to take his previously prescribed psychiatric medication.

d. A review of JLV provided insufficient evidence the applicant has engaged with the VA for treatment for a TBI or mental health conditions including PTSD after his discharge. In addition, he does not receive any service-connected disability. There was additional information available from his civilian providers in Ohio that the applicant has been treated for PTSD and migraines related to his deployment.

e. Based on the available information, it is the opinion of the Medical Advisor that there is sufficient evidence to support the applicant had a condition or experience that mitigates his misconduct which led to his discharge.

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 a TBI and mental health conditions including PTSD that mitigates his misconduct. There is evidence the applicant had been diagnosed with Adjustment Disorder while on active service, and he reported a history of TBI. Later after his discharge, there is evidence the applicant has been diagnosed with PTSD and migraines as a result of his combat deployment by a civilian provider.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced a TBI and mental health conditions including PTSD while on active service that mitigates his misconduct. There is evidence the applicant had been diagnosed with Adjustment Disorder while on active service, and he reported a history of TBI. Later after his discharge, there is evidence the applicant has been diagnosed with PTSD and migraines as a result of his combat deployment by a civilian provider.

(3) Does the condition/experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing a TBI and mental health conditions including PTSD while on active service. The applicant did use illegal drugs while on active service. This type of avoidant or self-medicating behavior can be a natural sequelae to a TBI and mental health conditions including PTSD.

Therefore, per Liberal Consideration, the applicant's misconduct, which led to his discharge is mitigable.

BOARD DISCUSSION:

1. 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 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 petition, available military records and medical review, the Board concurred with the advising opinion of the Medical Advisor that there is sufficient evidence to support the applicant had a condition or experience that mitigates his misconduct which led to his discharge.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced a TBI and mental health conditions including PTSD that mitigates his misconduct. There is evidence the applicant had been diagnosed with Adjustment Disorder while on active service, and he reported a history of TBI. Later after his discharge, there is evidence the applicant has been diagnosed with PTSD and migraines as a result of his combat deployment by a civilian provider.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced a TBI and mental health conditions including PTSD while on active service that mitigates his misconduct. There is evidence the applicant had been diagnosed with Adjustment Disorder while on active service, and he reported a history of TBI. Later after his discharge, there is evidence the applicant has been diagnosed with PTSD and migraines as a result of his combat deployment by a civilian provider.

(3) Does the condition/experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing a TBI and mental health conditions including PTSD while on active service. The applicant did use illegal drugs while on active service. This type of avoidant or self-medicating behavior can be a natural sequelae to a TBI and mental health conditions including PTSD.

Therefore, per Liberal Consideration, the applicant’s misconduct, which led to his discharge is mitigable.

3. The Board acknowledged the applicant’s service record, including his combat deployments, performance evaluations, medical documentation, remorsefulness and character references. Evidence in the record show the applicant was charged with wrongful use of cocaine and subsequently requested discharge in lieu of trial by court-martial under Army Regulation 635-200, Chapter 10. The Board noted the statements from his chain of command and medical providers that confirm the applicant was diagnosed with adjustment disorder and anxiety, likely related to combat stress and symptoms of PTSD. The Board determined there is sufficient evidence of in-service mitigating factors to overcome the misconduct that warrant an upgrade of the applicant’s characterization of service to general under honorable conditions.

4. Furthermore, while the narrative reason “in lieu of trial by court-martial” is technically accurate under regulatory guidance, the Board found that it does not fully reflect the mitigating circumstances of the applicant’s service and separation. Therefore, the Board determined correction of the applicant’s DD Form 214 to reflect a more favorable narrative reason for separation to Secretarial Authority in consistent with administrative precedent in cases involving substantial mitigation. Therefore, the Board granted relief with an discharge upgrade to general under honorable conditions and amendment to his narrative reason for separation to Secretarial Authority.

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>	
XXX	XXX	XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for 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 his characterization of service as general, under honorable conditions and the narrative reason as secretarial authority.

X //SIGNED//

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 (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 the 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), narrative reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. The regulation 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 "in lieu of trial by court-martial."

5. 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 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.

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.

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 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.

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, 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//