

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 August 2025

DOCKET NUMBER: AR20240007729

APPLICANT REQUESTS: upgrade of his under other than honorable conditions discharge to under honorable conditions (general).

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) indicates the applicant's service connection claim rating was denied and reasons for the decision (available for the Board's review)
- DD Form 214 (Certificate of Release of Discharge from Active Duty)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states in effect he would like his character of discharge be changed to general so he will be able to get his VA benefits that are due to him. He feels the correction should be made because after he returned from Iraq, he believes he suffered with Post Traumatic Stress Disorder (PTSD), and it was never diagnosed. He made the mistake of trying to shelter things by engaging in recreational marijuana to deal with what he saw and experienced in Iraq during his deployment from March 2003 to March 2004. Please consider his request so he may receive VA benefits that are due to him.
3. A review of the applicant's service records show:
 - a. He enlisted in the Regular Army on 3 October 2002.
 - b. He served in Kuwait/Iraq from 20030307 to 20040223.
 - c. A positive urinalysis was collected on the following dates:

- 1 February 2005
- 12 February 2005
- 23 March 2005

d. The service record is void of prior documentation of nonjudicial punishment

e. DD Form 458 (Charge Sheet) shows court martial charges were preferred on 27 April 2005, for 3 specifications of wrongful use of Marijuana.

f. On 11 May 2005 he requested discharge in lieu of trial by court-martial under the provisions (UP) of Chapter 10, AR 635-200.

g. On 17 May 2005 consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge in lieu of trial by courts-martial.

h. Accordingly, he was discharged with an under other than honorable conditions on 25 May 2005, he completed 2 years, 7 months, and 23 days of net active service this period. It also shows he was awarded or authorized the:

- Army Commendation Medal
- Army Achievement Medal
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon
- Overseas Service Ribbon (2nd Award)
- Air Assault Badge

MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his other than honorable discharge. He contends he experienced PTSD as a result of his deployment 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 3 October 2002; 2) The applicant deployed to Kuwait/Iraq from 07 March 2003 to 23 February 2004; 3) Positive urinalyses for THC were collected on 01 February 2005, 12 February 2005, and 23 March 2005; 4) On 27 April 2005, court-martial charges were preferred against the applicant for 3 specifications of Marijuana use; 5) On 25 May 2005, the applicant was discharged, Chapter 10- in lieu of court-martial. His service was characterized as under

other than honorable conditions. He completed 2 years, 7 months, and 23 days of net active service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service records. The VA's Joint Legacy Viewer (JLV) and hardcopy VA medical documentation provided by the applicant were also reviewed. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced PTSD that mitigates his misconduct. The applicant underwent a mental status examination by an active-duty mental health provider on 25 April 2005 with no additional information provided. There is insufficient evidence that the applicant officially reported or was diagnosed with a mental health condition while on active service.

d. A review of JLV revealed that the applicant initially connected with VA medical care beginning on 15 August 2022 until 30 November 2023, primarily for HUD services. The applicant provided VA documentation dated 16 October 2023 that the applicant's claim for PTSD and associated symptoms were denied due to lack of evidence. There was insufficient evidence the applicant has been diagnosed by the VA with service-connected PTSD, and he does not receive any service-connected disability for 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 diagnosed mental health condition or experience including PTSD 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 experienced PTSD due to his previous deployment, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD due to his previous deployment while on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD due to his previous deployment, while on active service. The applicant did engage in avoidant behavior such as using illegal drugs, which could be a natural sequelae to PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. However, the applicant contends he experienced mental

health condition or experience while on active service, which mitigates his misconduct. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with three specifications of wrongful use of Marijuana, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service.

2. The Board considered the following Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced PTSD due to his previous deployment, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD due to his previous deployment while on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD due to his previous deployment, while on active service. The applicant did engage in avoidant behavior such as using illegal drugs, which could be a natural sequelae to PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition.


3. The Board concurred with the medical advisor's review finding insufficient evidence the applicant had a condition or experience during service that mitigated his misconduct. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

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//

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 635-5 (Separation Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Honorable Discharge states an honorable discharge is a separation with honor. 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. General Discharge states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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 based on 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.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) 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 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.

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, 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. Section 1556 of Title 10, United States Code, 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 (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.

//NOTHING FOLLOWS//