

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 February 2025

DOCKET NUMBER: AR20240007775

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
- Character reference letters (5)

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 states during the time of his misconduct he was taking care of his adopted sons, who were his wife's children from a previous relationship. She left him with the boys, and he was not helped with establishing a family care plan. The nature of his discharge has directly impacted his life because he cannot receive Department of Veterans Affairs (VA) health benefits, go to a VA hospital for treatment as a Veteran, or receive any other VA benefits. He provides a statement wherein he provides a synopsis of how he enlisted in the Army to help take care of his daughter, and excelled during Basic Combat Training (BCT) and Advance Individual Training (AIT), and how his Army career was off to a good start.
 - a. The applicant met his future wife when they were attending BCT together. Upon completion of AIT they were stationed at Schofield Barracks, HI. Once they were married, his wife got out of the Army.
 - b. During an on island field deployment, his wife left him with his two adopted sons and went to Michigan. He did not have a chance to establish a family care plan and was unable to deploy with his wife gone. Instead of helping him, his chain of command

believed he should have had more control in his household, and he was pushed out after a military lawyer told him he could go to prison. His command thought it was best if he chose to separate himself from the Army so, he accepted a discharge UOTHC.

- c. The applicant indicates that post-traumatic stress disorder (PTSD), other mental health conditions, and reprisal/whistleblower are related to his request.
- 3. On 23 April 2001, the applicant enlisted in the Regular Army for a period of 3 years in the rank/grade of private/E-1.
- 4. On 23 October 2002, the applicant was counseled for failing to report to two accountability formations that day. He was advised that continued conduct of this nature could result in punishment under the provision of the Uniform Code of Military Justice (UCMJ).
- 5. The applicant was promoted to the rank/grade of specialist (SPC)/E-4 effective 1 November 2002.
- 6. On 28 February 2003, the applicant accepted summarized nonjudicial punishment (NJP) under the provisions of Article 15, UCMJ for being disrespectful toward a noncommissioned officer, and failing to go at the time prescribed to his appointed place of duty. His punishment was extra duty and restriction for 14 days.
- 7. On 8 May 2003, the applicant reenlisted for a period of 3 years.
- 8. On 4 September 2003, the applicant was counseled by his company commander regarding him considering not reporting for duty for a battalion training exercise on 8 September 2003 because he had not arranged for childcare while he would be in the field and his wife would be away on a business trip. The commander ordered the applicant, in writing, to report for duty no later than 0630 hours on 8 September 2003 in order to participate for the duration of the exercise from 8 to 19 September 2003. He advised the applicant that it was his personal responsibility to properly plan and coordinate for childcare so that he could uphold his contractual obligations to the U.S. Army. Failure to obey this order would be a violation of Articles 92 and 86(b) of the UCMJ, which each carried maximum punishments including a Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months. The applicant concurred with the counseling.
- 9. On 9 September 2003, the applicant was counseled by his first sergeant for violating Article 92, UCMJ by being derelict in the performance of his duties from on or about 8 September 2003 to on or about 19 September 2003, by only going on the unit field exercise from on or about 8 September 2003 to 11 September 2003. He failed to provide proper care for his stepchildren, who his wife left in his charge while she went

out of state. He knew this conflict was approaching and willfully failed to remedy the situation. He was reminded that the maximum punishment for this offense was a Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months. He was advised that continued conduct of this nature could result in his administrative separation with a discharge UOTHC which could bring him extreme hardship after discharge.

10. On 15 September 2003, NJP under the provisions of Article 15, UCMJ was imposed upon the applicant for his aforementioned dereliction of duty. On 17 September 2003, the applicant demanded trial by court-martial.

11. A DD Form 458 (Charge Sheet) shows on 7 December 2003, court-martial charges were preferred against the applicant for violation Article 92 of the UCMJ for being derelict in the performance of his duties from on or about 8 September 2003 to about 19 September 2003 by willfully failing to fully participate in the unit field exercise by failing to provide proper childcare for his stepchildren after being formally counseled prior to the field exercise. The applicant's chain of command recommended his charges be referred to a Summary Court-Martial.

12. 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's chain of command recommended approval of his request for discharge and the court-martial charges were withdrawn effective 9 January 2004.

13. On 12 January 2004, 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. The applicant was also barred from all military installations in Hawaii.

14. On 4 March 2004, the applicant underwent a mental status evaluation, and it was determined that he had the capacity to understand and participate in the proceedings, was mentally responsible, met the regulatory retentions standards. There was no evidence of a psychiatric condition, which would prevent him from participating in any legal or administrative actions or that warranted disposition through medical channels. He was psychiatrically cleared for administrative separation actions.

15. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show he was discharged on 30 April 2004, under the provisions of Army

Regulation 635-200, Chapter 10, by reason of "In Lieu of Trial By Court-Martial" with Separation code "KFS" and Reentry code "4." His service was characterized as UOTHC. He was credited with completing 3 years and 8 days of net active service this period. He had no time lost, and he completed his first full term of service.

16. Item 18 (Remarks) of his DD Form 214 shows he had an immediate reenlistment this period from 20030508-20040430 (indicating 8 May 2003 to 30 April 2004) but does not identify his continuous period of honorable service prior (see Administrative Notes).

17. The applicant petitioned the Army Discharge Review Board (ADRB) for relief. On 12 January 2012, the applicant was informed that after careful review of his application, military records, and all other available evidence, the ADRB determined that he was properly and equitably discharged and denied his request.

18. On 10 December 2024, a staff member of the Case Management Division (CMD) of the Army Review Boards Agency (ARBA), requested the applicant provide a copy of the medical documents that support his issue of PTSD and other mental health conditions for consideration by the Board. To date, the applicant has not provided a response.

19. On 13 January 2025, in the processing of this case the U.S. Army Criminal Investigation Division, searched their criminal file indexes, which revealed no reprisal/whistle blowing reports pertaining to the applicant.

20. The applicant provides five character reference letters which are available in their entirety for the Board's consideration. The letters were written by a Soldier with whom he served during BCT and AIT, friends, and acquaintances, each of whom rendered favorable comments about the applicant's work ethic, devotion to his family, and contributions within his community.

21. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. In doing so, he would have waived his opportunity to appear before a court-martial and risk a felony conviction. A characterization of UOTHC is authorized and normally considered appropriate.

22. 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.

23. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. On his DD Form 149, the applicant indicated that Posttraumatic Stress Disorder (PTSD), Other Mental Health Issues, and Reprisal/Whistleblower are related to his request. More specifically, he stated that he was caring for his adopted sons of his wife at the time of his separation. He asserted she left him with the children and that he was not aided in developing a Family Care Plan. His request as it pertains to Reprisal/Whistleblower is outside of the scope of this Advisory and will not be addressed. 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 (RA) on 23 April 2001 and re-enlisted on 08 May 2003, 2) he was counseled for failing to report to two accountability formations on 23 October 2002, 3) On 28 February 2003, the applicant accepted summarized nonjudicial punishment (NJP) for being disrespectful toward a noncommissioned officer and failing to go at the time prescribed to his appointed place of duty, 4) On 9 September 2003, the applicant was counseled by his first sergeant for being derelict in the performance of his duties from on or about 8 September 2003 to on or about 19 September 2003, by only going on the unit field exercise from on or about 8 September 2003 to 11 September 2003. He failed to provide proper care for his stepchildren, who his wife left in his charge while she went out of state. He knew this conflict was approaching and willfully failed to remedy the situation. On 15 September 2003, NJP under the provisions of Article 15, UCMJ was imposed upon the applicant for his aforementioned dereliction of duty. On 17 September 2003, the applicant demanded trial by court-martial, 5) A DD Form 458 shows on 7 December 2003, court-martial charges were preferred against the applicant for being derelict in the performance of his duties from on or about 8 September 2003 to about 19 September 2003 by willfully failing to fully participate in the unit field exercise by failing to provide proper childcare for his stepchildren after being formally counseled prior to the field exercise, 6) On 4 March 2004, the applicant underwent a mental status evaluation (MSE) and he was psychiatrically cleared for administrative separation, 7) the applicant was discharged on 30 April 2004 under the provisions of AR 635-200, Chapter 10, In Lieu of Trial By Court-Martial, with a separation code of KFS and reentry code of "4," 8) The applicant's previous petition to the ADRB shows on 12 January 2012 the ADRB determined that he was properly and equitably discharged and denied his request for relief, 9) On 13 January 2025 a memorandum from the U.S. Army Criminal Investigation Division shows a search of their criminal file indexes revealed no reprisal/whistle blowing reports pertaining to the applicant.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available

medical records. The VA's Joint Legacy Viewer (JLV) was also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. There were limited in-service medical records available for review in JLV from 19 February 2003 through 22 September 2003 (four notes in total), none of which were BH-related. Included as part of his application, an in-service Mental Status Evaluation conducted on 04 March 2004 for the purposes of separation under AR 635-200, Chapter 10 was reviewed. All domains of the MSE were within normal limits (WNL). The evaluating provider documented that the applicant met retention requirements of AR 40-501 and did not meet criteria for a Medical Evaluation Board (MEB). Furthermore, it was documented that he was mentally responsible for his behavior, was able to distinguish between right and wrong, and had sufficient mental capacity to understand and participate in any administrative or judicial proceedings.

d. A review of JLV shows he is not service-connected for any conditions. There is limited VA documentation available for review in JLV, with a total of three clinical notes from 01 July 2021 to 08 July 2021. It is of note that he is ineligible for VA services due to his UOTHC discharge. He presented to the Emergency Room (ER) on 01 July 2021 requesting a mental health evaluation due to increased stressors as a result of financial issues and his wife recently leaving with his child. The diagnosis was noted as Reaction to Severe Stress, Unspecified and he was discharged home. He was not diagnosed with a psychiatric condition and was discharged home. On 08 July 2021, the applicant contacted the Veterans Crisis Line (VCL) due to increased stress as a result of financial problems and recent divorce. He was provided information on getting enrolled in the VA. His BH-related concerns were not associated with his military service.

e. As part of his application, the applicant included several letters of reference. One undated letter of reference was authored by a Sergeant First Class (SFC) who indicated she had served with the applicant during Basic Combat Training and Advanced Individual Training. She stated that he exemplified the Army Ethos, was eager to help others, and served as Platoon Guide during this time. She further described him as a highly motivated and dedicated Soldier who demonstrated leadership, dedication to duty, and technical competence.

f. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends that his misconduct was related to PTSD and Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to PTSD and Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of records was void of any BH diagnosis or treatment history for the applicant during service and he provided no medical documentation supporting his assertion of PTSD or Other Mental Health Issues. His post-service VA records show a history of Reaction to Severe Stress, Unspecified, which was diagnosed by an ER doctor; however, the diagnosis was not associated with his military service, and he is not service connected for any conditions through the VA. In absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by PTSD or Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his misconduct was related to PTSD and Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant 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 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 an offense 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 was convinced by the compelling evidence submitted by the applicant of his sustained honorable conduct and personal growth since discharge, including five letters of support and a record of law-abiding behavior and community involvement. Therefore, the Board determined an upgrade to under honorable conditions (General) was warranted.

2. Prior to closing the discussion, the Board reviewed and concurred with the administrative note below.

3. 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>	
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:XX	:XX	:XX	GRANT FULL RELIEF
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:	:	:	GRANT PARTIAL RELIEF
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:	:	:	GRANT FORMAL HEARING
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:	:	:	DENY APPLICATION
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BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 15 April 1971 to show an under honorable conditions (General) characterization of service.

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.

ADMINISTRATIVE NOTES:

A review of the applicant's record shows his DD Form 214, for the period ending 30 April 2004, is missing an important entry that may affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding in item 18 (Remarks): "CONTINUOUS HONORABLE SERVICE FROM 20010423-20030507."

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. Army Regulation 635-5 (Personnel Separations – Separation Documents), in effect at the time, prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It establishes the standardized policy for preparing and distributing the DD Form 214. It states the DD Form 214 provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge.

a. Paragraph 1-4b(5) of the regulation in effect at the time stated that a DD Form 214 would not be prepared for enlisted Soldiers discharged for immediate reenlistment in the Regular Army.

b. Paragraph 2-4h(18) of the regulation currently in effect states that item 18 documents the remarks that are pertinent to the proper accounting of the separating Soldier's period of service. Subparagraph (c) states that for enlisted Soldiers with more than one enlistment period during the time covered by the DD Form 214, enter "IMMEDIATE REENLISTMENTS THIS PERIOD" and specify the appropriate dates. For Soldiers who have previously reenlisted without being issued a DD Form 214 and who are later separated with any characterization of service except "honorable," enter "CONTINUOUS HONORABLE ACTIVE SERVICE FROM" (first day of service which DD Form 214 was not issued) UNTIL (date before commencement of current enlistment)." Then, enter the specific periods of reenlistments as prescribed above.

6. 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.

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 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.

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, 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//