

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 April 2025

DOCKET NUMBER: AR20240007979

APPLICANT REQUESTS:

- upgrade of his under other than honorable conditions discharge
- change narrative reason for separation

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)
- Personal statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Headquarters, V Corps Permanent Orders 129-895, dated 8 May 2003, awarding him the Combat Infantry Badge
- 1st Brigade Stryker Combat Team, 25th Infantry Division orders 248-004, dated 5 September 2007, promotes him from corporal to sergeant, with a date of rank of 1 July 2007
- Four (4) award certificates – one Army Commendation Medal and three Army Achievement Medals, received during his time in service
- Warrior Transition Battalion-Alaska (WTB-Alaska) orders 034-002, dated 3 February 2009, attaches him to B Company, WTB-Alaska, for the purpose of receiving care as a Warrior in Transition
- Character letter submitted by a former fellow Soldier, which attests to him being a top notch Soldier
- [REDACTED] Certificate of Recognition for being name Noncommissioned Officer of the 4th Quarter of 2007
- University [REDACTED] Degree of Bachelor of Science Psychology
- University [REDACTED] Degree of Master of Science in Biomedical Imaging

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, via personal statement:

a. In 2009, he faced significant challenges. His wife had taken their son to Germany while he was recovering from a lumbar spinal fusion and dealing with untreated posttraumatic stress disorder (PTSD) from his combat service in Iraq. Feeling depressed and angry, he sought support through the Army's new Warrior Transition Unit (WTU), but found it staffed by infantry sergeants rather than medical personnel.

b. His troubles worsened when his wife informed him that she wouldn't return, leaving him feeling lost and needing help. After consulting an Army lawyer, he opted for a Chapter 10 discharge instead of facing a court martial. He was demoted and discharged under other than honorable conditions, losing his medical retirement and dignity in the process.

c. Before his injury, he had served honorably from 2002 to 2005, deployed during the Iraq invasion, and earned commendations as a leader. However, his PTSD affected his civilian life, leading him to re-enlist in 2006 in hopes of a career in the Army. He excelled but ultimately, after his discharge, he struggled with alcoholism and attempted suicide.

d. Eventually, he utilized VA benefits to attend college, address his PTSD, and gradually improved. He graduated from the University ██████████ with honors in 2012, earned a Master's degree from University ██████████ in 2015, and is now pursuing a PhD at ██████████. He has rebuilt his relationship with his now 15-year-old son and serves as the president of the ██████████ Student Veterans Association. Despite his past struggles, he has made significant strides since those dark days surrounding his discharge.

e. As of note, the applicant states he had untreated PTSD; however, he did not submit evidentiary documents in support of his claim.

3. A review of the applicant's service record shows:

a. Having had prior service, he enlisted in the Regular Army on 6 September 2006.

b. His DD Form 4 (Enlistment/Reenlistment Document shows the applicant reenlisted in accordance with the needs of the Army on 14 November 2007.

c. A DD Form 458 (Charge Sheet) shows court martial charges were preferred on 14 April 2009, for:

- One count of wrongfully use marijuana between on or about 25 February 2009 and on or about 25 March 2009
- One count of assaulting a noncommissioned officer on or about 13 March 2009
- Three counts of failing to go at the time prescribed to his appointed place of duty on or about 12 January 2009, 2 February 2009, and 23 March 2009
- One count of failing to obey a lawful order by a noncommissioned officer on or about 23 March 2009
- One count of being disrespectful in language and deportment toward a noncommissioned officer on or about 2 February 2009

d. On 27 April 2009, he offered to plead guilty to Charge 1, to be tried at a Field Grade (FG) Article 15, and waive his right to an Administrative Separation Board in exchange to refer his case to a FG Article 15 and dismiss all charges

e. On 27 April 2009, he requested separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10 in lieu of court-martial; he had been charged with violating Articles 112a, 128, 86, and 91 of the Uniform Code of Military Justice (UCMJ).

f. On 26 May 2009, the Separation Approving Authority, approved his request for discharge in lieu of trial by court-martial. The approving authority directed he be reduced to the grade of private (E-1), his discharge characterized as under other than honorable conditions, and be separated within seven (7) days.

g. His DD Form 214 shows he was discharged on 8 June 2009 with an under other than honorable conditions characterization of service, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 10 in lieu of trial by court-martial. He completed 2 years, 9 months, and 3 days net active service this period and 3 years of total prior active service. He was awarded or authorized:

- Army Commendation Medal
- Army Achievement Medal (3d Award)
- USA/USAF Presidential Unit Citation
- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal with Campaign Star
- Noncommissioned Officer Professional Development Ribbon

- Army Service Ribbon
- Overseas Service Ribbon (2d Award)

4. A review of the applicant's record confirms an administrative entry was omitted from his DD Form 214. The entry will be added to his DD Form 214 as an administrative correction and will not be considered by the Board

5. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

6. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

7. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions discharge and a more favorable narrative reason for separation. He contends PTSD and OMH mitigate his discharge.

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:

- With prior military service, the applicant re-enlisted in the Regular Army on 6 September 2006.
- DD Form 458 (Charge Sheet) shows court martial charges were preferred on 14 April 2009, for:
- One count of wrongfully use marijuana between on or about 25 February 2009 and on or about 25 March 2009
- One count of assaulting a noncommissioned officer on or about 13 March 2009
- Three counts of failing to go at the time prescribed to his appointed place of duty on or about 12 January 2009, 2 February 2009, and 23 March 2009
- One count of failing to obey a lawful order by a noncommissioned officer on or about 23 March 2009
- One count of being disrespectful in language and deportment toward a noncommissioned officer on or about 2 February 2009
- Applicant was discharged on 8 June 2009. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, chapter 10, in lieu of trial by court-martial. His service was characterized as Under Other Than Honorable Conditions with separation code KFS and reentry code 4.

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, in 2009, he faced significant challenges. His wife had taken their son to Germany while he was recovering from a lumbar spinal fusion and dealing with untreated posttraumatic stress disorder (PTSD) from his combat service in Iraq. Feeling depressed and angry, he sought support through the Army's new Warrior Transition Unit (WTU), but found it staffed by infantry sergeants rather than medical personnel. His troubles worsened when his wife informed him that she wouldn't return, leaving him feeling lost and needing help. After consulting an Army lawyer, he opted for a Chapter 10 discharge instead of facing a court martial. He was demoted and discharged under other than honorable conditions, losing his medical retirement and dignity in the process. Before his injury, he had served honorably from 2002 to 2005, deployed during the Iraq invasion, and earned commendations as a leader. However, his PTSD affected his civilian life, leading him to re-enlist in 2006 in hopes of a career in the Army. He excelled but ultimately, after his discharge, he struggled with alcoholism and attempted suicide. Eventually, he utilized VA benefits to attend college, address his PTSD, and gradually improved. He graduated from the University ██████████ with honors in 2012, earned a master's degree from the University ██████████ ██████████ in 2015, and is now pursuing a PhD at ██████████. He has rebuilt his relationship with his now 15-year-old son and serves as the president of the ██████████ Student Veterans Association. Despite his past struggles, he has made significant strides since those dark days surrounding his discharge.

d. Active-duty electronic medical records available for review show, following his discharge from military service and prior to his reenlistment, he was assessed by the VA on 26 August 2005 due to severe depression and PTSD symptoms related to his deployment to Iraq. The applicant was provided with individual therapy, and it was recommended he consider medication and a trauma treatment group; however, he was reluctant to consider medication and unable to participate in group therapy due to a scheduling conflict. Applicant participated in ongoing weekly psychotherapy until March 2006 and was diagnosed with Depression, NOS, and PTSD. The applicant participated in a psychiatric evaluation on 5 December 2005 and the note indicates he was started on antidepressant medication. In addition to Depression and PTSD, he was also diagnosed with Alcohol and Cannabis Abuse. A note dated 8 December 2005; shows he presented as a walk-in to medical due to side effects of the medication which was discontinued. The applicant participated in an in-depth psychiatric evaluation on 24 January 2006, to determine course of treatment and was diagnosed with Borderline Personality Disorder and Polysubstance Dependence. During his second enlistment, on 27 May 2008 he presented to behavioral health as a walk-in due to feeling overwhelmed. He was diagnosed with Adjustment Disorder. He was provided supportive psychotherapy due to numerous social problems including legal, occupational, and marital issues and was diagnosed with Adjustment Disorder with Anxious Mood. His diagnosis later changed to Adjustment Disorder with Depressed

Mood and he was also treated with medication. He continued to receive behavioral health services until his discharge from military service.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 60% service connected, including 10% for PTSD. The applicant participated in a C and P examination on 24 August 2009 and was diagnosed with PTSD based on his deployment to Iraq.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is evidence the applicant had a BH condition during military service. The applicant's BH condition partially mitigates his misconduct, however, the offense of assault against an NCO is not mitigated.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts the mitigating conditions of PTSD and OMH.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is service-connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. The applicant was discharge from military service due to being disrespectful towards an NCO, failing to obey a lawful order, FTR, use of marijuana, and assault of an NCO. The applicant's VA medical record shows he is service connected for PTSD. Given the nexus between PTSD and difficulty with authority, the applicant's charge of being disrespectful towards an NCO and failing to obey a lawful order are mitigated by his BH condition. In addition, given the nexus between the use of substances to cope with the symptoms of his BH condition, his use of marijuana is also mitigated by his BH condition. The applicant's misconduct of FTR is also mitigated given the association between PTSD and avoidance. However, his offense of assaulting and NCO is not mitigated by his BH condition. Assault is not a natural history or sequelae of his BH condition and, as such, would not mitigate his discharge. In addition, his BH condition does not impact the ability to distinguish right from wrong and act in accordance with the right.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial 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 record and medical review, the Board concurred with the advisory opinion of the Agency Behavioral Health Advisor that there is evidence the applicant had a BH condition during military service. The applicant's BH condition partially mitigates his misconduct, however, the offense of assault against an NCO is not mitigated.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts the mitigating conditions of PTSD and OMH.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is service-connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. The applicant was discharge from military service due to being disrespectful towards an NCO, failing to obey a lawful order, FTR, use of marijuana, and assault of an NCO. The applicant's VA medical record shows he is service connected for PTSD. Given the nexus between PTSD and difficulty with authority, the applicant's charge of being disrespectful towards an NCO and failing to obey a lawful order are mitigated by his BH condition. In addition, given the nexus between the use of substances to cope with the symptoms of his BH condition, his use of marijuana is also mitigated by his BH condition. The applicant's misconduct of FTR is also mitigated given the association between PTSD and avoidance. However, his offense of assaulting and NCO is not mitigated by his BH condition. Assault is not a natural history or sequelae of his BH condition and, as such, would not mitigate his discharge. In addition, his BH condition does not impact the ability to distinguish right from wrong and act in accordance with the right.

3. The Board determined there is insufficient evidence of mitigating factors during service that would overcome the seriousness of the misconduct involving the assault of a Noncommissioned Officer (NCO). The nature of the violation warranted the original characterization of discharge. The Board acknowledged the applicant's commendable post-service achievements, including completion of a Bachelor of Science in Psychology, completion of a Master of Science in Biomedical Imaging and submission of multiple character reference letters attesting to his integrity, personal growth, and reputation as a Soldier. These accomplishments reflect positively on the applicant's rehabilitation and commitment to self-improvement.

4. Furthermore, the Board considered the applicant's Behavioral Health (BH) condition and determined that it did not impair his ability to distinguish right from wrong or to act in

accordance with appropriate conduct standards during the period of misconduct. The Board found that the narrative reason for separation and character of service at discharge were not in error or unjust and thus, denies full upgrade relief. During deliberation, the Board discovered that the applicant had a prior period of honorable service which is not currently documented on his DD Form 214. The Board recommends partial relief be granted by amending the DD Form 214 to accurately reflect this honorable period of service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	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 amend the DD Form 214 for the period ending 8 June 2009 by adding the following entries in item 18 (Remarks): CONTINUOUS HONORABLE SERVICE FROM 20060906 to 20071113."
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 upgrade of the applicant's under other than honorable conditions discharge and change to his narrative reason for separation.

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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): N/AREFERENCES:

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 635-200 (Personnel Separations - Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to their normal expiration of term of service. The regulation in effect at the time stated individuals in pay grades E-5 and above could be processed for separation upon discovery of a drug offense. Those in pay grades below E-5 could also be processed after a first drug offense and must have been processed for separation after a second offense. The issuance of a discharge under other than honorable conditions was normally considered appropriate.

a. 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. 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. A characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

3. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the

statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

4. The Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta Memorandum]. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury (TBI), 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.

a. Guidance documents are not limited to under other than honorable conditions discharge characterizations but rather apply to any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from general to honorable characterizations.

b. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.

c. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

5. 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.

//NOTHING FOLLOWS//