

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 August 2025

DOCKET NUMBER: AR20240009357

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge to honorable.
- a video/telephonic 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)
- Self-Authored Statement (available for the Board's review)

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 he is writing to appeal the decision regarding his military discharge which was categorized as other than honorable (OTH). He served in the military from 2005 to 2009. Participating in Operation Iraqi Freedom (OIF) in receipt of several medals, including the National Defense Service Medal, Global War on Terrorism Service Medal, and Korean Defense Service Medal. His military career took a turn for the worse due to a combination of personal and mental health challenges. He was diagnosed with Post Traumatic Stress Disorder (PTSD), depression, anxiety, and bipolar disorder during his time in service, likely exacerbated by the stress and trauma of deployment. His marriage suffered greatly with his spouse being unfaithful during his deployment to Iraq.
 - a. Despite his struggles, he reached out to his chain of command for support. However, instead of receiving assistance, he was met with hostility and indifference. When he found himself homeless and in a state of mental distress, his first sergeant reacted with anger and contempt, ordering him off the base and refusing to provide any

form of assistance. This lack of support only compounded his difficulties, leaving him feeling abandoned and hopeless. Unable to cope with the overwhelming challenges he faced, he found himself accused of being absent without leave (AWOL) and confined to the Norfolk Navy brig for an extended period. Feeling isolated and without adequate representation, he made the decision to accept an other than honorable discharge as a means of expediently ending his ordeal and reuniting with his family.

b. He recognizes that he was not provided with the proper support and guidance to navigate the complexities of his situation. The decision to accept an OTH discharge was made under duress and without the benefit of fair representation. He firmly believes that with proper assistance and understanding, he could have successfully overcome the obstacles he faced and continued to serve honorably. He humbly requests that his case be reviewed with compassion and understanding.

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

- a. He enlisted in the Regular Army on 13 January 2005.
- b. He served in Korea from 8 September 2005 to 2 October 2006.
- c. The service record is void of prior documentation of nonjudicial punishment.
- d. On 19 March 2009, court-martial charges were preferred on the applicant for
 - Specification 1: being absent without authority (AWOL) from 29 December 2008 to 7 January 2009
 - Specification 2: AWOL from 21 January 2009 to 20 February 2009
 - Specification 3: AWOL from 24 February 2009 to 18 March 2009
- e. On 20 March 2009 the applicant was detained at the Norfolk Naval Brig Military Confinement Facility.
- f. On 28 April 2009 he requested discharge for the good of the service in lieu of trial by court-martial under the provisions (UP) of Chapter 10, AR 635-200.
- g. On 6 May 2009 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. Additionally, the applicant was released from the Norfolk Naval Brig Military Confinement Facility on 7 May 2009.
- h. Accordingly, he was discharged with an under other than honorable conditions on 13 May 2009, he completed 4 years, 4 months, and 1 day net active service this period. It also shows he was awarded or authorized:

- National Defense Service Medal
- Korean Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon

MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable discharge to honorable. He contends he experienced mental health conditions including PTSD, which mitigate 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 13 January 2005; 2) On 19 March 2009, court-martial charges were preferred against the applicant for three specifications of going AWOL between 29 December 2008-18 March 2009; 3) The applicant was discharged on 13 May 2009, Chapter 10-for the good of the service in lieu of trial by court-martial with an under other than honorable characterization of service. He completed 4 years, 4 months, and 1 day of active service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. The applicant asserts he experienced mental health conditions including PTSD, which mitigate his misconduct. There is evidence the applicant was seen for one appointment at behavioral health services prior to his deployment to Iraq on 27 April 2007. He reported depressive symptoms and ongoing stress related to occupational problems and resultant UCMJ action taken against him along with repeated negative counselings concerning his performance. In addition, the applicant was experiencing marital problems, and he and his wife were separated, which caused financial stress. The applicant was diagnosed with an Adjustment Disorder with Depressed Mood, and he was prescribed psychiatric medication. While deployed, the applicant was seen by a medical provider for a session for what was described as a repeat prescription for psychiatric medication. The medication prescribed to the applicant during this appointment was different from his earlier prescribed medication, and no reported symptoms were described or a corresponding diagnosis. He was seen again a few months later and prescribed another psychiatric medication again by a medical provider without a corresponding diagnosis or reported symptoms. Later, on 01 March 2008, the applicant was seen and evaluated by a prescribing behavioral health provider while deployed. He reported ongoing depressive symptoms, erratic sleep, difficulty working a night schedule, and extensive occupational problems including multiple nonjudicial punishments. Despite the lack of supportive evidence in the electronic medical records,

the applicant reported being diagnosed with Bipolar Disorder a few months prior and was prescribed psychiatric medication, which he discontinued after a few weeks. He also reported discontinuing the psychiatric medication initiated prior to his deployment. The applicant was diagnosed with Depression, recommended for a more consistent sleep schedule, and a discontinuation of working the night shift. In addition, he was prescribed an antidepressant medication. During follow-up medication management appointments, the applicant reported a notable improvement in his reported depressive symptoms and sleep problems.

The applicant was not seen by behavioral health services till he was incarcerated after his third incident of going AWOL. He was evaluated after experiencing a panic attack in his cell and reporting suicidal ideation after thinking about the consequences of his discharge. He denied any PTSD symptoms or being exposed to any potentially traumatic events during his deployment. He did describe ongoing occupational and marital problems after returning from deployment. Specifically, he stated he went AWOL to try to reunite and improve his marriage after they physically separated. He was diagnosed with Major Depression, Anxiety Disorder NOS, Panic Disorder and an Alcohol Use Disorder. He was prescribed psychiatric medication, and recommended for follow-up medication management appointments, and he was later diagnosed with an Adjustment Disorder.

d. A review of JLV provided insufficient evidence the applicant has engaged with the VA, and he has not been diagnosed with a service-connected mental health condition including PTSD. In addition, he does not receive any service-connected disability for any condition.

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

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 mental health conditions including PTSD, which mitigate his misconduct. There is evidence the applicant was diagnosed with an Adjustment Disorder, Depression, Anxiety NOS, and Panic Disorder as a result of situational stressors while on active service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD, which mitigate his misconduct. There is evidence the applicant was diagnosed with an Adjustment Disorder, Depression, Anxiety NOS, and Panic Disorder as a result of situational stressors while on active service.

(3) Does the condition/experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing mental health symptoms as a result of situational stressors, which were diagnosed as various mental health conditions while on active service. There is insufficient evidence beyond self-report the applicant was ever diagnosed with PTSD while on active service. The applicant did repeatedly go AWOL, which can be an avoidant behavior and a natural sequela to some of the mental health conditions the applicant was diagnosed with during his active service. Therefore, per Liberal Consideration, the applicant's misconduct of going AWOL could be considered mitigatable.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, a minority of the Board found that partial relief was warranted with an upgrade of the applicant's characterization of service to under honorable conditions (general) based on the behavioral health opine, while a majority of 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 being AWOL from 29 December 2008 to 7 January 2009, 21 January 2009 to 20 February 2009, and 24 February 2009 to 18 March 2009, 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 concurred with the medical advisor's review finding sufficient evidence the applicant had a condition or experience during service that mitigated his misconduct. Based on a preponderance of the evidence, a majority of the Board concluded that the applicant's characterization of service should be upgraded to honorable.

2. The Board considered the following Kurta questions:

a. Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced mental health conditions including PTSD, which mitigate his misconduct. There is evidence the applicant was diagnosed with an Adjustment Disorder, Depression, Anxiety NOS, and Panic Disorder as a result of situational stressors while on active service.

b. Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD, which mitigate his misconduct. There is evidence the applicant was diagnosed with an

Adjustment Disorder, Depression, Anxiety NOS, and Panic Disorder as a result of situational stressors while on active service.

c. Does the condition/experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing mental health symptoms as a result of situational stressors, which were diagnosed as various mental health conditions while on active service. There is insufficient evidence beyond self-report the applicant was ever diagnosed with PTSD while on active service. The applicant did repeatedly go AWOL, which can be an avoidant behavior and a natural sequela to some of the mental health conditions the applicant was diagnosed with during his active service. Therefore, per Liberal Consideration, the applicant's misconduct of going AWOL could be considered mitigatable.

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>
--------------	--------------	--------------

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

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 13 May 2009 to show in item 24 (Character of Service): Honorable

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//