

IN THE CASE OF: ██████████

BOARD DATE: 14 August 2025

DOCKET NUMBER: AR20240010503

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show he was medically discharged.

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

DD Form 149 (Application for Correction of Military Record)

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 that after his return from Iraq he was diagnosed with major depression. He should have been medically discharged. Since his discharge, he has struggled with drug and alcohol addiction trying to cope with his mental health issues.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 20 August 2003.
 - b. He served in Iraq from 3 March 2004 to 3 March 2005.
 - c. He received nonjudicial punishment on 5 October 2005 for wrongfully using cocaine and marijuana between on or about 2 July 2005 and 2 August 2005 and for wrongfully possessing some amount of marijuana on or about 10 September 2005. He was reduced to private/E-2.
 - d. DD Form 458 (Charge Sheet) shows court martial charges were preferred on 21 October 2005 for being absent from his unit without authority on or about 14 October 2005 until he was apprehended on or about 21 October 2005.

e. On 25 October 2005, he requested discharge in lieu of trial by court-martial under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10.

f. On 3 November 2005, the separation authority approved his request for discharge and directed he be reduced to private/E-1, with the issuance of an under other than honorable conditions (UOTHC) characterization of service.

g. Accordingly, he was discharged on 28 November 2005, in lieu of trial by court-martial, with an UOTHC characterization of service. He completed 2 years, 2 months, and 19 days of net active service this period.

h. On 30 May 2007, the Army Discharge Review Board (ADRB) considered his request for an upgrade of his UOTHC character of service and change in narrative reason for discharge. After careful consideration, the Board determined he was properly and equitably discharged. His request for relief was denied.

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

5. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) discharge and a referral to IDES to be assessed for a medical discharge. He contends he experienced mental health conditions, which is related to his requests. 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 20 August 2003; 2) The applicant deployed to Iraq from 3 March 2004-3 March 2005; 3) The applicant accepted non-judicial punishment (NJP) on 5 October 2005 for using cocaine and marijuana and for possession some amount of marijuana; 3) Court-martial charges were preferred against the applicant on 21 October 2005 for being AWOL from 14 October 2005 until he was apprehended on 21 October 2005; 7) On 28 November 2005, the applicant was discharged, Chapter 10- in lieu of trial by court-martial. His service was characterized as UOTHC. He completed 2 years, 2 months, and 19 days of net active service this period.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available 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 was experiencing mental health conditions, which mitigate his misconduct and warrant a medical discharge. There is evidence the

applicant first engaged with behavioral health services on 03 August 2005. He was reporting anxiety and depressive symptoms. In addition, the applicant was reporting symptoms of PTSD related to his recent deployment. The applicant was also described as using marijuana. He was referred to outpatient individual therapy and substance abuse treatment. The applicant was seen at military substance abuse treatment on 30 August 2005, and he attended four sessions of substance abuse treatment before discontinuing in September 2005. He was also referred to psychiatric services in August 2005. The applicant was noted to be in treatment for depressive symptoms secondary to poly-substance abuse, and he was non-compliant with previously prescribed psychiatric medication. In late September 2005, the applicant reported discontinuing his prescribed medication due to an improvement in mental health symptoms and illegal substance use. He was diagnosed with alcohol abuse, cannabis abuse, alcohol-induced mood disorder, and unspecified psychoactive substance abuse in remission. The applicant's case was closed in September 2005 due to the applicant discontinuing his previously prescribed medication and over three weeks of resolution of reported depressive symptoms.

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

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 mental health condition or experience that mitigates his misconduct. In addition, there is insufficient evidence the applicant's case warrants a referral to IDES to be assessed for a medical discharge.

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 mental health conditions, which mitigate his misconduct. The applicant did report depressive and anxiety symptoms after returning from deployment. His symptoms were reported to be induced by poly-substance abuse, which resolved after discontinuing illegal drug use and after discontinuing psychiatric medication.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions, which mitigate his misconduct. The applicant did report depressive and anxiety symptoms after returning from deployment. His symptoms were reported to be induced by poly-substance abuse, which resolved after discontinuing illegal drug use and after discontinuing psychiatric medication.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is sufficient evidence beyond self-report the applicant was experiencing mental health symptoms and poly-substance abuse after returning from deployment. He was evaluated and treated by behavioral health services for a short period of time. The applicant's symptoms of depression and anxiety were described to have resolved after discontinuing illegal drug and alcohol abuse. In addition, the applicant had engaged in short-term substance abuse treatment, discontinued his prescribed psychiatric medication, and reported a significant improvement in symptoms. The applicant did engage in avoidant behavior such as going AWOL and illegal drug use, which could be a natural sequela to some mental health conditions. However, the presence of misconduct is not sufficient evidence of the presence of a mitigating mental health condition during active service. In addition, there is insufficient evidence the applicant during his active service: was determined to not meet medical retention standards for a mental health condition; attended six months of consistent mental health treatment without improvement; required two inpatient psychiatric admissions; or was ever placed on a permanent psychiatric profile. Therefore, there is insufficient evidence the applicant's case warrants a referral to IDES to be assessed for a medical discharge. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct and warrants a medical discharge, and per Liberal Consideration the contention is sufficient for 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 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 had a prior nonjudicial punishment for drug use and possessing marijuana and was pending court martial charges for being absent without leave from 14 October 2005 until he was apprehended on or about 21 October 2005, 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. 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.

2. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions, which mitigate his misconduct. The applicant did report depressive and anxiety symptoms after returning from deployment. His symptoms were reported to be induced by poly-substance abuse, which resolved after discontinuing illegal drug use and after discontinuing psychiatric medication.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions, which mitigate his misconduct. The applicant did report depressive and anxiety symptoms after returning from deployment. His symptoms were reported to be induced by poly-substance abuse, which resolved after discontinuing illegal drug use and after discontinuing psychiatric medication.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is sufficient evidence beyond self-report the applicant was experiencing mental health symptoms and poly-substance abuse after returning from deployment. He was evaluated and treated by behavioral health services for a short period of time. The applicant's symptoms of depression and anxiety were described to have resolved after discontinuing illegal drug and alcohol abuse. In addition, the applicant had engaged in short-term substance abuse treatment, discontinued his prescribed psychiatric medication, and reported a significant improvement in symptoms. The applicant did engage in avoidant behavior such as going AWOL and illegal drug use, which could be a natural sequela to some mental health conditions. However, the presence of misconduct is not sufficient evidence of the presence of a mitigating mental health condition during active service. In addition, there is insufficient evidence the applicant during his active service: was determined to not meet medical retention standards for a mental health condition; attended six months of consistent mental health treatment without improvement; required two inpatient psychiatric admissions; or was ever placed on a permanent psychiatric profile. Therefore, there is insufficient evidence the applicant's case warrants a referral to IDES to be assessed for a medical discharge. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct and warrants a medical discharge, and per Liberal Consideration the contention is sufficient for the board's consideration.

The Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service to show he was medically discharged.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	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.

8/15/2025

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CHAIRPERSON

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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 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. Title 10, USC, Section 1203 provides for the physical disability separation of a member who has less than 20 years of service and a disability rating at less than 30 percent (%).

4. Title 38, USC, Sections 1110 and 1131, permit the Department of Veterans Affairs (VA) to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

a. The Army rates only conditions determined to be physically unfitting at the time of discharge which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career.

b. The VA does not have authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

5. Army Regulation 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). Once a determination of physical unfitness is made, the physical evaluation board (PEB) rates all disabilities using the Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Chapter 2, provides physical standards for enlistment, appointment, and induction with the purpose to ensure members medically qualified are medically capable of completing required training, adapt to a military environment without geographical limitations, perform duties without aggravation of existing physical defects or medical conditions.

b. The standards in Chapter 2 are applicable to individuals who enlist in the Regular Army - for medical conditions or physical defects pre-dating original enlistment, standards are applicable for enlistee's first 6 months of active duty. It states that enlisted Soldiers identified within the first 6 months of active duty with a condition that existed

prior to service, that does not meet the physical standards, may be separated following an evaluation by an Entrance Physical Standards Board, under the provisions of Army Regulation 635-200, Chapter 5; for Reserve Component and Army National Guard Soldiers.

6. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System (DES) and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. It states, in part:

a. Only the unfitting conditions or defects and those that contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability. The mere presence of impairment does not, in and of itself, justify a finding of unfitness because of physical disability.

b. The PEB-appointed counsel advises the Soldier of the Informal PEB (IPEB) findings and recommendations and ensures the Soldier knows and understands his or her rights. The Soldier records his or her election to the PEB on the DA Form 199 and has 10 calendar days from the date of receiving the PEB determination to make the election, submit a rebuttal, or request an extension.

7. 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. 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.

8. 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.

9. 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.

//NOTHING FOLLOWS//