

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 August 2025

DOCKET NUMBER: AR20240010720

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

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)
- Character Reference Letter indicates someone else took advantage of the applicant and he should not have been discharge out of the Army
- Medical documentation shows his medical evaluation, diagnosis and progress notes

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 his Post Traumatic Stress Disorder (PTSD) has greatly impacted his life and led to excessive alcohol use in his past. The drinking caused him to not be in the right state of mind allowing an underage female to have sex with him. This led to a Court Martial and to his other than honorable discharge. His alcohol consumption had also led to relationships and caused two unwanted pregnancies. He also received a DUI citation/conviction in 2021 which really opened his eyes.

a. Since those incidences have made extreme impacts on his life. He had decided to get help from mental health services. He felt it did do some good but unfortunately he ran out of funds to continue to keep going. Then in 2023 he started going to a new therapist and he has improved his life in the short time he has been gone to the

therapist. He changed jobs and lost his health insurance for 3 months, so he was not able to continue to see the therapist as his funds were very limited. Every time he called the Veteran Affairs (VA) he has been told repeatedly he does not qualify for VA Mental Health Services. He is currently on medication for PTSD, night terrors, depression, anxiety, and sleep disorders that started during his time in Iraq. Sleep has been extremely difficult for him. He has problems falling asleep and staying asleep. The night terrors he has causes him to wake up drenched in sweat sometimes, wake up in a panic has taken a mental toll on him.

b. Professionally he has found it difficult to maintain a job for more than a couple of months to a couple of years. He finds it difficult to have a good relationship with a lot of people and prefer to work on his own. It has proven difficult to be able to make a career out of jobs he has had due to his PTSD and bouncing from job to job. Being 33 years old he feels he should be in a better position in life, but it just has not been in happened.

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

a. He enlisted in the Regular Army on 27 May 2009.

b. He served in Iraq from 10 July 2010 to 31 July 2011.

c. The available service record is void of prior documentation of nonjudicial punishment and court-martial documentation.

d. On 7 September 2012 he requested discharge in lieu of trial by court-martial under the provisions (UP) of Chapter 10, AR 635-200.

e. The applicant's legal counsel request for approval of the request for discharge in lieu of trial by court-martial proffered a statement for the applicant.

f. On 24 September 2012 the chain of command recommended approval, with an other than honorable conditions discharge.

g. On 18 October 2012 consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge in lieu of trial by courts-martial.

h. Accordingly, he was discharged with an under other than honorable conditions on 24 October 2012, he completed 3 years, 4 months, and 28 days net active service this period. It also shows he was awarded or authorized:

- Army Commendation Medal
- National Defense Service Medal

- Global War on Terrorism Service Medal
- Iraq Campaign Medal with/campaign star (2nd award)
- Army Service Ribbon
- Overseas Service Ribbon

4. On 4 August 2014, the applicant was notified the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

5. By regulation, an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

6. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions discharge to (general) under honorable conditions. He contends PTSD and OMH as related to his request.

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:

- Applicant enlisted in the Regular Army on 27 May 2009.
- He served in Iraq from 10 July 2010 to 31 July 2011.
- On 7 September 2012 he requested discharge in lieu of trial by court-martial under the provisions of AR 635-200, Chapter 10.
- Applicant was discharge on 18 October 2012 under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. His DD Form 214 shows an under other than honorable conditions (UOTHC) characterization of service with separation code KFS and RE code 4.
- On 4 August 2014, the applicant was notified the Army Discharge Review Board (ADRB) reviewed his discharge processing, found it proper and equitable, and denied his request for an upgrade of his discharge.

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: "I am writing to you in an attempt to get my Other Then Honorable Discharge upgraded. I have been living with and suffering from PTSD and other medical issues since being in the Army. I have 3 PTSD diagnoses from 3 separate therapists, one of which was on base while I was still in

the Army. PTSD has greatly impacted my life and led to excessive alcohol use in my past. The drinking caused me to not be in the right state of mind allowing an underage gal to have sex with me. This led to a Court Martial and to my Other Than Honorable Discharge. My alcohol consumption had also led to another woman having sex with me while I was intoxicated and caused 2 pregnancies that I did not want. I had also received a DUI citation/conviction in 2021 which really opened my eyes. Since those incidences have made extreme impacts on my life, I had decided to get myself help. I sought out mental health services beforehand and felt like it did do some good but unfortunately ran out of funds to continue to keep going. Then in 2023 I started going to a new therapist and he has improved my life the short time I had gone to him. I had changed jobs and lost my health insurance for 3 months, so I have not been able to continue to see him as my funds are very limited. Every time I call the VA eligibility or anyone from there, I keep getting told I do not qualify for VA Mental Health Services.”

d. Active-duty electronic medical records available for review show the applicant was seen by behavioral health services on 4 October 2011 due to sleep problems; he reported no history of mental health treatment. He shared having deployed once but did not report any combat related stress. He was diagnosed with Adjustment Disorder and the next day was seen for a medication evaluation and provided a sleep aid. He was seen for a psychiatric evaluation on 31 October 2011 and denied depressed mood, anxiety, or combat-related stress. He reported no improvement in his sleep issues with the sleep aid and was requesting Ambien. He was diagnosed with Insomnia, provided psychoeducation regarding sleep hygiene, and given another medication for sleep. The applicant received ongoing follow-up care regarding his insomnia via medication management but declined group therapy for sleep hygiene. On 25 April 2012, the applicant participated in a mental status evaluation for the purpose of separation. He screened negative for depression, anxiety and TBI. He did not meet criteria for any mental health condition and was psychiatrically cleared for any administrative action deemed appropriate by command.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. The applicant selectively provided documentation from a medical provider who he sought for a medical evaluation and shows treatment from September 2023 to February 2025. The psychiatric issues listed are based solely on his self-report and the applicant was diagnosed with PTSD, Generalized Anxiety Disorder, and Sleep Terrors.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence the applicant had a BH condition that would mitigate his misconduct.

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 was diagnosed with Adjustment Disorder and Insomnia while in military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A memorandum from the applicant's attorney, dated 7 September 2012, requesting discharge in lieu of trial by court-martial states: "[REDACTED] has confessed to twice having sex with a partner that, at the time of the offenses, was approximately 15 years and 2 months old." Indicating the applicant was discharged due to statutory rape. In his statement to the Board the applicant states, "drinking caused me to not be in the right state of mind allowing an underaged gal to have sex with me." His statement appears to indicate the applicant's lack of remorse and his unwillingness to accept responsibility for engaging in statutory rape. He describes his crime as "allowing an underaged gal to have sex with me". In addition, contrary to his assertion that the cause of his crime was related to alcohol use, in a memorandum dated 10 September 2012 the applicant states: "Everything that occurred that night in my barracks room was with the consent of everyone present. I do not recall-drinking at all that night." In addition, the applicant states, "I have 3 PTSD diagnoses from 3 separate therapists, one of which was on base while I was still in the Army." The active-duty electronic medical record shows no evidence of the applicant being diagnosed with PTSD while in service. On the contrary, medical documentation reports the applicant asserted he did not experience any combat related stress. Regardless of diagnosis, the applicant's misconduct of statutory rape would not be mitigated by PTSD or any other behavioral health condition. Specifically, PTSD, Generalized Anxiety Disorder, nor Sleep Terrors impair an individual's ability to know right from wrong, understand consequences, and make purposeful, conscious decisions.

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 applicant was charged 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 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. 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 the mitigating conditions of PTSD and OMH.

b. Did the condition exist or experience occur during military service? Yes. The applicant was diagnosed with Adjustment Disorder and Insomnia while in military service.

c. Does the condition or experience actually excuse or mitigate the discharge? No. A memorandum from the applicant's attorney, dated 7 September 2012, requesting discharge in lieu of trial by court-martial states: "██████████ has confessed to twice having sex with a partner that, at the time of the offenses, was approximately 15 years and 2 months old." Indicating the applicant was discharged due to statutory rape. In his statement to the Board the applicant states, "drinking caused me to not be in the right state of mind allowing an underaged gal to have sex with me." His statement appears to indicate the applicant's lack of remorse and his unwillingness to accept responsibility for engaging in statutory rape. He describes his crime as "allowing an underaged gal to have sex with me". In addition, contrary to his assertion that the cause of his crime was related to alcohol use, in a memorandum dated 10 September 2012 the applicant states: "Everything that occurred that night in my barracks room was with the consent of everyone present. I do not recall-drinking at all that night." In addition, the applicant states, "I have 3 PTSD diagnoses from 3 separate therapists, one of which was on base while I was still in the Army." The active-duty electronic medical record shows no evidence of the applicant being diagnosed with PTSD while in service. On the contrary,

medical documentation reports the applicant asserted he did not experience any combat related stress. Regardless of diagnosis, the applicant's misconduct of statutory rape would not be mitigated by PTSD or any other behavioral health condition. Specifically, PTSD, Generalized Anxiety Disorder, nor Sleep Terrors impair an individual's ability to know right from wrong, understand consequences, and make purposeful, conscious decisions.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

X//Signed//

CHAIRPERSON

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

REFERENCES:

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

2. AR 635–200 Active Duty Enlisted Administrative Separations, in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (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. Paragraph 3-7b (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 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

3. 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//