

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 June 2025

DOCKET NUMBER: AR20240011042

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record) – 2
- Self-authored letter
- Petition containing 51 Veterans' signatures in support of his request for upgrade of his UOTHC discharge

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 all he wanted was to serve his country. He went absent without leave (AWOL) because he found out his wife was cheating on him with another service member. He blamed the military instead of keeping himself accountable. He was too young to realize the ramifications of his actions which have caused him a lifetime of shame. He has grown so much as a spiritual leader in his church, a cornerstone in his community, and he has excelled in college. He prays the Board's decision will put an end to his feeling of failure.

3. On his DD Form 149, the applicant notes post-traumatic stress disorder (PTSD) issues are related to his request.

4. A review of the applicant's service record reflects the following:

a. He enlisted in the Regular Army on 19 January 2005. He was not awarded a military occupational specialty.

b. On 2 December 2005, he was reported as AWOL and remained absent until he returned to military authorities on 10 January 2006.

c. Court-martial charges were preferred against him on 19 January 2006, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL.

d. On 19 January 2006, the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a bad conduct discharge; and the procedures and rights that were available to him.

(1) Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 10, request for discharge in lieu of trial by court-martial. In his request for discharge, he acknowledged his understanding of the elements of the offenses charged, and he was admitting guilt to one or more of the specifications against him, or of a lesser included offense which also authorized the imposition of a bad conduct discharge. He further acknowledged he understood that if his discharge request was approved, he could be deprived of several Army benefits, he could be ineligible for some benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

(2) He declined to submit a statement in his own behalf.

e. His commander recommended approval of his request for discharge on 24 January 2006. The commander noted punishment would have a minimal rehabilitative effect; a discharge would be in the best interest of all concerned.

f. The separation authority approved his request for discharge in lieu of trial by court-martial on 26 January 2006, and directed his discharge under UOTHHC, and reduction to E-1.

g. The applicant was discharged on 15 February 2006. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. His service was characterized as UOTHHC. He completed 11 months and 19 days of net active service this period with 39 days of lost time.

h. The applicant petitioned the Army Discharge Review Board for consideration of his request for upgrade of his UOTHHC discharge. On 9 December 2009, the Board voted to deny relief and determined his discharge was both proper and equitable.

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

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable. On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD) is related to his request. More specifically, he said he went AWOL when he found out his wife was cheating with another Service Member. 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 19 January 2005, 2) the applicant was reported as AWOL from 02 December 2005 until 10 January 2006, 3) court-martial charges were preferred against the applicant on 19 January 2006 for one specification of going AWOL, 4) the applicant was discharged on 15 February 2006 under the provisions of AR 635-200, Chapter 10, In Lieu of Trial by Court-Martial, 5) the applicant's previous petition to the ADRB on 09 December 2009 was denied as it was determined that his discharge was proper and equitable.

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. In-service medical records were available for review via JLV from 04 March 2005 through 31 October 2005. The applicant presented to BH as an unscheduled walk-in on 01 September 2005 due to feeling "overwhelmed by stress." The applicant reported experiencing several occupational stressors including receiving two Article 15s for underage drinking and one positive urinalysis for cocaine, which occurred during the same period of time in which he became separated from his wife. He reported since separating from his wife he has had problems with sleep, irritability, decreased energy, concentration and attention, and ongoing ruminations about divorce proceedings which he initiated three days prior to walking into behavioral health. He was diagnosed with Adjustment Disorder with Disturbance of Emotions and Conduct and was released without limitations. He was referred to the Army Substance Abuse Program (ASAP) and instructed to schedule an intake appointment with behavioral health. On 07 September 2005, the applicant did not show for his intake appointment. The applicant presented to BH on 19 September 2005 for a Chapter 14 separation evaluation, showing his diagnosis as Occupational Problem. He was released without limitations.

d. A review of JLV shows the applicant is not service-connected through the VA with any conditions.

e. 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, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

f. 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.

(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. The applicant was diagnosed with Adjustment Disorder with Disturbance of Emotions and Conduct and Occupational Problem in-service, which are not mitigating conditions [Advisor's Note: *Adjustment Disorders lasting less than 6 months fall under the purview of administrative separation IAW AR 635-200, Chapter 5-14*]. The applicant's records are void of a diagnosis of PTSD. In absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by PTSD and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his misconduct was related to PTSD, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

BOARD DISCUSSION:

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 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 absenting himself from his unit from 2 December 2005 until 10 January 2006. The Board found no error or injustice in the separation proceedings and designated character of service assigned by his commander during separation. The Board concurred with the medical advisor's review that the applicant's misconduct was related to PTSD and spousal infidelity. The Board noted the applicant's post-service character improvement and remorse. The Board majority determined relief was appropriate to amend his characterization of service to

under honorable conditions (General). The Board minority concluded there was no error or injustice and denied relief.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial 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 on 15 February 2006 to show in item 24 (Character of Service): under honorable conditions (General).

2. The Board further determined that 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 upgrading the applicant's characterization of service to 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. Title 10, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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.

b. 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.

c. Chapter 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

4. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR) on 25 August 2017. 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, 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 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.

5. 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, Boards 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//