

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 May 2025

DOCKET NUMBER: AR20240011138

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) character of service, and an appearance before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Form 21-0781(Statement in Support of Claimed Mental Health Disorder(s) Due to an In-Service Trauma), dated 17 July 2024
- VA Form 21-10210 (Lay/Witness Statement), dated 14 July 2024

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, in effect, he suffered from post-traumatic stress disorder (PTSD) at the time of the events leading to his discharge.
3. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 11 May 2004.
  - b. He served in Iraq from 1 February 2005 to 19 January 2006.
  - c. He was formally counseled on the following occasions:
    - 15 June 2006, for underage drinking and self-referral to the Army Substance Abuse Program (ASAP)
    - 25 July 2006, ASAP treatment plan non-compliance

- 14 August 2006, involvement in alcohol related incident and damage to government property

d. He received non-judicial punishment on 26 September 2006 for the following violations which took place on or about 11 August 2006:

- being disrespectful in language towards a noncommissioned officer
- willfully damaging military property of a value of \$500.00 or less
- unlawfully choking Private (PV1) M.N.W.
- being drunk and disorderly
- unlawfully consuming alcohol while under 21 years of age

e. He was formally counseled on 16 October 2006 for breaking restriction and disobeying a lawful order.

f. Court-martial charges were preferred against him on 15 December 2006 for the following violations:

- failing to obey a lawful order, on or about 1 November 2006
- unlawfully striking the back, grabbing and applying pressure to the neck and face, covering the mouth, putting hand in the mouth, and pushing back the body of PV1 M.N.W., on or about 15 October 2006
- breaking restriction, on or about 15 October 2006

g. On December 2006, he was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment, the possible effects of a UOTHC discharge, and the procedures and rights available to him. After receiving legal counsel, he voluntarily requested discharge, in lieu of trial by court-martial, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10. He did not submit a statement in his own behalf.

h. His immediate and intermediate commanders recommended approval of the request, with the issuance of an UOTHC character of service.

i. On 25 January 2007, the separation authority approved the requested discharge and directed the issuance of an UOTHC character of service.

j. Accordingly, the applicant was discharged on 29 January 2007, with an UOTHC character of service. He completed 2 years, 8 months, and 19 days of net active service this period.

4. In the processing of this case on 27 March 2025, the Army Review Boards Agency (ARBA) requested medical documentation in support of the applicant's contention of PTSD. To date, no additional documentation has been received.

5. The applicant provides:

a. A VA Form 21-0781, dated 17 July 2024, wherein the applicant states he experienced combat traumatic events to include the death of unit personnel while out on patrol on three occasions which caused behavioral changes that effected his performance.

b. A VA Form 21-10210, dated 14 July 2024, completed by the applicant's direct supervisor at the time of deployment, notes their unit encountered rockets, mortars, small arms fire, and improvised explosive devices during their deployment. They experienced the death of three members of their unit while out on patrols.

6. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) character of service. On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD) is related to his request. 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 11 May 2004, 2) he served in Iraq from 01 February 2005 to 19 January 2006, 3) he was formally counseled on three occasions between 15 June 2006 and 14 August 2006 for underage drinking and self-referral to the Army Substance Abuse Program (ASAP), ASAP treatment plan non-compliance, and involvement in an alcohol-related incident and damage to government property, 4) he received nonjudicial punishment (NJP) on 26 September 2006 for being disrespectful in language towards a noncommissioned officer (NCO), willfully damaging military property of a value of \$500.00 or less, unlawfully choking a Private, being drunk and disorderly, and unlawfully consuming alcohol while under 21 years of age, 5) he was counseled on 16 October 2006 for breaking restriction and disobeying a lawful order, 6) court-martial charges were preferred against the applicant on 15 December 2006 for failing to obey a lawful order (01 November 2006), unlawfully striking the back, grabbing and applying pressure to the neck and face, covering the mouth, putting hand in the mouth, and pushing back the body of a Private (15 October 2006), and breaking restriction (15 October 2006), 7) on December 2006, he was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment, the possible effects of a UOTHC discharge, and the procedures and rights available to him. After receiving legal counsel,

he voluntarily requested discharge, in lieu of trial by court-martial, under the provisions of AR 635-200, Chapter 10. He did not submit a statement in his own behalf, 8) the applicant was discharge on 29 January 2007 under the provisions of AR 635-200, Chapter 10, In Lieu of Court-Martial, with a separation code of KFS and reentry code of '4.'

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 from 03 June 2004 through 26 January 2007. The applicant had the following in-service BH diagnoses on his problem list in JLV: Nicotine Dependence (26 January 2007), Alcohol Abuse (20 October 2006), Depression (29 September 2006), and Adjustment Disorder with Mixed Emotional Features (15 September 2006).

d. The applicant was seen by BH due to Marital Problems from 24 March 2006 through 30 May 2006. He completed three stress management classes from 24 April 2006 through 08 May 2006. His initial diagnosis was Acute Stress Reaction and at the time of termination from group it was noted that he did not have a diagnosis. He completed a six-session anger management group from 10 May 2006 through 14 June 2006 with the diagnosis documented as Adult Antisocial Behavior.

e. He presented to psychiatry on 27 April 2006 reporting a previous history of BH treatment in 2004 due to depression and suicidal ideation and that he was previously prescribed an antidepressant medication but did not recall the name [*Advisor's note: the previous BH records were not available for review*]. Due to his deployment, he was unable to take the medication. Since returning from deployment, he reported experiencing depression since his wife reported to the MP's that he 'battered' her, and, as a result left with their daughter. His diagnosis was noted as Acute Reaction to Stress and he was prescribed two antidepressant medications (Lexapro and Wellbutrin) and Seroquel (antipsychotic) for sleep. He returned to psychiatry on 15 September 2006 with the chief complaint noted as "being considered for chapter." The provider documented that applicant's reported misconduct and noted that he expressed a desire to resume Seroquel and Lexapro. The diagnosis was documented as Adjustment Disorder with Mixed Emotional Features and Alcohol Abuse. He followed-up with psychiatry on 28 September 2006 regarding his recent stressors. The provider documented that he expressed a desire to continue using drugs after leaving the Army and that he continued to drink alcohol while enrolled in ASAP. The provider documented that he denied experiencing significant anxiety or depression but had been using Seroquel to help with sleep. He expressed that he was no longer interested in

treatment. The diagnoses were documented as Depression and Alcohol Abuse. His final BH encounter on 18 October 2006 shows he presented at the request of command as they “said they believe he has problems.” The applicant denied having any concerns, did not desire BH treatment, and essentially communicated that none of his military-related problems were of concern due to his pending separation. His diagnosis was documented as Alcohol Abuse.

f. Included as part of his application, an email from an ASAP provider to the unit First Sergeant dated 25 July 2006 shows that the applicant was undergoing ASAP treatment for Polysubstance Dependence. The provider documented that the applicant was not complying with his treatment plan and that the diagnosis warrants discharge from the military. It was further noted that he was “argumentative, defiant, and uncooperative in group” and that he was not verifying daily attendance at Alcoholics Anonymous/Narcotics Anonymous (AA/NA), as required.

g. A review of JLV shows the applicant is not service-connected through the VA for any conditions. It is of note that his UOTHC discharge renders him ineligible for VA services. A note dated 04 April 2024 shows that a third party contacted the VA Crisis Line expressing concern about the applicant’s well-being/safety. The VA providers attempted the contact him through 08 April 2024 and were unable to reach him. A mental health screening note dated 11 July 2024 shows the applicant reported having “a lot going on” and that he was having difficulty managing it. He reported problems with sleep, anxiety, and depression due to “what he went through while he was deployed.” He also reported ongoing problems related to alcohol use and that he used alcohol as a means to cope with sleep problems and nightmares.

h. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant was diagnosed with Depression in-service, which is a potentially mitigating condition. His diagnoses of Adjustment Disorder with Mixed Emotional Features and Acute Reaction to Stress are subsumed by his diagnosis of Depression. Alcohol and Substance Use Disorders, and Adult Antisocial Behavior do not constitute mitigating conditions. This Advisor would contend that the applicant’s misconduct is partially mitigated by his diagnosis of Depression.

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with Depression in-service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with Depression in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. In-service medical records show the applicant was diagnosed with Depression, which is a potentially mitigating BH condition. As there is an association between changes in mood, irritability, poor decision-making, and depression, there is a nexus between the applicant's misconduct of failing to obey a lawful order and breaking restriction and his diagnosis of Depression. However, assault is not part of the natural history and sequelae associated with Depression, nor does the condition interfere with the ability to distinguish between right and wrong and adhere to the right. Thus, BH mitigation is partially supported for his misconduct of failure to obey a lawful order and breaking restriction.

j. Regarding applicant's assertion of PTSD, while there is no evidence to support this diagnosis, applicant's self-assertion of PTSD alone merits consideration by the board.

#### BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the lengthy pattern of misconduct leading to the applicant's separation, some of which was of a violent nature against others, as well as the following findings in the medical review finding only partial mitigation for the misconduct:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes.

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially,

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

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

|      |      |      |                      |
|------|------|------|----------------------|
| :    | :    | :    | 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.

|                 |
|-----------------|
| //SIGNED//<br>X |
|-----------------|

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 (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, opinions, and reviews to ABCMR applicants prior to adjudication.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

4. 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.

a. 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.

b. 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.

c. 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.

5. 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.

6. 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//