

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE:

DOCKET NUMBER: AR20240011150

APPLICANT REQUESTS:

- upgrade of his under other than honorable conditions (UOTHC) character of service
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show a different separation program designator (SPD) code, reentry (RE) code, and narrative reason for separation, presumably more favorable
- a personal 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)

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 equity will follow upon a hearing date. He notes other mental health as a condition related to his request.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 28 January 2019.
 - b. DD Form 458 (Charge Sheet) shows court martial charges were preferred on 15 October 2020 for the following violations of the Uniform Code of Military Justice:
 - two specifications of committing a violent offense against his spouse, by unlawfully striking her with his head and/or hands, on divers occasions between on or about 1 October 2019 and 31 December 2019 and between on or about 1 January 2020 and 31 May 2020

- assaulting his spouse by strangling her, on divers occasions between on or about 1 January 2020 and 31 January 2020
- willfully damaging or destroying the property of his spouse with intent to threaten or intimidate, between on or about 1 January 2020 and 31 January 2020
- three specifications of disobeying a lawful command from his superior commissioned officer by violating a Military Protective Order, on divers occasions between on or about 9 January 2020 and 25 July 2020
- wrongfully abusing a domestic dog, between on or about 1 May 2020 and 31 May 2020

c. On 16 October 2020, he requested discharge for the good of the service under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10, in lieu of trial by court-martial.

d. His chain of command recommended approval of the requested discharge.

e. On 1 November 2020, the separation authority approved his request for discharge and directed he be reduced to private/E-1, with the issuance of a UOTHC character of service.

f. Accordingly, he was discharged on 5 November 2020. He completed 1 year, 9 months, and 8 days of net active service this period. His DD Form 214 further shows:

- Item 24 (Character of Service) – UOTHC
- Item 25 (Separation Authority) – Army Regulation 635-200, Chapter 10
- Item 26 (Separation Code) – KFS
- Item 27 (Reentry Code) – 4

g. On 11 April 2022, the Army Discharge Review Board considered his request for an upgrade of his UOTHC character of service. 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 to request an upgrade of his under other than honorable conditions discharge. He contends he experienced mental health conditions during his time in service that 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 28 January 2019; 2) On 15 October 2020, court martial charges were preferred for: Two specifications of striking his spouse, one specification of strangling his spouse, one specification of destroying his spouse's property with the intent to intimidate, three specifications of disobeying a lawful order by violating a Military Protective Order (MPO), and one specification of abusing his dog; 3) The applicant was discharged on 5 November 2020, Chapter 10. His character of service was under other than honorable conditions. He completed 1 year, 9 months, and 8 days of net active service. 4) The applicant previously applied to the ABCMR for discharge upgrade on 11 April 2022 where his discharge was determined to be fair and equitable.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service 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. The applicant asserts he experienced mental health conditions during his time in service that mitigate his misconduct. The applicant's first documented interaction with mental health treatment began on 18 January 2020, when he was referred to Family Advocacy Program (FAP) following the alleged physical abuse of his pregnant spouse. During this encounter, he denied any mental health symptoms. The applicant continued to be followed by FAP and began engagement with mental health on 02 June 2020 due to reported emotional pain and distress due to external stressors. It was noted that apart from the applicant's current legal and interpersonal stressors, the applicant denied any additional mental health issues and was subsequently diagnosed with a partner relational problem. On 23 July 2020, the applicant was command escorted to mental health due to increased SI/HI following the violation of his MPO with his spouse and was subsequently psychiatrically hospitalized until 29 July 2020. On 29 July 2020, a DA3822 form was completed and noted the applicant was put on a temporary profile (expiring 26 October 2020) due to inpatient hospitalization and was at intermediate risk for harm to self. This form also determined that no further cognitive or emotional impairments were present. The applicant remained in contact with mental health up until his discharge and his diagnosis remained adjustment disorder with mixed disturbance of emotions and conduct throughout treatment. On 09 September 2020, the applicant presented for a 5-17 medical evaluation and was cleared for separation from a medical perspective without any medical concerns. On 04 November 2020, during his final appointment, the applicant was cleared from a mental health perspective for discharge from the military.

d. The VA's Joint Legacy Viewer (JLV) was examined, and no additional post-discharge results were found. The applicant has not been diagnosed with a service-connected mental health condition, and he does not receive service-connected disability for a mental health condition at this time.

e. The applicant asserts he experienced mental health conditions while on active service that mitigate his misconduct. There is insufficient evidence that the applicant reported or was diagnosed with any mental health conditions while on active service that impacted his subsequent misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant contends he was experiencing mental health conditions at the time of his active service which mitigates his misconduct. The applicant was diagnosed with adjustment disorder with mixed disturbance of emotions and conduct following his misconduct while still on active military service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing mental health conditions at the time of his active service which mitigates his misconduct. The applicant was diagnosed with adjustment disorder with mixed disturbance of emotions and conduct following his misconduct while still on active military service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report that the applicant was diagnosed with any mental health disorders other than those resulting from the distress from his misconduct. In addition, there is no nexus between the applicant's reported mental health conditions and the applicant's offenses of domestic violence, breaking an MPO, intimidation of his spouse, and animal abuse, in that: 1) These types of misconduct are not a part of the diagnosis or natural sequelae of most mental health conditions; 2) Most mental health conditions do not impact one's ability to distinguish right from wrong. However, per Liberal Consideration, the applicant's experience of mental health conditions alone is sufficient for 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 relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, the medical advisor's review 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 two specifications of committing a violent offense against his spouse, by unlawfully striking her with his head

and/or hands, on divers occasions, assaulting his spouse by strangling her, on divers occasions, willfully damaging or destroying the property of his spouse with intent to threaten or intimidate, three specifications of disobeying a lawful command from his superior commissioned officer by violating a Military Protective Order, on divers occasions, and wrongfully abusing a domestic dog, 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 that the applicant reported or was diagnosed with any mental health conditions while on active service that impacted his subsequent misconduct. Based on a preponderance of the evidence, the Board concluded that the characterization of service, separation code, narrative reason for separation and the RE-Code 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 contends he was experiencing mental health conditions at the time of his active service which mitigates his misconduct. The applicant was diagnosed with adjustment disorder with mixed disturbance of emotions and conduct following his misconduct while still on active military service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing mental health conditions at the time of his active service which mitigates his misconduct. The applicant was diagnosed with adjustment disorder with mixed disturbance of emotions and conduct following his misconduct while still on active military service.

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The Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service, separation code, narrative reason for separation or his RE-Code due to the egregious nature of the misconduct.

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:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

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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. 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 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of Reentry (RE) codes.
 - RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
 - RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
 - RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable – they are ineligible unless a waiver is granted
 - RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification
5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. The

regulation states that SPD Code "KFS" is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of court-martial.

6. 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.

7. 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.

8. 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-

artial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

//NOTHING FOLLOWS//