

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 August 2025

DOCKET NUMBER: AR20240011397

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

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge)
- Orders 039-0206, issued by Headquarters, III Corps and Fort Hood, Fort Hood, TX, reassigned him to the transition point for transition processing, effective 8 February 2005
- Certificate, 10 June 2004, reflects he completed basic training
- Certificate, 12 August 2004, reflects he completed the Food Service Specialist Course
- Diploma from Brightwood College on 27 March 2018, certifies he completed the X-Ray Technician/Medical Assistant Back Office
- Certificate of Achievement from Brightwood College on 11 May 2018, awarded for having perfect attendance
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for period of service ending 10 February 2005
- Marriage Certificate reflects he was married on 22 August 2022
- Six-character reference letters that collectively attest to his faith, commitment to family, integrity, and service to the community
- Veterans Affairs decision letter, which shows he was granted service connection with an evaluation of 70 percent effective 16 September 2024, for adjustment disorder with mixed anxiety, depressed mood and alcohol use disorder

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 he signed up to protect and defend his country, which in itself separates him from most. His mental health was weak due to his family. The Army wasn't able to help. Separation was his only choice. Finding help is still difficult.

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

a. He enlisted in the Regular Army, on 1 April 2004.

b. He received formal counseling on the following dates/for:

- 14 September 2004; failure to be at appointed place of duty, travelling outside 250-mile radius
- 17 September 2004; failure to report, disobeying an order
- 20 September 2004; failure to report, insubordination, disobeying an order
- 21 September 2004; failure to report, insubordination, disobeying an order
- 22 September 2004; failure to report, insubordination, disobeying an order
- 23 September 2004; failure to report, insubordination, disobeying an order

c. He underwent a mental status evaluation, on 24 September 2004. The attending psychologist remarked the applicant presented issues that are causing him to stress at this time. His mood was depressed. However, he was psychiatrically cleared for administrative action deemed appropriate by the command.

d. He received additional counseling on 25 September 2004, for failure to report, and disobeying an order.

e. On 4 November 2004, he accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice, for absenting himself from his unit from 11 September 2004 until 12 September 2004. His punishment included forfeiture of \$596.00 pay per month for two months, and 45 days extra duty and restriction.

f. His commander notified him on 22 November 2004, that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, for commission of a serious offense. The commander noted the applicant had disobeyed his commander on numerous occasions, he absented himself from his appointed place of duty and he absented himself from his unit.

g. On 23 November 2004, he consulted with counsel and was advised of the basis for the contemplated separation action, the possible effects of the discharge, and the rights available to him. He indicated he understood that, as the result of issuance of a discharge UOTHC, he may be ineligible for many or all benefits as a Veteran under both

Federal and State laws and that he may expect to encounter substantial prejudice in civilian life. He declined to submit a statement in his own behalf.

h. on 14 December 2004, his commander formally recommended his separation, prior to his expiration term of service, under the provisions of Army Regulation 635-200, paragraph 14-12c, for commission of a serious offense.

i. Consistent with the chain of command's recommendations, the separation authority directed the applicant's separation on 28 January 2005, with an UOTHC characterization of service.

j. The applicant was discharged on 10 February 2005. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c(1), for misconduct. His service was characterized as UOTHC. He completed 10 months and 10 days of net active service this period.

4. 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.

5. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his other than honorable discharge. He contends he experienced mental health conditions 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 01 April 2004; 2) The applicant received 7 formal counseling's that included infractions such as: Failing to report to his place of duty (7 specifications), insubordination (4 specifications), and disobeying an order (7 specifications) between the dates of 14 and 25 September 2004; 3) On 04 November 2004, he accepted NJP for going AWOL from 11 to 12 September 2004; 4) On 10 February 2005, the applicant was discharged, AR 635-200, paragraph 14-12c(1), for misconduct. His service was characterized as under other than honorable conditions. He completed 10 months and 10 days of net active service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service and medical records. The VA's Joint Legacy Viewer (JLV) and hardcopy VA and civilian medical records provided by the applicant were also reviewed. 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 that mitigate his misconduct. On 24 September 2004, the applicant underwent a mental status

examination by a military mental health provider, which described the applicant as experiencing stress and appearing depressed. As a result of this evaluation, the provider recommended that the applicant be administratively discharged due to a failure to adapt to military service. The applicant was otherwise cleared for continued administrative separation procedures from a mental health perspective and no diagnosis was generated. There was insufficient evidence that the applicant attended or was diagnosed with any mental health conditions while on active military service.

d. The applicant provided hardcopy civilian mental health documentation of a mental health evaluation dated 02 March 2025 that diagnosed the applicant with Major Depressive Disorder, Recurrent, Severe without Psychotic symptoms and PTSD. The applicant's civilian mental health provider connected the applicant's mental health symptoms directly to his military service. A review of JLV indicated that the applicant connected with VA mental health care beginning on 23 September 2024, for emergent treatment of suicidal ideation. This visit resulted in the provisional diagnoses of Major Depressive Disorder and Alcohol Use Disorder and subsequent inpatient psychiatric care. The applicant provided hardcopy documentation of his previous VA diagnoses that included Major Depressive Disorder and Alcohol Abuse as of 05 February 2025. In addition, the applicant provided a hardcopy memorandum dated 20 March 2025, from his VA psychiatric provider that also attributed the applicant's mental health symptoms as originating from his military experiences. The applicant has continued outpatient VA physical and mental health care since that time. The applicant is currently 70% VA service-connected for Chronic Adjustment Disorder.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence to support the applicant had a mental health condition or experience during his time in service that may mitigate his misconduct. The applicant was noted as appearing depressed and reported feelings of stress during his psychiatric mental status evaluation during the administrative discharge process. In addition, the applicant's civilian mental health provider as well as his VA psychiatric provider both attributed his mental health symptoms to his experiences while in military service. Finally, the applicant is also currently VA service-connected for Chronic Adjustment Disorder.

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 was noted as appearing depressed and reported feelings of stress during his psychiatric mental status evaluation during his administrative discharge process. In addition, the applicant provided hardcopy documentation of two separate mental health providers (VA and civilian) that attributed

the applicant's symptoms of PTSD and Major Depressive Disorder with his time in military service. Finally, the applicant is VA service-connected for Chronic Adjustment Disorder.

(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 was noted as appearing depressed and reported feelings of stress during his psychiatric mental status evaluation as a part of his administrative discharge process. In addition, the applicant provided hardcopy documentation of two separate mental health providers (VA and civilian) that attributed the applicant's symptoms of PTSD and Major Depressive Disorder with his time in military service.

(3) Does the condition experience actually excuse or mitigate the misconduct? Yes, there is sufficient evidence the applicant experienced mental health conditions while on active service. The applicant engaged in erratic and avoidant behavior such as failing to obey orders, insubordinate behavior, failing to be at his place of duty, and going AWOL that resulted in his discharge from active service. This behavior can be a natural sequelae to some mental health conditions, including Major Depressive Disorder and PTSD. Therefore, per Liberal Consideration, the applicant's misconduct is mitigatable.

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 received numerous counseling for being absent without leave, insubordination and disobeying a direct order, as well as a nonjudicial punishment for being with being absent without leave from 11 September 2004 to 12 September 2004. The Board noted the applicant's character references, his post service conduct, and his claim of behavioral health issues. The Board also noted the applicant's untimely submission of his request (over 20 years later) and his short period of time in service. Therefore, the Board determined there was no error or injustice in the separation proceedings and designated characterization of service. Notwithstanding the medical review, the Board did not concur with the medical review and found insufficient evidence to mitigate 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 was noted as appearing depressed and reported feelings of stress during his psychiatric mental status evaluation during his administrative discharge process. In addition, the applicant provided hardcopy documentation of two separate mental health providers (VA and civilian) that attributed the applicant's symptoms of PTSD and Major Depressive Disorder with his time in military service. Finally, the applicant is VA service-connected for Chronic Adjustment Disorder.

(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 was noted as appearing depressed and reported feelings of stress during his psychiatric mental status evaluation as a part of his administrative discharge process. In addition, the applicant provided hardcopy documentation of two separate mental health providers (VA and civilian) that attributed the applicant's symptoms of PTSD and Major Depressive Disorder with his time in military service.

(3) Does the condition experience actually excuse or mitigate the misconduct? Yes, there is sufficient evidence the applicant experienced mental health conditions while on active service. The applicant engaged in erratic and avoidant behavior such as failing to obey orders, insubordinate behavior, failing to be at his place of duty, and going AWOL that resulted in his discharge from active service. This behavior can be a natural sequelae to some mental health conditions, including Major Depressive Disorder and PTSD. Therefore, per Liberal Consideration, the applicant's misconduct is mitigatable.

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

█ █ █ 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.

█

█ █

█

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 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. It states that action will be initiated to separate a Soldier for misconduct when it was clearly established that rehabilitation was impracticable or unlikely to succeed.

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 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 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//