

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 July 2025

DOCKET NUMBER: AR20240011987

APPLICANT REQUESTS: an upgrade of his discharge 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, undated

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 is currently incarcerated and unable to provide his medical records. If you look closely, and then based on his medical records, he was already pending a medical discharge when he returned from his deployments to Iraq. He was medically damaged and dealing with a lot of traumas. He could not and did not know how to cope with a lot of situations that came his way. He felt his unit really did not want to help him in any way after he got into the physical altercation. The other Soldier lied about him stealing night vision goggles. He doesn't know why the other Soldier singled him out. He just reacted instead of thinking things through; he hit the other Soldier and knocked him out. He was dealing with a lot of stress and did not know how to talk to anyone about it.

a. While serving in Iraq, his unit conducted daily missions outside the forward operating base. He was also a member of the quick reaction force to go and recover anyone who was attacked by unfriendly forces and could not make it back on their own. He was involved in daily explosions with his vehicle and sustained a head injury. He now suffers from bad headaches that effect his vision, coordination, mobility, thinking process, and memory, and the Department of Veterans Affairs prescribes him medication for those conditions and other service-connected conditions.

b. He felt betrayed by his unit. He had not been in trouble before the fight. He was an excellent Soldier, and he received two Army Good Conduct Medals. He did not deploy anymore due to his pending medical discharge. When he returned home from deployment, he experienced devastating marital and financial distress that led to drug use as a coping mechanism. He is currently receiving 100-percent service-connected disability compensation with the unemployability rate from the Department of Veterans Affairs.

c. He requests amendment of his grade, character of service, separation authority, separation code, and reentry code.

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

a. He enlisted in the Regular Army on 29 November 2001.

b. He served in Iraq from 9 March 2004 through 1 May 2005 and from 30 June 2006 through 30 August 2007.

c. The DD Form 458 (Charge Sheet) shows court-martial charges were preferred against him on 29 October 2008 for the following charges/specifications:

- Charge I, specification – disobeying a lawful order on 10 June 2008
- Charge II, specification – striking another Soldier in the face on 29 July 2008
- Charge III –
  - specification 1 – being absent without leave (AWOL) from 9 June 2008 until 10 June 2008
  - specification 2 – being AWOL from 12 August 2008 until 13 August 2008
  - specification 3 – failing to report on 7 June 2008
  - specification 4 – failing to report on 5 August 2008

d. The 12 December 2008 urinalysis report results show he tested positive for cocaine use on 5 December 2008.

e. He was AWOL from 8 December 2008 to 29 April 2009.

f. On 29 April 2009, he violated Texas Penal Code 31.07 (Unauthorized Use of a Motor Vehicle).

g. He accepted nonjudicial punishment as follows:

- 7 July 2009 for being AWOL from 8 December 2008 to 29 April 2009

- 28 September 2009 wrongful use of cocaine on –
- 29 November 2008
- 5 December 2008
- 30 July 2009
- 5 August 2009

h. On 15 June 2010, the applicant's immediate commander notified him of his intent to separate him for commission of a serious offense under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c. The commander recommended characterization of his service as under other than honorable conditions. He acknowledged the notification the same day.

i. He was advised by consulting counsel of the basis for the contemplated action to separate him for commission of a serious offense under the provisions of Army Regulation 635-200, paragraph 14-12c, and its effects and of the rights available to him.

j. On 1 September 2010, the intermediate commander recommended approval of the applicant's discharge under the provisions of Army Regulation 635-200, paragraph 14-12c, with characterization of his service as under other than honorable conditions.

k. On 21 October 2012, he was discharged under other than honorable conditions. He completed 7 years, 5 months, and 5 days of net active service during this period with lost time from 9-10 May 2006, 11-21 May 2006, 9 June 2008, 12 August 2008, 30 September-6 October 2008, 10-27 October 2008, 10/10/2008, 8 December 2008-28 May 2009, 29 May-14 June 2009, and 30 October 2009-31 August 2010. He was awarded or authorized the:

- Iraq Campaign Medal with two campaign stars
- Army Commendation Medal
- Army Achievement Medal
- Meritorious Unit Commendation
- Army Good Conduct (2nd Award)
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Korea Defense Service Medal
- Overseas Service Ribbon (3rd Award)
- Combat Action Badge

4. On 9 May 2022, the Army Discharge Review Board reviewed the applicant's discharge processing and found it proper and equitable. The board denied his request for an upgrade of his discharge.

5. In reaching its determination, the Board may consider the applicant's petition and his service records in accordance with the published equity, injustice, or clemency determination guidance.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions discharge. He contends he experienced mental health conditions including PTSD and a traumatic brain injury (TBI), which are 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 29 November 2001; 2) The applicant deployed to Iraq from 9 March 2004-1 May 2005 and from 30 June 2006-30 August 2007; 3) On 29 October 2008, court-martial charges were preferred against the applicant for: A) disobeying an order; B) striking another Soldier in the face; C) being AWOL from 09-10 June 2008 and 12-13 August 2008; and D) failing to report on two occasions; 4) On April 2009, the applicant violated Texas Penal Code by unauthorized use of a motor vehicle; 5) The applicant accepted nonjudicial punishments between September 2008- August 2009 for being AWOL from 08 December 2008-29 April 2009 and 5 incidents of testing positive for cocaine; 6) The applicant was discharged on 21 October 2012, Chapter 14-12c for commission of a serious offense. His service was characterized as under other than honorable conditions. He completed 7 years, 5 months, and 5 days net active service. The applicant lost time from 9-10 May 2006, 11-21 May 2006, 9 June 2008, 12 August 2008, 30 September-6 October 2008, 10-27 October 2008, 8 December 2008-28 May 2009, 29 May-14 June 2009, and 30 October 2009-31 August 2010; 7) On 9 May 2022, the Army Discharge Review Board reviewed the applicant's discharge processing and found it proper and equitable. The board denied his request for an upgrade of his discharge.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. The applicant asserts he was experiencing mental health conditions including PTSD and a TBI, which mitigate his misconduct. The applicant was evaluated twice while deployed in June and Sept 2007 following exposure to an IED. He reported a resulting headache on each occasion. The applicant was provided neuropsychological screening, reported not losing consciousness, or being dazed. The results of his

neuropsychological screenings and evaluations were within normal range. He was provided over the counter pain medication for his headaches and returned to duty with a follow-up appointment scheduled. The applicant was evaluated at his follow-up appointment and reported no continued headache or new symptoms. Due to the applicant's exposure to IED blasts and continued headaches, he was evaluated after returning from deployment by the TBI clinic on 03 June 2008. He reported a history of head injury prior to the military and repeated exposure to blasts during deployment with lasting headaches since redeployment and reported memory problems. He also described an increase in anxiety, depression, and anger management problems. He was referred to behavioral health services and also continue at the TBI clinic.

d. The applicant was evaluated by psychiatry services on 04 June 2008. He reported similar problems, but he also noted significant marital problems since redeployment and resulting financial problems. He was diagnosed with an Adjustment Disorder with Depressed mood and prescribed psychiatric medication. The applicant discontinued any treatment following this encounter till 01 December 2008. The applicant was then referred to behavioral health services for a Mental Status Evaluation (MSE) as part of the administrative separation proceedings for a Chapter 14. The evaluating provider requested the evaluation be adjusted to an evaluation for a Chapter 5-17. The applicant was determined to "not be a good candidate for a Chapter 14" due to his history of TBI and previously reported and current mental health symptoms. It was noted the applicant did not attend any treatment due to the unit being in the field for an extended exercise.

e. The applicant was recommended to be reevaluated at the TBI clinic and further behavioral health treatment. The applicant did not continue with any of the treatment recommendations. He was later seen at the Family Advocacy Program (FAP) on 18 June 2009. The details related to the reason for the applicant's referral to FAP were not available in the electronic medical records, but the applicant was enrolled in the Men's Group for domestic violence, and he was referred back to behavioral health services due to reported depression and PTSD symptoms. However, the applicant did not attend treatment at behavioral health services. On 22 June 2009, he was again seen at behavioral health services for another MSE as part of the administrative separation proceedings for a Chapter 14. It was noted the applicant understood and could appreciate the difference between right and wrong, but he was not cleared from a psychiatric perspective due to his reported mental health symptoms and history of PTSD and TBI. He was again recommended for PTSD and TBI treatment.

f. There is insufficient evidence the applicant engaged in any military behavioral health treatment beyond a Men's Group at FAP during his active service. He reported to behavioral health services for an MSE on 27 August 2010 for a Chapter 14 due to testing positive for cocaine. It was noted, the applicant tested positive for cocaine earlier in December 2008. Consequently, he was referred to a 7-month rehabilitation program

and then a half-way house. At the time of this evaluation, the applicant did not report symptoms of a TBI or PTSD. He was describing symptoms of adjustment related anxiety and depression as a result of his mother recently passing away. The applicant was also dealing with the stress of his children being removed from his wife's care due to her drug use. He was diagnosed with an Adjustment Disorder with Anxiety and Depressed mood, and he was cleared from a psychiatric perspective for any administrative action deemed appropriate by Command.

g. A review of JLV provided evidence the applicant began to engage with the VA in January 2011. He has been diagnosed with service-connected PTSD and migraine headaches. There is insufficient evidence the applicant has been diagnosed with service-connected TBI by the VA.

h. 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 condition or experience that partially mitigates his misconduct.

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced mental health conditions including PTSD and a TBI, which mitigate his misconduct. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD. The applicant was diagnosed intermittently with an Adjustment Disorder, PTSD, and TBI while on active service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD and a TBI, which mitigate his misconduct. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD. The applicant was diagnosed intermittently with an Adjustment Disorder, PTSD, and TBI while on active service.

(3) Does the condition/experience actually excuse or mitigate the discharge? Partially, there is sufficient evidence the applicant was experiencing mental health symptoms related to his deployment and situational life experiences post deployment. In addition, he was exposed to TBI during his deployment. Consequently, the applicant was diagnosed intermittently diagnosed with an Adjustment Disorder, PTSD, and a TBI, while on active service. After his discharge, the applicant was diagnosed with service-connected PTSD. The applicant did engage in misconduct which can a natural sequelae to these conditions, such as not following a lawful order, not being on time to his place of duty, going AWOL, and repeatedly using illegal drugs. However, he also engaged in misconduct such as striking another Soldier and unauthorized use of a vehicle. There is no nexus between the applicant's diagnosed mental health conditions or TBI and these

types of misconduct in that: 1) these types of misconduct are not a part of the natural history or sequelae of the applicant's diagnosed mental health conditions or TBI; 2) applicant's diagnosed mental health conditions and TBI do not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates his entire misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. One potential outcome was to deny relief based on the misconduct of striking another Soldier. However, upon review of the applicant's petition, available military records and the medical review, the Board concurred with the advising opinion of the Agency Medical Advisor that there is sufficient evidence to support the applicant had a condition or experience that partially mitigates his misconduct.

#### 2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced mental health conditions including PTSD and a TBI, which mitigate his misconduct. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD. The applicant was diagnosed intermittently with an Adjustment Disorder, PTSD, and TBI while on active service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD and a TBI, which mitigate his misconduct. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD. The applicant was diagnosed intermittently with an Adjustment Disorder, PTSD, and TBI while on active service.

(3) Does the condition/experience actually excuse or mitigate the discharge? Partially, there is sufficient evidence the applicant was experiencing mental health symptoms related to his deployment and situational life experiences post deployment. In addition, he was exposed to TBI during his deployment. Consequently, the applicant was diagnosed intermittently diagnosed with an Adjustment Disorder, PTSD, and a TBI,

while on active service. After his discharge, the applicant was diagnosed with service-connected PTSD. The applicant did engage in misconduct which can a natural sequelae to these conditions, such as not following a lawful order, not being on time to his place of duty, going AWOL, and repeatedly using illegal drugs. However, he also engaged in misconduct such as striking another Soldier and unauthorized use of a vehicle. There is no nexus between the applicant’s diagnosed mental health conditions or TBI and these types of misconduct in that: 1) these types of misconduct are not a part of the natural history or sequelae of the applicant’s diagnosed mental health conditions or TBI; 2) applicant’s diagnosed mental health conditions and TBI do not affect one’s ability to distinguish right from wrong and act in accordance with the right

3. The Board determined that there is sufficient evidence of in-service mitigating factors to warrant relief, despite the applicant’s record of misconduct, which includes multiple AWOL incidents, drug use, and an assault. The Board found these actions to be partially mitigated by the applicant’s diagnosed service-connected mental health conditions, including PTSD and traumatic brain injury (TBI). The applicant served honorably in two combat deployments to Iraq, where he was repeatedly exposed to traumatic events, including daily explosions and a head injury sustained while serving on a quick reaction force. The Board acknowledged that these experiences likely contributed to the onset of his mental health decline. Additionally, the applicant’s exemplary prior service reflected in two Army Good Conduct Medals and numerous campaign and achievement awards, supports the applicant’s assertion that he was a dedicated and effective Soldier prior to these challenges. Based on the totality of the circumstances, including the clear nexus between his combat-related conditions and subsequent misconduct, the Board found it appropriate to grant relief by upgrading the characterization of service to General (Under Honorable Conditions).

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by re-issuing the applicant a DD Form 214 showing his characterization of service as General Under Honorable Conditions.

**X** //SIGNED//

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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. 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 14 established policy and procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally considered appropriate; however, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

4. of Title 10, U.S. Code, section 1556, 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 (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.

//NOTHING FOLLOWS//