



b. One day, he was being accosted on [REDACTED] by a man accusing him of sleeping with his wife; at that moment, he realized [REDACTED] was his wife. He exited the airbase in his car, but he was trying to force him off the road. They exited their vehicles and started fighting in an apartment complex parking lot. It seemed like they were fighting for over five minutes. At some point his wife attacks him too. When it was all said and done, all were injured; however, her injuries were far worse. He takes blame for the injuries, but he does not know where or how many times he was struck by anyone. He believed he blacked out because he can't recall all the events surrounding the fight. He can only imagine fighting until he no longer perceived them as a threat. The MPs (Military Police) thought he had used a weapon because of the injuries to [REDACTED]

c. He was offered a plea bargain that would have resulted in 1 year prison term and a dishonorable discharge. He did not accept the plea deal because he wasn't convinced that he could do all the things in the charges. He was found guilty of attempted murder of the wife and sentenced to eight years in prison. He is very remorseful for physically and emotionally injuring the couple. He has been on Prozac for over 13 years. He did reach out to the medical community after his first deployment but was told nothing was wrong. He knows in 2003 the military did not treat PTSD (post-traumatic stress disorder) like it does today. He has witnessed enemy combatants, and friendly personnel dead, dying and wounded civilian (including women and children). At this time, he is asking for empathy and compassion in the consideration of an honorable discharge based on mental defect due to war experiences.

3. Review of the applicant's service records shows:

a. He enlisted in the Regular Army on 14 August 2010, and he held military occupational specialty 63B, Light Wheel Vehicle Mechanic.

b. He reenlisted on 4 April 2003 and on 2 December 2005. He served in Pakistan from 1 November 2005 to 23 February 2006, Angola from 23 August to 19 September 2005, and Iraq from 2 May 2003 to 9 July 2004.

c. On 1 February 2008, at Headquarters, 21st Theater Sustainment Command, Germany, the applicant was convicted by a general court-martial of:

(1) Charge I, Article 80: Plea: Not Guilty, Finding: Guilty; one specification of on or about 26 May 2007, with premeditation, attempting to murder [REDACTED] by means of striking him in the head with a flashlight.

(2) Charge II, Article 128, Plea: Not Guilty. Finding: Guilty; one specification of on or between 15 March 2007 and 1 May 2007, unlawfully holding [REDACTED] by the arms and neck with his hands and scratching her forearm with his hands.

d. The court sentenced him to reduction to the lowest enlisted grade of private/E-1, forfeiture of all pay and allowances, confinement for 12 years, and to be discharged from the service with a dishonorable discharge.

e. The applicant was confined at the Personnel Control Facility at Fort Sill, OK, beginning on 1 February 2008.

f. On 2 June 2008, the convening authority approved the sentence and, except for the portion of the sentence extending to a dishonorable discharge, ordered the sentence executed.

g. The appellate authority affirmed the findings of guilty and the sentence.

h. General Court-Martial Order Number 170, issued by Headquarters, U.S. Army Fires Center of Excellence, Fort Sill, OK on 25 June 2010, shows the sentence to reduction to the grade of private E1, forfeiture of all pay and allowances, confinement for 12 years, and a dishonorable discharge, adjudged on 1 February 2008. as promulgated in General Court-Martial Order Number 3, Headquarters, 21st Theater Sustainment Command, 2 June 2008, has been finally affirmed. The automatic forfeitures required by Article 58b, UCMJ, were deferred effective 19 February 2008 until 2 June 2008. The accused was credited with 2 days of confinement against the sentence to confinement. Article 71(c) having been complied with; the Bad-Conduct Discharge will be executed.

j. The applicant was discharged on 15 October 2010. His DD Form 214 shows he was discharged in the rank/grade of private/E-1 as a result of court-martial conviction in accordance with Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 3, with a bad conduct discharge. He completed 7 years, 5 months, and 17 days of active service, and he had lost time from 1 February 2008 to 15 October 2010.

(1) Block 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) shows he was awarded:

- Army Commendation Medal (2nd Award)
- Army Achievement Medal (2nd Award)
- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Humanitarian Service Medal
- Army Service Ribbon
- Driver/Mechanic Badge with Driver Wheeled Vehicle Clasp
- Driver/Mechanic Badge with Mechanic Clasp

(2) Block 18 (Remarks) erroneously listed his Immediate Reenlistments as 1999-12-17 to 2005-04-03; 2005-04-04 to 3205-12-01; and 2005-12-02 to 2010-10-15. It also omitted his continuous honorable service.

5. By regulation (AR 635-200), a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

6. In reaching its determination, the Board can consider the applicant's petition and his service record 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 bad conduct discharge to an honorable discharge. He contends he experienced mental health conditions including PTSD that mitigated his misconduct.

b. 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 14 August 2000; 2) He was deployed to Pakistan, Angola, and Iraq; 3) On 1 February 2008, the applicant was convicted by a general court-martial of: A) one specification of on 26 May 2007, with premeditation attempted to murder by means of striking an individual in the head with a flashlight and; B) and earlier physical assault; 4) The applicant was discharged on 15 October 2010, Chapter 3- as a result of court-martial conviction with a bad conduct discharge.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed the supporting documents and the applicant's military service and available medical records. The Armed Forces Health Longitudinal Technology Application (AHLTA) and the VA's Joint Legacy Viewer (JLV) were also examined. No additional medical documentation was provided.

d. On his application, the applicant contends mental health conditions including PTSD were contributing and mitigating factors in the circumstances that resulted in his separation. There is insufficient evidence the applicant reported behavioral health symptoms prior to the events associated with his court-martial. After the event, the applicant was seen at behavioral health for symptoms of anxiety, depression, and problems with stress management. He was diagnosed with an acute reaction to stress and an adjustment disorder. A review of JLV provided evidence the applicant has been treated for depression, anxiety, and PTSD. The applicant receives no service-connected disability. The applicant did not provide any additional medical documentation from a licensed behavioral health provider.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant had condition or experience that mitigated his misconduct.

**Kurta Questions:**

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he was experiencing mental health conditions including PTSD that contributed to his misconduct. There was evidence the applicant was reporting depression and anxiety symptoms after engaging in misconduct which resulted in his court-martial.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing mental health conditions including PTSD that contributed to his misconduct. There was evidence the applicant was reporting depression and anxiety symptoms after engaging in misconduct which resulted in his court martial.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is sufficient evidence the applicant was reporting symptoms of depression and anxiety related to the negative consequences of the events of his misconduct. Later, the applicant has been diagnosed by the VA with PTSD related to his experiences in Iraq. However, there is no nexus between the applicant's reported mental health symptoms including PTSD and premeditated attempted murder and assault because: 1) these types of misconduct are not part of the natural history or sequelae of his reported mental health conditions including PTSD; 2) His reported mental health conditions including PTSD 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 mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

**BOARD DISCUSSION:**

The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service to include deployment, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA BH Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-

service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct not being mitigated by PTSD. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust. The Board concurred with the correction described in Administrative Note(s) below.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

Other than the correction addressed in Administrative Note(s) below, the Board determined 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 otherwise insufficient as a basis for correction of the records of the individual concerned.

4/1/2024

X █

CHAIRPERSON

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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.

ADMINISTRATIVE NOTE(S):

Correct Block 18 (Remarks) of his DD Form 214 by adding the entry "Continuous Honorable Service 2000-08-14 to 2005-12-01."

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) provides for the separation of enlisted personnel:
  - a. Paragraph 3-7a provides that 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. Paragraph 3-7b provides that 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. Paragraph 3-7c states a discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or for the good of service in selected circumstances.
  - d. Paragraph 3-11 states a member will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.
3. Title 10, U.S. Code, section 1552, provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the Uniform Code of Military Justice, action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the Uniform

Code of Military Justice or action on the sentence of a court-martial for purposes of clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

4. Army Regulation 635-8 (Separations Processing and Documents), currently in effect, provides for the preparation and distribution of the DD Form 214. It states for item 18 (Remarks) to Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable", enter "Continuous Honorable Active Service from" (first day of service for which DD Form 214 was not issued) Until (date before commencement of current enlistment).

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors, when taking action on applications from former service members administratively discharged under other than honorable conditions, and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

6. 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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

7. 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 (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. 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, BCM/NRs 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. 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.

8. Section 1556 of Title 10, United States Code, 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//