

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 November 2023

DOCKET NUMBER: AR20230000230

APPLICANT REQUESTS: an upgrade of his character of service from bad conduct to under honorable conditions (general) and a personal appearance hearing before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Masters Certificate in project management, 4 December 1998
- Bachelor of Arts Degree, 9 June 2001
- youth training program outline, undated
- youth training program evaluation worksheet, 29 June 2007

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AC87-09267 on 14 September 1988.
2. The applicant provides a new argument which was not previously considered by the Board.
3. The applicant states, he takes full responsibility for the mistake of getting involved in drugs while stationed in Korea, as a teenager, almost 40 years ago. Since then, he returned to school, earned a college degree, climbed the corporate ladder working with some Fortune 100 companies, and even launched a Non-Profit organization in 2006 titled Youth of Honor. He has traveled to youth detention centers, middle schools, and high schools, where he has spoken to at-risk youth and shared his life lessons to help them. Although he has not been officially diagnosed with post-traumatic stress disorder (PTSD), when he served in the 2nd Infantry Division at Camp Hovey, Korea, the threat of harm that came with being close to the Demilitarized Zone affected his stress level. However, he has never used it as an excuse for his actions. He has not been in any trouble since he left the Military in 1985. He has been married for 31 years, and he and his wife have raised two college-graduate daughters. He believes his accomplishments as an adult merit having his bad conduct discharge upgraded.

4. The applicant enlisted in the regular Army on 16 September 1980 for a period of 3 years; his expiration term of service (ETS) date was 15 September 1983. His record does not include a DD Form 214 for this period of service.

5. On 12 July 1983, the applicant executed an immediate reenlistment for a period of 3 years.

6. Orders 339-255, Headquarters, 8th Personnel Command (Provisional), dated 5 December 1983, shows he was ordered to proceed on a Permanent Change of Station to Korea; his reporting date was recorded as 7 December 1983.

7. General Court-Martial Order (GCMO) Number 13, issued by Headquarters, 19th Support Command, APO, San Francisco, on 14 August 1984, shows:

a. On 27 June 1984, the applicant was arraigned, tried, and convicted of the following charge(s) and specification(s), pursuant to his pleas of guilty:

(1) Charge I, Article 134 (Distribution/possession of illegal drugs) –

(a) Specification 1 – in that the applicant did, on or about 10 March 1984, wrongfully distribute 44 milligrams more or less of methamphetamine, a scheduled II controlled substance, while on a military installation (Yongsan Military Reservation, Seoul, Korea) used by the armed forces or under the control of the armed forces.

(b) Specification 2 – in that the applicant did, on or about 12 March 1984, wrongfully distribute 143 milligrams more or less of methamphetamine, a scheduled II controlled substance, while on a military installation (Yongsan Military Reservation, Seoul, Korea) used by the armed forces or under the control of the armed forces.

(c) Specification 3 – in that the applicant did, on or about 18 April 1984, wrongfully possess 16 grams more or less of methamphetamine, a scheduled II controlled substance, with the intent to distribute the said controlled substance, while on a military installation (Yongsan Military Reservation, Seoul, Korea) used by the armed forces or under the control of the armed forces.

b. The court sentenced him to forfeiture of all pay and allowances, confinement at hard labor for five years, and to be discharged from the service with a **dishonorable discharge**.

c. On 23 July 1984, his sentence was adjudged.

d. On 14 August 1984, the convening authority approved the courts sentence of the forfeiture of all pay and allowance and dishonorable discharge, only so much of the

sentence as provided for total forfeitures of all pay and allowances, confinement at hard labor for eighteen (18) months and a dishonorable discharge. The record of trial was forwarded to the Judge Advocate General of the Army for review by a Court of Military Review. Pending completion of the appellate review the applicant was confined at the Disciplinary Barracks, Fort Leavenworth, KS to serve his confinement.

8. A memorandum of opinion, United States Army Court of Military Review, before three Appellate Military Judges, dated 26 April 1985, states, in part:

The findings of guilty are affirmed. Reassessing the sentence on the basis of the error noted and the entire record, the Court affirms only so much of the sentence as provides for a bad-conduct discharge, confinement at hard labor for fifteen months and forfeiture of all pay and allowances.

9. GCMO Number 607, issued by United States Army Correctional Activity, Fort Riley, KS, on 6 November 1985, shows only so much of the **sentence as provided for a bad conduct discharge**, confinement at hard labor for fifteen (15) months and forfeiture of all pay and allowances (forfeitures applying to pay and allowances becoming due on and after the date of the convening authority's action), was adjudged on 23 July 1984 and as promulgated in GCMO Number 13 on 14 August 1984 was finally affirmed. Article 71(c) having been complied with; the sentence was executed and the portion of the sentence pertaining to confinement was served.

10. A Standard Form 88 (Report of Medical Examination) and 93 (Report of Medical History), dated 28 August 1985, shows the applicant underwent a medical examination; the examination notes he suffered from bunions and shows he was found qualified for separation/discharge.

11. His DA Form 2-1 (Personnel Qualification Record) shows he was promoted –

- private 2 (PV2)/E-2 on 16 March 1981
- private first class (PFC)/E-3 on 16 September 1981
- specialist (SPC)/E-4 on 1 September 1982

12. The applicant was discharged on 9 December 1985, under the provisions of Army Regulation (AR) 635-200, chapter 3, section IV (Dishonorable and Bad Conduct Discharge), with a **bad conduct** characterization of service in the rank/grade of private (PV1/E-1), effective 16 July 1985. His DD Form 214 contains the following entries or information:

- a. Block 12a (Date Entered Active Duty This Period) – 12 July 1983
- b. Block 12d (Total Prior Active Service) – 2 years, 9 months, and 26 days.

c. He completed 1 year, and 5 months, of net active service of which 7 months, and 21 days was foreign service in Korea.

d. Block 18 (Remarks) does not include any language regarding immediate reenlistments this period.

e. He received a Separation Code of "JJD" and Reenlistment Code of "RE-4."

f. Block 29 (Dates of Time Lost During This Period) shows lost time from 23 July 1984 to 15 July 1985.

13. On 3 September 1987, he applied to the ABCMR for an upgrade of his discharge contending that his discharge was unjust, because it was based on one incident, he was young and made a mistake, he served his confinement and should not be caused to endure the permanent stigma of his discharge and adverse impact on his career in civilian life. The ABCMR determined the applicant failed to submit sufficient relevant evidence to demonstrate the existence of probable material error or injustice and voted to deny his request on 14 September 1988.

14. Regulatory guidance in effect at the time provided an enlisted person will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial, after such affirmed sentence has been ordered duly executed.

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

16. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his character of service from bad conduct to under honorable conditions (general). The applicant asserts PTSD as a mitigating factor in his discharge.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- Applicant enlisted into the RA on 16 September 1980. On 12 July 1983, the applicant executed an immediate reenlistment for a period of 3 years.
- General Court-Martial Orders issued on 14 August 1984, show that on 27 June 1984, the applicant was arraigned, tried, and convicted of the following charge(s) and specification(s), pursuant to his pleas of guilty: Charge I, Article 134 (Distribution/possession of illegal drugs) –

- Specification 1 – in that the applicant did, on or about 10 March 1984, wrongfully distribute 44 milligrams more or less of methamphetamine, a scheduled II controlled substance, while on a military installation (Yongsan Military Reservation, Seoul, Korea) used by the armed forces or under the control of the armed forces.
- Specification 2 – in that the applicant did, on or about 12 March 1984, wrongfully distribute 143 milligrams more or less of methamphetamine, a scheduled II controlled substance, while on a military installation (Yongsan Military Reservation, Seoul, Korea) used by the armed forces or under the control of the armed forces.
- Specification 3 – in that the applicant did, on or about 18 April 1984, wrongfully possess 16 grams more or less of methamphetamine, a scheduled II controlled substance, with the intent to distribute the said controlled substance, while on a military installation (Yongsan Military Reservation, Seoul, Korea) used by the armed forces or under the control of the armed forces.
- GCMO Number 607, issued by United States Army Correctional Activity, Fort Riley, KS, on 6 November 1985, shows only so much of the sentence as provided for a bad conduct discharge, confinement at hard labor for fifteen (15) months and forfeiture of all pay and allowances, was adjudged on 23 July 1984.
- The applicant was discharged on 9 December 1985 with a bad conduct characterization of service.
- ABCMR denied his request for upgrade on 14 September 1988.

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, DD his ABCMR Record of Proceedings (ROP), DD Form 214, separation and service records, as well as his college degree, Master's certificate, and youth training program documents. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration. The applicant acknowledges he's never been officially diagnosed with PTSD but asserts that being that close to the DMZ while in Korea, and the threat of harm, impacted his stress level. He asserts this as a mitigating factor to his misconduct involving drugs (distribution). He also shared his successes since discharge and how he has changed (please see application for full details).

d. The applicant's time in service predates use of electronic health records (EHR) by the Army, hence no EHRs are available for review. His service record and supporting documents did not contain his service treatment records (STR), though his separation medical exam was available. The applicant completed his separation physical exam on

28 August 1985, which is reflected on the Report of Medical Examination and Report of Medical History. He reported some nervous trouble but otherwise denied frequent trouble sleeping, depression or excessive worry, loss of memory or amnesia, or periods of unconsciousness. He was found qualified for separation/discharge. There is no record the applicant was ever diagnosed or treated for PTSD, nor any other mental health concern while in the service.

e. Per the applicant's VA EHR, he is 70% service connected for medical conditions, but holds no service connection for any mental health conditions. The applicant has had minimal engagement with the VA and has no mental health related diagnoses nor encounters. Through review of JLV, this applicant did have "Community Health Summaries and Documents" available, though there was no record of a mental health diagnoses, nor mental health encounters. No other medical records were provided.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence the applicant had a mitigating condition or experiences prior to his misconduct. In addition, the severity of the misconduct outweighs any potential mitigation.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant asserts PTSD as a mitigating factor.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts the increased stress and PTSD were present during his time in Korea.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant reported he was never officially diagnosed with PTSD but stated he experienced increased stress and fear while stationed in Korea along the DMZ. Consistent with the applicant's acknowledgement, there is no record of the applicant having a history of any mental health concerns, diagnoses, nor treatment while in the service nor since his discharge. Of note, there is a nexus between self-medication and avoidance through substance use and PTSD. However, there is no nexus between PTSD and distribution/selling of substances, as these behaviors are not part of the natural history and sequelae of the asserted diagnosis. Hence, mitigation due to a mental health condition is not supported.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance 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 before the Board is not necessary to serve the interest of equity and justice in this case.

2. 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 contentions, the military record, regulatory guidance and published DoD guidance for liberal consideration and clemency in consideration of discharge upgrade requests. Notwithstanding the applicant’s post-service accomplishments, the Board agreed that although the applicant contends his misconduct was due to PTSD, his military record does not reflect a diagnosis of PTSD and none was provided with his application for consideration by the Board. After due consideration of the request, the Board determined that the evidence presented does not meet the burden of proof in determining the existence of an error or injustice and a recommendation for relief is not warranted.

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:

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 to amend the decision of the Army Board for Correction of Military Records (ABCMR) in Docket Number AC87-09267 on 14 September 1988.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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. Army Regulation 635-200, in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 3, section IV, states an enlisted person will be given a bad conduct discharge pursuant only to an approved sentence of a general or a special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.
 - 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.
2. Army Regulation 635-5 (Separation Documents) in effect at the time, states:
 - a. A DD Form 214 will be prepared for all personnel at the time of their retirement, discharge, or release from the Active Army. However, a DD Form 214 will **not** be prepared for enlisted members who are discharged for immediate reenlistment in the Regular Army.
 - b. Make the following entries in block 12 (Record of Service) of the DD Form 214 –

(1) Block 12a (Date Entered Active Duty This Period) – Enter the date of the first day of the last immediate reenlistment for which a DD Form 214 was not issued.

(2) Block 12c (Net Active Service This Period) - All service entered will be less time lost.

(3) Block 12d (Total Prior Active Service) - All service entered will be less time lost.

c. Make the following entries in block 18 (Remarks) of the DD Form 214 - Enter a list of enlistment periods for which a DD Form 214 was not issued. Example: Immediate reenlistments this period: 761210-791001; 791002-821001.

3. 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.

4. 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.

5. 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.

6. 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.

7. Army Regulation 15-185 (ABCMR), paragraph 2-11, states applicant's do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//