

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 March 2024

DOCKET NUMBER: AR20230005418

APPLICANT REQUESTS: upgrade of his bad conduct 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 from the Armed Forces of the United States)
- Personal Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Multiple in-service Certificates of Achievement and/or Training
- Department of Veterans Affairs (VA) Progress Notes

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:

a. On the DD Form 149, he states he was assigned a bad conduct character of service after failing a routine urinalysis and after being falsely accused of stealing money from a fellow Soldier.

b. On the DD Form 293, he states he had no way to prove that he did not steal the money. He was going to pay the person back, but the person did not believe him. If one was missing a lot of money from their bank account, they would not wait 6 months to report the loss, they would report the loss immediately. He was a good Soldier. He went to Iraq and earned the Combat Infantryman Badge. He now suffers from sleep apnea, post-traumatic stress disorder (PTSD), and depression. He is hoping to get some help.

c. In a personal statement, he states he feels that the injustice was that he was a hard-working Soldier and never got into trouble until he went to Iraq. Being shot at

wasn't a problem and that is not what he was suffering with until this day. It was the body parts that really bothered him. When he came back to the states, he would wake up with night sweats and sleep paralysis all he could think of was the intestines, skull caps, fingers, and a number of a few other body parts they still haunt him to this day.

(1) On 24 December 2004 at checkpoint 12 at 0827 there was a 600lb car bomb in the check point there were dead Iraqis all over but no loss of Americans. This date and time are stuck in his memory forever not because of the death but because the higher ups wanted to get the checkpoint opened in record time so they could get rewarded for it. They ordered him to start picking up the body parts and putting them into trash bags. He obeyed the order but after a large intestine and a piece of someone's face skull, he almost lost it finally. He was told he did not have to do it because they had morticians that were paid to do that. It started a month after he got back home, and he started drinking heavily and it was not working. He found that if he did not sleep, he would not have the nightmares he was having and instead of asking for help because of his pride, he found cocaine as self-medicating. He could stay up and not dream and when he finally crashed, he would not remember anything.

(2) He sold and lost all of the items he had bought because of this addiction. He asked a friend to borrow some money he gave it to him freely, but he has no proof of this. His ability to make sound judgements at the time made him cave and plead guilty to all charges. He took cocaine but the 9 years in Leavenworth scared him so bad that he thought 18 months would be better. He thought of how he could explain this. He then remembered the transfers were in June and he was getting out in December on transition leave. He reported it to the bank and had been told he had these allegations against him. He thinks if anyone had money in the bank and they did not know where it went, they would be at the bank that week and not wait so long to say something. He knows he was a great Soldier, and he even went to Fort Lewis Correctional and worked every day to reduce his sentence filling sandbags and working there.

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

a. He enlisted in the Regular Army on 8 June 2000. He completed training for award of military occupational specialty 11B, Infantryman. He served in Kuwait/Iraq from 17 March 2004 to 16 March 2005.

b. On 22 May 2006, the applicant was convicted by a general court-martial at Fort Hood, TX of the following charges and their specifications:

(1) Charge I: Article 112a. Plea: Guilty. Finding: Guilty. One specification between on or about (o/a) 25 January 2006 and 4 February 2006, wrongfully use cocaine.

(2) Charge II: Article 121. Plea: Guilty. Finding: Guilty.

- Specification 1: o/a 7 June 2005, steal about \$10,000, the property of Sergeant (SGT) L.T.S. Plea: Guilty. Finding: Guilty.
- Specification 2: o/a 13 June 2005, steal about \$3,000, the property of SGT L.T.S. Plea: Guilty. Finding: Guilty.
- Specification 3: o/a 30 June 2005, steal about \$700, the property of SGT L.T.S. Plea: Guilty. Finding: Guilty.
- Specification 4: o/a 5 July 2005, steal about \$10,000, the property of SGT L.T.S. Plea: Guilty. Finding: Guilty.
- Specification 5: o/a 5 July 2005, steal about \$1,100, the property of SGT L.T.S. Plea: Guilty. Finding: Guilty.
- Specification 6: O/a 15 August 2005, steal about \$700, the property of SGT L.T.S. Plea: Guilty. Finding: Guilty.
- Specification 7: O/a 24 October 2005, steal about \$450, the property of SGT L.T.S. Plea: Guilty. Finding: Guilty.

c. The court sentenced him to forfeiture of all pay and allowances, reduction to the lowest enlisted grade of E-1, confinement for 36 months, and to be discharged from the service with a bad conduct discharge.

d. Also on 22 May 2006, the applicant was placed in confinement at Fort Lewis Correctional Facility.

e. On 3 October 2006, the convening authority approved only so much of the sentence as provides for reduction to the grade of private /E-1; forfeiture of all pay and allowances; confinement for 18 months; and, a bad conduct discharge, and except for the part of the sentence extending to a bad- conduct discharge, order it executed. The record of trial was forwarded to the appellate authority.

f. On 20 July 2007, the applicant was released from confinement. He was placed on excess leave from 20 July 2007 to 27 March 2008, pending appellate review.

g. General Court-Martial Order Number 365, issued by Headquarters, U.S. Army Field Artillery Center, Fort Sill, OK on 20 December 2007, shows the appellate review had been completed, the sentence has been finally affirmed. Article 71(c) having been complied with, and the bad conduct discharge will be executed.

h. The applicant was discharged on 27 March 2008. 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 (Separation Code JJD and Reentry Code 4). He completed 6 years, 7 months, and 22 days of active service, of

which 1 year, 1 month and 27 days was lost time (22 May 2006 to 19 July 2007) and 8 months and 7 days was excess leave (20 July 2007 to 27 March 2008).

4. The applicant provides multiple in-service certificates of achievement for training rotations and/or exercises, as well as a certificate for completion of the Combat Lifesaver Course and a certificate for award of the Combat Infantryman Badge.

5. The applicant did not qualify to have his discharge reviewed by the Army Discharge Review Board because his conviction was by a general court-martial.

6. 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.

7. 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.

8. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his bad conduct 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 in the RA on 8 June 2000.
- On 22 May 2006, the applicant was convicted by a general court-martial at Fort Hood, TX of the following Charges and their Specifications:
- Charge I: Article 112a. Plea: Guilty. Finding: Guilty. One specification between on or about (o/a) 25 January 2006 and 4 February 2006, wrongfully use cocaine. Plea: Guilty. - Article 121
- Charge II: Article 121. Plea: Guilty. Finding: Guilty.
- Specification 1: o/a 7 June 2005, steal about \$10,000, the property of Sergeant (SGT) L.T.S. Plea: Guilty. Finding: Guilty.
- Specification 2: o/a 13 June 2005, steal about \$3,000, the property of SGT L.T.S. Plea: Guilty. Finding: Guilty.
- Specification 3: o/a 30 June 2005, steal about \$700, the property of SGT L.T.S. Plea: Guilty. Finding: Guilty.
- Specification 4: o/a 5 July 2005, steal about \$10,000, the property of SGT L.T.S. Plea: Guilty. Finding: Guilty.
- Specification 5: o/a 5 July 2005, steal about \$1,100, the property of SGT L.T.S. Plea: Guilty. Finding: Guilty.

- Specification 6: O/a 15 August 2005, steal about \$700, the property of SGT L.T.S. Plea: Guilty. Finding: Guilty.
- Specification 7: O/a 24 October 2005, steal about \$450, the property of SGT L.T.S. Plea: Guilty. Finding: Guilty.
- Specification 8: O/a 15 November 2005, steal about \$550, the property of SGT L.T.S. Plea: Guilty. Finding: Guilty.
- Applicant was discharged on 27 March 2008. 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 (Separation Code JJD and Reentry Code 4).

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 Form 293, DD Form 214, ABCMR Record of Proceedings (ROP), self-authored statement, in-service certificates, VA progress notes, and documents from his service record and separation. 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.

d. The applicant states he was assigned a bad conduct character of service after failing a routine urinalysis and after being falsely accused of stealing money from a fellow soldier. On a separate form, he states he had no way to prove that he did not steal the money. He was going to pay the person back, but the person did not believe him. If one was missing a lot of money from their bank account, they would not wait 6 months to report the loss, they would report the loss immediately. He was a good Soldier. He went to Iraq and earned the Combat Infantryman Badge. He now suffers from sleep apnea, post-traumatic stress disorder (PTSD), and depression. He is hoping to get some help.

e. Active-duty electronic medical records available for review evidence the applicant was treated with therapy and medication while at the Fort Lewis Regional Correctional Facility. A note dated 21 November 2006 indicates the applicant was diagnosed with Posttraumatic Stress Disorder (PTSD) and had a previous diagnosis of Adjustment Disorder. The record evidences additional encounters on 23 January 2007 and 11 July 2007, with the applicant continuing to meet diagnostic criteria for PTSD.

f. The VA electronic record available for review shows the applicant is not service connected, likely due to the characterization of his discharge. The applicant sought services via the VA upon discharge from military service. An initial psychosocial assessment dated 23 May 2008, indicates the applicant claimed he was honorably discharged and was seeking service connection. The record shows the next VA encounter in September of 2014, six years later. A mental health consult dated 1

October 2014 provides an initial diagnosis of PTSD, Alcohol Dependence, and Cocaine Abuse. The applicant was referred for individual therapy, he declined, but was treated with medication. Applicant later participated in mental health counseling, with a note dated 7 January 2015, indicating his ambivalence of participating in ongoing treatment. The record indicates the applicant has participated intermittently in treatment via the VA including medication management, time-limited group therapy via the addiction management team, and occasional individual therapy. His most recent individual therapy note in the record was on 25 January 2022, with the applicant continuing to endorse that he was honorably discharged.

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is evidence to support the applicant had a BH condition during his time in service that would partially mitigate his discharge.

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 contends a mitigating condition.

(2) Did the condition exist or experience occur during military service? Yes. The applicant's active-duty and VA electronic medical records indicate he has been diagnosed with combat-related post-traumatic stress disorder (PTSD).

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. There is medical documentation evidencing the applicant had an in-service diagnosis of PTSD and post military service, the VA has treated the applicant for his symptoms of PTSD. The applicant was discharged from military service via a court-martial conviction due to wrongful use of cocaine and larceny, where he repeatedly stole large sums of money from another Soldier. The applicant's wrongful use of cocaine would be mitigated by his diagnosis of PTSD since there is a nexus between PTSD and the use of substances as a coping mechanism. However, PTSD is not a likely cause for either premeditated misconduct or misconduct that continues for an extended period of time. His misconduct of multiple charges of theft over an extended time period is not part of the natural history or sequelae of PTSD. And, even if PTSD symptoms were present at the time of his misconduct, they do not impact the ability to distinguish right from wrong and act in accordance with the right.

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 DoD guidance for liberal consideration of discharge upgrade requests.

2. The Board reviewed and noted the medical reviewer's determination that there was partial mitigation for the drug use; however, determined that an upgrade to the applicant's characterization of service was not warranted. The court-martial sentenced the applicant to a bad conduct discharge. All requirements of law and regulation were met.

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, 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. 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.

5. 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.

6. 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.

7. 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//