

IN THE CASE OF: ██████████

BOARD DATE: 14 December 2023

DOCKET NUMBER: AR20230006153

APPLICANT REQUESTS: Upgrade of his bad conduct discharge (BCD) to under honorable conditions (general) or honorable.

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

- DD Form 293 (Application for the Review of Discharge)
- Self-authored letter (17 typed pages)
- Request for assistance to Senator ██████████, with Agency response letter

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. He is an Army Veteran that continues to have great respect for the country and the support channels available. He was damaged during his time in service, and he is seeking treatment and assistance to cope with his post-traumatic stress disorder (PTSD), mental health, and other issues. Since exiting the military, his civilian life and relationships have been hard to manage and deeply affected because of his service-connected disabilities.

b. On 27 October 2007, his life was changed forever. He prays that no one ever has to experience the traumatic events that took place. A group of civilians attempted to rob him and two other Soldiers; they murdered his best friend and shot his other friend. He managed to not be hit. He was held at the scene by police for over four hours, watched them set up yellow tape, mark casings, and administer forensics. They said he was being held as a material witness. They brought him to the police station and held him for three days as they initially investigated. When he got back to his unit, his entire room was ransacked. His unit had searched his room because initially they weren't given any details as to why he was being held.

c. Around this period, his unit was preparing to go to Africa for deployment. He was being trained as one of eight soldiers that would be on a special tactical security detail for high-ranking officials. There were no performance or conduct issues prior to the incident. A short while after the incident, he was told that he would not be going on deployment because there was an ongoing investigation, and he was considered a material witness to it. He was put on a rear detachment detail while the rest of his unit deployed to Africa.

d. In the summer of 2008, he was facing financial hardships. He was advised by a sergeant that he qualified for an Army Emergency Relief (AER) loan through Red Cross, which he had been voluntarily donating portions of his check to, to help others. He went through his chain of command and was told by his captain that he would "absolutely not sign off" on approval. This adversity created more stress, and he didn't give a reason for his non-approval. When he spoke to the sergeant who directed him to AER, he stated that he could still get him the loan. He filled out a worksheet that the applicant had never seen, gave it to him, and instructed him where to go. He was able to get the \$500 loan and he paid it back in full. Because he was close to his expiration term of service (ETS) date, his unit was informed by AER that he had taken out the loan to ensure they would be paid back before he left. This is how it was brought to his captain's attention. He was told months later, after he had already paid off the borrowed funds, that his unit wanted to charge him for "wrongful appropriation."

e. He was feeling much stress, anxiety, and depression, so relied on support from the military mental health clinic. He was diagnosed with PTSD and being treated by Dr. [REDACTED]. He was seeing him regularly to talk about the trauma of the shooting, watching his best friend be murdered, and also the mistreatment he was experiencing within his unit. The diagnosis and treatment are notated in his medical records. They also heavily medicated him at the time which made him feel worse and he had to try different medications until finding what worked.

f. His captain informed him that he was preferring charges against him. This was three weeks before his final ETS date. The charges stated were forgery of his name and communicating a threat. Both of these charges eventually did not hold up and were proven untrue. His attorney informed him that he should continue to prepare as if he were getting out of the Army. At some point, he was hopeless and continued to be in fear. He felt like he had no chance of proper representation and was forced to look out for himself. He listened to his attorney's advice and chose to take a plea deal. He did not agree with pleading guilty, but felt he needed security in his life. That security was to take a year deal because he thought years in jail would haunt him.

g. The abuse and conditions of confinement were a burden that he suffered and still suffers from. He hopes that the countries great leaders can rectify and/or take into consideration the hardship he had to deal with. As notated in his military records, he

was a decorated honorable Soldier, a “leader who optimized professionalism, courtesy, sound judgment, and dedication to the mission, the unit and the U.S. Army”. An unpredictable traumatic night and the events afterwards changed his life forever.

3. The applicant enlisted in the Regular Army on 8 November 2005. Upon completion of training, he was awarded military occupational specialty 13P (Multiple Launch Rocket System Fire Direction Specialist).

4. Before a general court-martial on 9 September 2009, at Headquarters, U.S. Army Fires Center of Excellence and Fort Sill, Fort Sill, OK, the applicant was found guilty of violations of the Uniform Code of Military Justice; however, the relevant court-martial order is not available for review.

5. General Court-Martial Order 132, issued by Headquarters, U.S. Army Fires Center of Excellence and Fort Sill, Fort Sill, OK on 9 July 2012, noted that the applicant's sentence had been affirmed and ordered the BCD be duly executed.

6. The applicant was discharged on 19 October 2012. His DD Form 214 (Certificate of Release from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 3, as a result of court-martial. His service was characterized as bad conduct. He was assigned Separation Code JJD and Reentry Code 4. He completed 6 years and 10 months of net active service this period with 41 days of time lost.

7. Additionally, his DD Form 214 shows he was awarded or authorized the Army Achievement Medal, National Defense Service Medal, Global War on Terrorism Service Medal, Korea Defense Service Medal, and the Overseas Service Ribbon.

8. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

9. 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.

10. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his bad conduct discharge (BCD) to under honorable conditions (general) or honorable. The applicant asserts PTSD is a mitigating factor in his misconduct and request for upgrade.

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 Regular Army on 8 November 2005.
- Before a general court-martial on 9 September 2009, at Headquarters, U.S. Army Fires Center of Excellence and Fort Sill, Fort Sill, OK, the applicant was found guilty of violations of the Uniform Code of Military Justice; however, the relevant court-martial order is not available for review.
- General Court-Martial Order 132, issued by Headquarters, U.S. Army Fires Center of Excellence and Fort Sill, Fort Sill, OK on 9 July 2012, noted that the applicant's sentence had been affirmed and ordered the BCD be duly executed.
- The applicant was discharged on 19 October 2012 as a result of court-martial, with his service was characterized as bad conduct.

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 293, his ABCMR Record of Proceedings (ROP), his DD Form 214, some documents from his service record and separation, as well as a request for assistance from a senator with a response letter, and a self-authored statement. 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 asserts that PTSD mitigates his discharge. He asserts experiencing significant/traumatic events while in the service and he is requesting an upgrade so as to receive services for his mental health. He asserts he was diagnosed with PTSD while in the service and seeking mental health help. He asserts charges were brought against him for forgery and communicating a threat but that these charges did not hold up and were proven untrue. He noted though that he took a plea deal. Throughout his self-statement he also highlights mistreatment by his leadership, the Army, his legal process, and his experiences in prison. His service records regarding his court martial and misconduct are not available.

e. The applicant's engagement with health care, to include mental health, can be found in his electronic health record (EHR). The applicant's EHR shows the applicant first engaged in mental health care on 1 November 2007, just days after his friends

were shot and his best friend was killed in front of him. He engaged actively in care from this first appointment through mid-February of 2009. He has engaged in therapy, high risk case management, medication management, and inpatient care. He has been diagnosed with adjustment disorder with depressed mood, adjustment disorder with disturbance of emotions and conduct, adjustment disorder with anxiety, insomnia, acute reaction to stress with mixed disorders, anxiety disorder NOS, depression, depressive type psychosis, and dysthymic disorder. There is also evidence from an encounter 19 September 2008 that he experienced suicidal ideation, potential homicidal ideation and was hospitalized.

f. His supporting documents and service records did not contain any medical or mental health related records. However, his medical records contained some data that was also administrative in nature. On 2 April 2008, the applicant was seen for a walk-in as he'd recently been arrested for assault and battery; commander consulted with the provide hence the report appeared accurate. He was seen for a chapter mental status evaluation (MSE) on 2 June 2008. In his record it noted he was facing a chapter 14 discharge due to having a weapon. He was cleared for administrative action. In an encounter from 11 December 2008, there was an uploaded copy of his sanity board results (conclusions only) that was conducted prior to his court martial. He was found to not have a severe mental disease or defect and was found only to have an adjustment disorder with mixed disturbance of emotion and conduct. It was specifically noted that he does not have PTSD. In addition, he was found able to appreciate the nature and quality or wrongfulness of his conduct and able to understand the nature of the proceedings against him and conduct or cooperate in his own defense.

g. The applicant has been engaged in care at the VA since he was still active duty (starting in 2009) but established mental health related care in 2022. The applicant is not service connected, though given his bad conduct discharge, the applicant would not typically be eligible for benefits and care through the VA. He has been diagnosed with PTSD, adjustment disorder with anxiety, anxiety disorder unspecified, cannabis dependence, depression unspecified/depressive disorder, major depressive disorder – recurrent – moderate, and other obsessive-compulsive disorder, as well as psychosocial problems such as homelessness, housing instability, other problems related to housing and economic circumstances, and sheltered homelessness. He has engaged in support around housing, medication management, group therapy and individual therapy, to include for addiction management. Through review of Joint Legacy Viewing, this applicant did not have any "Community Health Summaries and Documents" available. No other medical records were provided for review.

h. After reviewing the application and all supporting documents, it is clear the applicant has a potentially mitigating condition now (PTSD), as well as other conditions during his time in service (dysthymia, depression, psychosis). However, this Agency Behavioral Health Advisor cannot provide an opine regarding an upgrade without

documentation of the specific misconduct that led to his court martial, guilty verdict and bad conduct 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 asserts PTSD mitigates his discharge.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts PTSD was present during his time in service. His service records do not confirm this, though he was diagnosed with a depressive disorder, dysthymia, anxiety, acute reaction to stress and psychosis, all of which are potentially mitigating conditions.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unable to opine.

i. After reviewing the application and all supporting documents, this Agency Behavioral Health Advisor cannot provide an opine regarding potentially mitigating conditions or experiences without documentation of the specific misconduct that led to his bad conduct discharge. In general, there seems to be significant information missing regarding misconduct, his court martial and his discharge. That said, the applicant was experiencing potentially mitigating conditions during his time in service, to include depression, dysthymic disorder, anxiety, acute reaction to stress, and psychosis. He has since been diagnosed by the VA with PTSD as well as other psychological and psychosocial conditions. While he is not service connected, this is not uncommon given his BCD. There is also extensive medical documentation supporting that the applicant experienced a significant traumatic event while in the service, the murder of his friend in front of him at a club. Self-report and assertion also suggest he experienced significant mistreatment thereafter by his unit/command/the Army. However, there is insufficient (no) official documentation to reflect what led to his court martial and bad conduct discharge.

j. Of note, his self-authored statement indicates he took a plea deal for forgery and communicating a threat. However, a medical note included the applicant stating he got in trouble for having a concealed weapon on him the night his friend was killed. Another note included the same information but also indicated he'd gone AWOL at one point as well. His self-authored statement also includes many of these asserted charges. If these statements are an accurate reflection of his misconduct, this would mean a portion of his misconduct occurred prior to/simultaneously to his trauma and the trauma would not

mitigate having a concealed weapon. Going AWOL is an avoidance symptom consistent with the natural history and sequelae of PTSD, anxiety and depression. This behavior would be mitigated given that it appears to have occurred after his trauma and there is a nexus between the misconduct and his experience, assertion and diagnoses. Forgery and communicating a threat are not consistent with the diagnoses he asserts though could be mitigated by psychosis. That said, the applicant had a sanity board and was cleared, and given the lack of documentation it is unclear if certain charges occurred before or after the assessment. In sum, without further information about the nature of his misconduct, as well as the dates of the occurrences, no official opinion can be rendered.

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, 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 there being insufficient evidence to determine if his misconduct is 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.

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 for correction of the records of the individual concerned.

2/15/2024

X

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 three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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 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 3, Section IV provided that a member would be given a BCD pursuant only to an approved sentence of a general or special court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed.

4. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

5. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service (BCM/NR), on 3 September 2014, 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. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs 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 PTSD, 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.

7. 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//