

IN THE CASE OF: ██████████

BOARD DATE: 10 January 2024

DOCKET NUMBER: AR20230006864

APPLICANT REQUESTS, in effect:

- an upgrade to the characterization of his discharge from bad conduct (BCD) to honorable
- upgrade of his Army Commendation Medal to a Bronze Star, Silver Star, or Medal of Honor
- correction of his rank/pay grade to show specialist (SPC/E-4)
- to be issued a DD Form 214, Certificate of Release or Discharge from Active Duty, for the period from 22 June 2000 to 29 September 2003 with an honorable characterization of service

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

- 2-DD Forms 149, Application for Correction of Military Record
- Honorable Discharge Certificate
- DA Form 638, Recommendation for Award
- Army Commendation Medal Certificate
- Department of Veterans Affairs 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's request to upgrade his Army Commendation Medal is premature and will not be considered by the Board as he has not exhausted his administrative remedies on this matter.

3. The applicant indicates that his request is related to post-traumatic stress disorder (PTSD) and other mental health issues. He states, in effect -

a. He told his chain of command that something was wrong with him and that he did not want to go back to Iraq due to the explosion and killings he experienced during his first deployment in 2003. He contends that he intentionally got into trouble to go to jail and not be deployed but he was still deployed in 2005. Upon his return from deployment, he was court-martialed and subsequently discharged. He believes that he would have retired if not for his negative combat experience during his initial deployment.

b. Headquarters, Fort Hood, Fort Hood, Texas General Court-Martial Order Number 42, 22 June 2007, shows he was reduced to SPC/E-4, not private/E-1. Further, his BCD punishment included reduction to SPC/E-4, and his DD Form 214 shows his rank/pay grade as private/E-1.

4. The applicant's record shows that on 22 June 2000, he enlisted in the Regular Army for a period of four years. He reenlisted on 30 September 2003 for an additional period of three years.

5. On 1 March 2005, he was promoted to sergeant (SGT/E-5).

6. His record is void of any documents related to misconduct; however, he received a performance evaluation while assigned to Battery A, 26th Field Artillery, 4th Infantry Division (Mechanized), Iraq, as the Position Azimuth Determining System (PADS) Section Chief for the period from March 2005 through February 2006. His rater indicated in Part IV3, Training, that the applicant did not take initiative to establish training plans to adequately teach his Soldiers the necessary skills to be proficient in their military occupational specialty. His senior rater made the following comments in Part V, Overall Performance and Potential:

- do not promote
- does not currently possess the ability to lead Soldiers
- do not select for future schooling
- does not demonstrate the professionalism required to serve as a noncommissioned officer

7. General Court-Martial (GCM) Order Number 42, 22 June 2007, published by Headquarters, Fort Hood, Fort Hood, TX, show that the applicant pled guilty and was found guilty of the following offenses:

- wrongfully damaging a 1998 Ford Explorer vehicle
- wrongfully damaging a 2001 Jeep Wrangler

- wrongfully damaging a 2004 Jeep Wrangler
- stealing a compact disc player, valued at approximately \$450.00
- stealing a tool kit, valued at approximately \$120.00
- stealing a compact disc case and compact discs
- stealing two individual body armor suits, combined value of \$3000.00

8. The following charges were dismissed:

- Charge I, fleeing apprehension on 21 October 2005
- Charge II, making a false official statement to military police investigator (two specifications)
- Charge V, wrongfully impeding an investigation into his own misconduct

9. He was sentenced on 30 October 2006. His sentence included reduction to SPC/E-4, four months of confinement, and to be discharge from the service with a BCD. The sentence was approved as adjudged, and except for the part of the sentence extending to a BCD, was directed to be executed.

10. On 22 June 2007, the U.S. Army Court of Criminal Appeals (USACCA) corrected GCM Order Number 42 to delete in Charge II the finding of "Dismissed" and substituting the finding of "Guilty."

11. GCM Order Number 119, 24 April 2008, published by Headquarters, U.S. Army Field Artillery Center and Fort Sill, Fort Sill, OK, as corrected by the USACCA, noted that the sentence had been finally affirmed. The automatic reduction to the pay grade of private/E-1 required by Article 58a, Uniform Code of Military Justice, and Army Regulation (AR) 27-10, Military Justice, was effective 22 June 2007. That portion of the sentence extending to confinement had been served. Article 71(c) having been complied with, directed the BCD portion of the sentence be executed.

12. Orders 323-0677, 18 November 2008, published by U.S. Army Installation Management Command, Headquarters, U.S. Army Garrison, Fort Sill, OK, assigned the applicant to the U.S. Army Transition Point. These orders show his rank as PV1.

13. The applicant was discharged on 28 October 2008, under the provisions of AR 635-200, Chapter 3, as a result of court-martial, and with a bad conduct characterization of service. His DD Form 214 lists the narrative reason for discharge was "Court-Martial," his separation code as "JJD," and his reentry code as "4." This form further shows in:

- Block 4a, Grade, Rate or Rank – PV1
- Block 4b, Pay Grade – E01
- Block 12h, Effective Date of Pay Grade – 22 June 2007

- Block 13, Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized – no awards for valor
- Block 18, Remarks – SERVICE IN IRAQ 20030320 - 20040320

14. The applicant did not provide medical documentation showing a diagnosis of, or treatment for a mental health condition.

15. The applicant provided:

- a. His Honorable Discharge Certificate, 29 September 2003.
- b. VA letter, 1 March 2023, which shows the applicant completed -
 - other than honorable service from 22 June 2000 to 21 June 2004
 - dishonorable service from 22 June 2004 to 28 October 2008

16. The Board should consider the applicant's statement in accordance with the published equity, injustice, or clemency determination guidance.

17. AR 27-10 states the automatic reduction to the lowest enlisted pay grade will be affected in a case in which the approved sentence includes, whether or not suspended, either a dishonorable or BCD.

18. Court-martial convictions stand as adjudged or modified by appeal through the judicial process.

19. MEDICAL REVIEW:

a. Background: The applicant is requesting that his Bad Conduct discharge be upgraded due to experiencing PTSD during his time in service. In addition, applicant requests to “upgrade an award from an ARCOM to a Bronze Star or a Medal of Honor, due to me saving lives in combat.” Applicant also requested restoration of his rank to SPC and a revised DD-214 to reflect his honorable discharge during his first enlistment.

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 22 Jun 2000 and reenlisted 30 Sep 2003. He was deployed to Iraq from 20 Mar 2003 - 20 Mar 2004. His awards included the Army Commendation Medal, Army Achievement Medal, Army Good Conduct Medal, National Defense Service Medal, GWOT Expeditionary Medal,

GWOT Service Medal, NCO Professional Development Ribbon and Army Service Ribbon.

- The recommendation for an ARCOM noted, “SPC ██████ followed TTP by maintaining his composure while under fire and returning fire during the unblocked ambush in the convoy which resulted in saving the lives of both the driver and commander.”
- Based on an evaluation covering March 2005 through February 2006, his rater noted, “applicant did not take initiative to establish training plans to adequately teach his Soldiers the necessary skills to be proficient in their military occupational specialty.” His senior rater recommended against promotion and future schooling, noting lack of ability to lead Soldiers and to “demonstrate the professionalism required to serve as a noncommissioned officer.”
- A General Court-Martial (22 Jun 2007) found applicant guilty for damaging three separate vehicles belonging to three soldiers. Additionally, he was found guilty for stealing items from these cars including a CD player, tool kit and compact discs, as well as stealing two “Individual Body Armor Suits...property of the U.S. Government” (21 Oct 2005).
- The applicant’s separation packet is unavailable for review. However, the applicant’s partial service record includes his DD Form 214 (Report of Separation from Active Duty), which indicates that he received a Bad Conduct discharge on 28 Oct 2008.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant’s completed DD Form 149, his ABCMR Record of Proceedings (ROP), Personal Statement, DD Form 214, as well as documents from his service record. However, his service packet in its entirety was unavailable for review. The VA electronic medical record and DOD health record were reviewed through Joint Longitudinal View (JLV).

d. Applicant asserted that PTSD was a mitigating factor in his discharge. Based on his available service record and supporting documents, there is an absence of evidence the applicant was diagnosed or treated for a potentially mitigating condition (PTSD) that occurred during his time in service.

e. Per the applicant’s VA EHR, he is service connected at 100% for medical and behavioral health conditions. He has a disability rating of 70% for PTSD. A TBI Neurobehavioral Inventory Consult (06 Apr 2011) noted, “He was posting guard at a fuel farm in 2003. A civilian walked up with explosive strap to him. This individual detonated himself approximately 10 feet from where he was standing. He was hit by the vast amounts of blood and body parts. He was knocked to the ground. In 2005, he was traveling in a Bradley that was hit by an IUD. He denied any loss of consciousness. The Bradley started on fire, and the patient tried to pull his best friend, who is unconscious, out of the Bradley. He was unsuccessful, and his friend died. He tells me that between

his 2003 deployment and his 2005 deployment, he broke into his friend's car. He called the military police to come arrest him, so that he would not have to go back to Iraq in 2005. He was arrested, but his unit deployed before his court date. They took them with them on the 2005 deployment. He was sent home early from that deployment to go to court for breaking and entering the friend's vehicle. He served 4 months in jail." A PTSD Clinic Initial Note (27 Apr 2011) indicated, "Veteran described sleep disturbance and difficulty adjusting to changes in routine. Veteran noted that he is jumpy and startles easily at loud noises such as car backfiring or even loud TV, also startled by Ft Hood training. Veteran reports significant anger and that he 'gets mad quick' which is a change from prior to combat experience. He noted a 'flashback' one time when he was jumped by his girlfriend's family members and thought he was being attacked in the Army."

f. In summary, applicant received a 70% service-connected disability for PTSD. In addition, there is considerable documentation to establish he has been treated for PTSD by VA which was initially experienced during applicant's time in service. After review of the application and all supporting documents, it is the opinion of this Agency Medical Advisor that the condition of PTSD partially mitigates for some misconduct or substandard performance, notably inadequate leadership initiative, professionalism as an NCO and failing to meet standards for promotion and further schooling. However, PTSD is not associated with the specific misconduct of damaging at least three vehicles, theft of personal items in the vehicles and theft of government property. Thus, PTSD does not mitigate for these actions, despite the claim his intention was to keep from being deployed back to Iraq. That said, the rationale for applicant's illegal actions does relate to PTSD in the sense that it served as a means, ineffective and inappropriate as it turned out, to avoid placement in an environment where he feared an escalation of unwanted PTSD symptoms.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge. Yes, he experienced PTSD due to his deployment to Iraq that was subsequently identified as a 70 percent service-connected disability by VA.

(2) Did the condition exist or experience(s) occur during military service? Yes, there is considerable evidence he initially encountered PTSD symptoms while on active duty as a result of his deployment to Iraq.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes, applicant's PTSD does partially mitigate for his substandard leadership as an NCO and failure to meet normal requirements for promotion and further schooling. However, applicant's misconduct of purposeful damage to three vehicles along with theft of personal and government property cannot be mitigated. PTSD is not associated with

intentional damage to three vehicles and theft of personal property, even when done to avoid a return to Iraq where an escalation of PTSD symptoms was anticipated.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial 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 based on the applicant's misconduct was not a mitigating factor.. However, upon further review of the applicant's petition, available military records and medical review, the Board considered the advising official finding the applicant's condition of PTSD partially mitigates for some misconduct or substandard performance, notably inadequate leadership initiative, professionalism as an NCO and failing to meet standards for promotion and further schooling. The opine noted that, PTSD is not associated with the specific misconduct of damaging at least three vehicles, theft of personal items in the vehicles and theft of government property. Thus, PTSD does not mitigate for these actions, despite the claim his intention was to keep from being deployed back to Iraq.

2. The Board, notwithstanding the opine partial mitigation, agreed there is insufficient evidence of in-service mitigating factors to overcome the pattern of misconduct. The Board noted, the applicant provided no post service achievements or character letters of support that could attest to his honorable conduct for the Board to weigh a clemency determination. The Board found there was insufficient evidence to support the applicant's contentions for an upgrade of his Army Commendation Medal to a Bronze Star, Silver Star, or Medal of Honor. The record is absent any DA Form 638 (Recommendation for Award) recommending the applicant for any additional awards such as the Bronze Star, Silver Star or Medal of Honor. Additionally, the Board found no error or injustice that warrants a correction of his rank/pay grade to show specialist (SPC/E-4). However, during deliberation the Board determined the applicant's record incorrectly reflects his character of service for a prior period of honorable service which is not currently reflected on his DD form 214. The Board recommended that a change be completed to more accurately show his period of honorable service by granting a partial upgrade.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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|---|---|---|----------------------|
| : | : | : | GRANT FULL RELIEF |
| █ | █ | : | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| : | : | █ | DENY APPLICATION |

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 28 October 2008 by adding the following entry in block 18(Remarks):

- CONTINUOUS HONORABLE ACTIVE SERVICE FROM 20000622-20030929
- IMMEDIATE REENLISTMENT THIS PERIOD 20030930-20081028

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to

- upgrade to the characterization of the applicant's discharge from bad conduct (BCD) to honorable
- upgrade of his Army Commendation Medal to a Bronze Star, Silver Star, or Medal of Honor
- correction of applicant's rank/pay grade to show specialist (SPC/E-4)

2/20/2024

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.

ADMINISTRATIVE NOTE(S) N/AREFERENCES:

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 Army Board for Correction of Military Records (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 (AR) 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. This regulation provides:
 - 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 provided that an enlisted person would be given a bad conduct discharge 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.
 - d. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, 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.
3. AR 635-5, Personnel Separations-Separation Documents, states for enlisted Soldiers with more than one enlistment period during the time covered by the DD Form 214, enter "IMMEDIATE REENLISTMENTS THIS PERIOD" (specify dates). However, for 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 which DD Form 214

was not issued) Until (date before commencement of current enlistment). Then, enter the specific periods of reenlistments.

4. AR 27-10, Military Justice, prescribes the policies and procedures pertaining to the administration of military justice and implements the Manual for Courts-Martial (MCM), United States, 2005. Pursuant to Article 58, Uniform Code of Military Justice, the automatic reduction to the lowest enlisted pay grade will be affected only in a case in which the approved sentence include, whether or not suspended, either –

a. A dishonorable or bad conduct discharge; or

b. Confinement in excess of 180 days (if the sentence is awarded in days) or in excess of 6 months (if sentence is awarded in months).

5. Title 10, U.S. Code, section 1130 provides the legal authority for consideration of proposals for decorations not previously submitted in a timely fashion. Upon the request of a Member of Congress, the Secretary concerned shall review a proposal for the award of or upgrading of a decoration. Based upon such review, the Secretary shall determine the merits of approving the award.

a. All requests that are not processed within time limitations and/or theater are considered retroactive and must be processed through the chain of command which was in effect at the time of the service or achievement to be recognized. All commanders in the former chain of command, to include the awards approval authority for the request, must endorse the recommendation for approval, downgrade, or disapproval as appropriate in the intermediate authority blocks on the award form. Every attempt will be made by the recommender to obtain the original chain of command's endorsement for all award recommendations. In the event an individual is not available, the recommender must provide documentation, such as a memorandum of record, emails, or letters verifying they have taken all reasonable steps to locate the individual.

b. After the aforementioned documentation is collected, the recommender must send the completed documentation to a Member of Congress for their endorsement. The Member of Congress will forward the packet and their endorsement through the Office, Chief of the Legislative Liaison to the Army Human Resources Command, ATTN: AHRC-PDP-A, 1600 Spearhead Division Avenue, Fort Knox, KY 40122. The burden and costs for researching and assembling documentation to support approval of requested awards and decorations rest with the requestor.

//NOTHING FOLLOWS//