

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2024

DOCKET NUMBER: AR20230008599

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

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

- DD Form 293 (Application for the Review of Discharge)
- Self-authored statement, undated
- Psychiatric service activity records, Community Mental Health Center, Inc., 30 September 2021 to 9 August 2022 and 24 January 2023

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. At the age of 18, two years before he enlisted in the Army, he was diagnosed with mild delusions, which he believes was a prelude to his current mental health condition. During the enlistment process, the Army required him to get a waiver for his stay at a mental health institution where he was diagnosed with mild delusions.

b. In basic training, he excelled in the physical assignments but failed to grasp the full spectrum of what it meant to be a Soldier mentally. The acceleration of his delusions brought on his failure to grasp these concepts. He was unaware at the time that his delusions were taking a significant toll on his performance as a Soldier.

c. When he arrived at his first assignment, he found out his girlfriend was pregnant and asked for leave. When the Army denied him leave, he tried to push forward, but instead, he hit rock bottom due to several situations compiling on top of one another. He felt the pressure building and could no longer function in a mental state conducive to

success, so he took leave alone. He regrets his decision because his thinking was neither rational nor clear-headed or based on reality.

d. Since his discharge from the Army, he was diagnosed with schizoaffective disorder and post-traumatic stress disorder (PTSD). He is currently being seen at the Community Mental Health Center in Dearborn County, Lawrenceburg, IN, by a team of mental health specialists. He has been with this team for a year and a half, and they have helped him with many things, including medication, housing, and therapy. He is slowly rebuilding his life and hopes the Board will consider this new insight into the circumstances that led to his discharge and grant him relief.

3. The applicant enlisted in the Regular Army on 13 October 2004, for 3 years and 18 weeks. The highest rank/grade he held was private/E-2.

4. Special Court Martial Order (SPCMO) Number 17, issued by Headquarters, I Corps and Fort Lewis, Fort Lewis, WA, on 13 July 2006, shows:

a. He was found guilty of the following charges:

- on or about 16 April 2005, absent himself from his unit and did remain so absent until on or about 7 July 2005
- on or about 18 July 2005, absent himself from his unit and did remain so absent until on or about 29 July 2005
- on or about 7 July 2005, behave with disrespect toward his superior commissioned officer
- on or about 29 July 2005, was disrespectful in language to his superior noncommissioned officer
- on or about 29 July 2005, willfully and wrongfully damage a car
- between on or about 29 June and 29 July 2005, wrongfully use marijuana
- on or about 29 July 2005, being drunk and disorderly

b. He was sentenced to reduction to private/E-1, confinement for eight months, and separation from service with a BCD. The sentence was adjudged on 15 November 2005.

c. The convening authority approved the sentence, and except for the part of the sentence extending to a BCD, ordered the sentenced executed. The record of trial was forwarded for appellate review. The U.S. Army Court of Military Review documentation affirming the approved findings of guilty and the sentence, is not available in the record.

5. SPCMO Number 57, issued by Headquarters, U.S. Army Field Artillery Center and Fort Sill, Fort Sill, OK, on 19 April 2007, shows the sentence was finally affirmed, the provisions of Article 71(c) had been complied with, and was ordered duly executed.

6. The applicant was discharged accordingly on 3 August 2007, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 3, as a result of court-martial - other, with a bad conduct characterization of service in the grade of E-1. He received Separation Code “JJD” and a reentry code of “4.” His DD Form 214 (Certificate of Release or Discharge from Active Duty) contains the following entries:

a. He completed 2 years, 3 months, and 18 days of net active service during the period covered.

b. Block 18 (Remarks) shows the dates and time lost during this period as:

- 16 April 2005 to 7 July 2005
- 18 July 2005 to 29 July 2005
- 15 November 2005 to 13 February 2006

7. The applicant provides medical documentation of the behavioral health care he received at the Community Mental Health Center (CMHC), Inc. from 30 September 2021 to 9 August 2022 and 24 January 2023. He was referred to the Community Mental Health Center for an outpatient psychiatric evaluation after making a suicide attempt by stabbing in September 2021. He was diagnosed with schizoaffective disorder bipolar type.

8. On 6 November 2009, the Army Discharge Review Board (ADRB) reviewed the applicant’s request for an upgrade of his discharge. The ADRB found his discharge to be both proper and equitable under the circumstances and voted to deny his request.

9. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code (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.

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

11. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his bad conduct discharge (BCD) to under honorable conditions (general).

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:

- The applicant enlisted in the Regular Army on 13 October 2004.
- Special Court Martial Order (SPCMO) Number 17, issued on 13 July 2006, shows he was found guilty of the following charges:
- on or about 16 April 2005, absent himself from his unit and did remain so absent until on or about 7 July 2005
- on or about 18 July 2005, absent himself from his unit and did remain so absent until on or about 29 July 2005
- on or about 7 July 2005, behave with disrespect toward his superior commissioned officer
- on or about 29 July 2005, was disrespectful in language to his superior noncommissioned officer
- on or about 29 July 2005, willfully and wrongfully damage a car
- between on or about 29 June and 29 July 2005, wrongfully use marijuana
- on or about 29 July 2005, being drunk and disorderly
- Applicant was discharged on 3 August 2007, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 3, as a result of court-martial - other, with a bad conduct characterization of service in the grade of E-1. He received Separation Code “JJD” and a reentry code of “4.”
- An ADRB denied the applicant’s request for an upgrade on 6 November 2009.

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, ABCMR Record of Proceedings (ROP), DD Form 214, self-authored statement, medical records, 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, at the age of 18, two years before he enlisted in the Army, he was diagnosed with mild delusions, which he believes were a prelude to his current mental health condition. During the enlistment process, the Army required him to get a waiver for his stay at a mental health institution where he was diagnosed with mild delusions. In basic training, he excelled in the physical assignments but failed to grasp the full spectrum of what it meant to be a Soldier mentally. The acceleration of his delusions brought on his failure to grasp these concepts. He was unaware, at the time, that his delusions were taking a significant toll on his performance as a Soldier. When he arrived at his first assignment, he found out his girlfriend was pregnant and asked for leave. When the Army denied him leave, he tried to push forward, but instead, he hit

rock bottom due to several situations compiling on top of one another. He felt the pressure building and could no longer function in a mental state conducive to success, so he took leave alone. He regrets his decision because his thinking was neither rational nor clear-headed or based on reality. Since his discharge from the Army, he was diagnosed with schizoaffective disorder and post-traumatic stress disorder (PTSD). He is currently being seen at the Community Mental Health Center in Dearborn County, Lawrenceburg, IN, by a team of mental health specialists. He has been with this team for a year and a half, and they have helped him with many things, including medication, housing, and therapy. He is slowly rebuilding his life and hopes the Board will consider this new insight into the circumstances that led to his discharge and grant him relief.

e. Due to the period of service, no active-duty electronic medical records were available for review. VA electronic records available for review indicate the applicant is not eligible for services due to the characterization of his discharge. A note dated 17 December 2013 indicates the applicant was seen during a VA outreach visit to a correctional facility. He had questions concerning benefits for incarcerated veterans after his release. However, his release date was outside of 6 months, and he was ineligible for services. Another encounter dated 23 September 2015, indicates the applicant was once again seen during a VA outreach visit to the correctional facility. He reported a January 2016 projected release date, denied medical concerns, and shared he would be going to a halfway house upon release. The applicant further provides medical documentation that evidences a note dated 30 September 2021, indicating he was referred for an outpatient psychiatric evaluation after an inpatient psychiatric hospitalization from 4 September 2021 to 25 September 2021 due to a suicide attempt. He was experiencing auditory command hallucinations telling him to harm himself as well as symptoms of depression. The applicant had apparently relocated from Washington state to Indiana without proper transition in his mental healthcare and medications. The psychiatric evaluation notes the applicant has a long history of schizophrenia as well as symptoms of bipolar disorder. The applicant further reported a past history of alcohol and cannabis abuse, as well as multiple stressors including homelessness and financial difficulties. The provider notes the applicant did not endorse any symptoms of PTSD and he was diagnosed with Schizoaffective Disorder, Bipolar type. A follow-up psychiatry note dated 9 August 2022, indicates the applicant evidenced ongoing stability and denied any psychotic or depressive symptoms.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is evidence to support the applicant likely had a mitigating BH condition during his time in service.

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 was diagnosed with Schizoaffective Disorder post-military service, that likely was present before and during his military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was diagnosed with Schizoaffective Disorder, Bipolar type, following an inpatient psychiatric hospitalization. Schizoaffective Disorder includes symptoms of both a mood disorder and psychosis. Prodromal schizoaffective disorder is the earliest stage or the initial signs, which typically present in adolescence prior to the active stage of the disorder and are indicated by changes in personality and behavior. The symptoms include dysregulated behaviors, nervousness, anxiety, depression, difficulty concentrating, isolation, lack of appropriate personal hygiene, bizarre behaviors, and conduct problems. It is likely the applicant was experiencing the prodromal stage, of what was later diagnosed as Schizoaffective Disorder, when he was in military service. Overall, Schizoaffective Disorder presents with psychosis or a loss of contact with reality, that impacts one's thoughts and perceptions making it difficult to determine the difference between what is real from what is not. When experiencing symptoms of the disorder, people may hear, see, or believe things that are not real, and this can impair their ability to differentiate between right and wrong. Given the nexus between Schizoaffective Disorder and dysregulated behaviors, it is likely the applicant's BH condition contributed to the behaviors that led to his discharge.

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 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 grant relief based on the medical opine given the nexus between schizoaffective disorders and the conditions contributed to the applicant's behavior. However, upon further review of the applicant's petition, available military records and the medical review, the Board considered the advising official finding sufficient evidence to support the applicant likely had a mitigating BH condition during his time in service. The Board noted, the opine found the nexus between schizoaffective disorder and dysregulated behaviors, it is likely the applicant's BH condition contributed to the behaviors that led to his discharge. Although, the Board notwithstanding the advising official findings, determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct.

2. The Board determined the applicant's self-reporting alone was insufficient evidence to excuse the numerous patterns of misconduct. The Board noted the applicant received a waiver to serve due to his pre-existing health issues. The Board also noted that during the applicant's 2009 Board proceedings there were no mental health issues noted during his ADRB case. ABCMR 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. Furthermore, based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust. Therefore, relief was denied.

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.



 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, USC, 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. Title 10, USC, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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, in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. 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.
 - b. 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.
 - c. 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.
4. 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.

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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part 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 sexual assault or sexual harassment was unreported, or 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.

6. 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, 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.

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//