

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2024

DOCKET NUMBER: AR20230010325

APPLICANT REQUESTS: in effect, reconsideration of his previous request for an upgrade of his dishonorable discharge, and a hearing before the Board via video or telephone.

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)
- self-authored statement, 17 June 2023

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 AR20180006384 on 1 October 2020.

2. As a new argument, the applicant states he is currently an incarcerated veteran in the state of Florida. At the time he committed the crime that he was charged and convicted of, he was addicted to drugs, and that is the reason he committed the crime. When he was released from prison, he suffered a great deal of emotional and physical stress in his life. He has been in and out of jail for over 30 years and is now getting the help for his addiction that he has been asking for his whole life. He has had three bypass open heart surgeries and suffers from mental health and physical issues from his years of drug addiction. He is very remorseful for the crime he believes he would not have committed if he had not been on drugs. He has lost a lot of time due to his drug use but has changed his life and has given his life to the Lord Jesus Christ. He asks the board to grant him relief and give him another chance at life. The applicant notes post-traumatic stress disorder (PTSD) and other mental health issues as conditions related to his request.

3. The applicant enlisted in the Regular Army on 11 September 1985, for 3 years. The highest rank/grade he held was private first class/E-3.

4. The applicant accepted nonjudicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice, on three occasions:

a. On 18 October 1985, for being disrespectful in language toward a superior noncommissioned officer on or about 5 October 1985. His punishment was reduction to private/E-2 (suspended for one month), forfeiture of \$162.00 pay, 7 days restriction, and 7 days extra duty.

b. On 21 February 1986, for unlawful assault on or about 8 February 1986. His punishment was reduction to private/E-2, forfeiture of \$150.00 pay per month for one month (suspended for two months), and 14 days restriction, and 14 days extra duty. His suspended forfeiture of \$150.00 pay per month for one month was vacated effective 7 March 1986.

c. On 11 March 1986, for failing to go at the time prescribed to his appointed place of duty on or about 1 March 1986 and for threatening with contempt and being disrespectful in language toward a noncommissioned officer on or about 3 March 1986. His punishment was reduction to private/E-1.

5. General Court Martial Order (GCMO) Number 80, issued by Headquarters, 8th Infantry Division on 23 October 1986, shows the applicant was found guilty of:

- One specification of wrongfully possessing a concealed knife
- One specification of committing an assault against another Soldier and intentionally inflicting grievous bodily harm
- One specification of communicating a threat against another Soldier
- One specification of communicating a threat to injure a Soldier

a. The court sentenced him to forfeiture of all pay and allowances, confinement for 5 years, and to be discharged from the service with a dishonorable discharge. The sentence was adjudged on 26 August 1986.

b. The convening authority approved the sentence and except for the dishonorable discharge ordered the sentence executed. The sentence was approved on 23 October 1986 and the record of trial was forwarded for appellate review.

6. The U.S. Army Court of Military Review upheld the findings of guilty and the sentence as approved by the convening authority. The findings of guilty and the sentence were affirmed on 10 February 1987.

7. GCMO Number 339, issued by the U.S. Disciplinary Barracks, U.S. Army Combined Arms Center and Fort Leavenworth, Fort Leavenworth, KS, on 21 October 1987, shows the sentence having been affirmed, was ordered to be duly executed.

8. The applicant was discharged accordingly on 20 November 1987, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 3-10, as a result of court-martial-other, in the rank/grade of private/E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his character of service was dishonorable, with separation code “JJD” and reenlistment code “RE-4.” He was credited with 11 months and 15 days of net active service with 7 months and 22 days of foreign service. He had lost time from 26 August 1986 thru 20 November 1987.

9. On his DD Form 149, the applicant notes medical records were submitted in support of his request. However, he did not provide medical records with his application.

10. The ABCMR considered the applicant's request for an upgrade of his dishonorable discharge on 1 October 2020. After reviewing the application and all supporting documents, the Board determined relief was not warranted. The Board found the evidence presented did not demonstrate the existence of a probable error or injustice as a basis for correction of the applicant's records.

11. 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.

12. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

13. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request for an upgrade of his dishonorable 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 11 September 1985.
- General Court Martial Order (GCMO) Number 80, issued by Headquarters, 8th Infantry Division (Mechanized) on 23 October 1986, shows:

- The applicant was found guilty of three charges of violating a lawful general regulation, committing an assault thereby intentionally inflicting grievous bodily harm, and twice communicating a threat, on 13 June 1986.
- He was sentenced to forfeiture of all pay and allowances, confinement for 5 years, and to be discharged from the service with a dishonorable discharge.
- Applicant was discharged accordingly on 20 November 1987, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 3-10, as a result of court-martial-other, in the rank/grade of private/E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his character of service was dishonorable, with separation code “JJD” and reenlistment code “RE-4.”
- ABCMR considered the applicant's request for an upgrade of his dishonorable discharge on 1 October 2020. After reviewing the application and all supporting documents, the Board determined relief was not warranted.

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), ABCMR Docket Number AR20180006384 on 1 October 2020, self-authored statement, 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.

The applicant states he is currently an incarcerated veteran in the state of Florida. At the time he committed the crime that he was charged and convicted of, he was addicted to drugs, and that is the reason he committed the crime. When he was released from prison, he suffered a great deal of emotional and physical stress in his life. He has been in and out of jail for over 30 years and is now getting the help for his addiction that he has been asking for his whole life. He has had three bypass open heart surgeries and suffers from mental health and physical issues from his years of drug addiction. He is very remorseful for the crime he believes he would not have committed if he had not been on drugs. He has lost a lot of time due to his drug use but has changed his life and has given his life to the Lord Jesus Christ. He asks the board to grant him relief and give him another chance at life. The applicant notes post-traumatic stress disorder (PTSD) and other mental health issues as conditions related to his request.

d. Due to the period of service, no active-duty electronic medical records were available for review and the applicant did not submit hardcopy medical documentation from his time in service. Limited VA electronic medical records were available for review, the record is void of evidence of any BH condition or diagnosis, and the applicant is not service connected. The VA electronic record indicates one encounter on 17 February 2017 where a social worker saw the applicant at Washington State Prison. The applicant reported being incarcerated since April 2015 for a drug possession charge and expected to be released in August 2017. The applicant indicated upon

release he would have an address and would not need homeless services. He requested the necessary paperwork in order to obtain an upgrade of his military discharge. He further indicated being in good health, despite having heart disease, and denied any mental health related issues.

e. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition that mitigates his misconduct. Regardless, it is unlikely any BH condition would mitigate his discharge due to the nature of his misconduct; assault by intentionally inflicting grievous bodily harm, and twice communicating a threat. 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 self-asserts a mitigating condition.

(2) Did the condition exist or experience occur during military service? No. The applicant asserts PTSD and OMH, however, he provides no medical documentation.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant provides no medical documentation substantiating any BH diagnosis. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. And while the applicant self-asserts PTSD and other mental health condition, he did not provide any medical documentation substantiating any diagnoses and did not provide a rationale for his contention. However, regardless of a diagnosis, PTSD would not mitigate assault by intentionally inflicting grievous bodily harm, and twice communicating a threat. Assault is not a natural sequela of this BH condition and would not mitigate the reason for his discharge. In addition, PTSD does not impact the ability to distinguish right from wrong and act in accordance with the right.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing 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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The applicant's trial by a general court-martial was warranted by the gravity of the offenses charged (assault, threats). His conviction and discharge were conducted in accordance with applicable laws and regulations and the discharge appropriately

characterizes the misconduct for which he was convicted. He was given a dishonorable discharge pursuant to an approved sentence of a general court-martial. The appellate review was completed, and the affirmed sentence was ordered duly executed. All requirements of law and regulation were met with respect to the conduct of the court-martial and the appellate review process, and the rights of the applicant were fully protected. The Board found no error or injustice in the separation processing. The Board considered the medical records, any VA documents provided, and the review and conclusions of the advising official. The Board concurred with the medical official's finding insufficient evidence to support the applicant had a behavioral health condition that mitigates his misconduct. Also, he provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. 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.

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 to amend the decision of the ABCMR set forth in Docket Number AR20180006384 on 1 October 2020.

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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, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
2. Army Regulation 15-185 (ABCMR) states applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
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 dishonorable 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.
 - d. 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, homosexual conduct, security reasons, or in lieu of trial by court martial.
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. Boards are 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.

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 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//