

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 August 2024

DOCKET NUMBER: AR20230012112

APPLICANT REQUESTS: in effect, the issuance of two separate DD Forms 214 (Certificate of Release of Discharge from Active Duty): one to reflect his continuous honorable active service from 5 June 2000 to 14 October 2012 and the other to reflect his bad conduct discharge (BCD) from 15 October 2012 to 7 October 2022.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214, for the period ending 7 October 2022
- Release of Information, Congressman M.G., dated 11 August 2023
- Email, Office of Congressman M.G., dated 28 September 2023

FACTS:

1. The applicant states he would like a separate DD Form 214 to show that he had honorable service. His mental health caused his rapid decline while serving, which eventually led to his BCD. He deployed multiple times in support of Operations Enduring Freedom and Iraqi Freedom. He notes post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and other mental health as conditions related to his request.
2. The applicant enlisted in the Regular Army on 5 June 2000, for a 6-year period. He subsequently reenlisted on 22 December 2004, 22 November 2008, and 15 October 2012. The highest rank he attained was sergeant first class/E-7.
3. The applicant served in the following imminent danger pay areas:
  - Iraq – 7 December 2007 to 27 February 2009
  - Iraq – 27 January 2010 to 12 August 2008
  - Afghanistan – 19 March 2012 to 9 December 2012
4. An incident report shows that on 10 August 2017, a loss prevention officer observed the applicant shoplifting three figurines from the Navy Exchange. He was apprehended for Larceny of Government Property – Shoplifting, transported to the police precinct,

apprised of his rights, and later released to his first sergeant. The incident resulted in the following actions:

a. The applicant was formally counseled on 11 August 2017, that due to the incident on 10 August 2017, his access to classified information was suspended and a suspension of favorable personnel action was initiated by his chain of command.

b. On 3 October 2017, the applicant received a General Officer Memorandum of Reprimand (GOMOR) for the larceny of three Hawaiian statues from the Navy Exchange. The applicant acknowledged receipt of the GOMOR on 4 October 2017. In an attached statement, he requested the GOMOR be filed locally. He took full responsibility for his actions; he made an honest mistake. He was checking to see if the boxes fit in a bag so he could carry them on his walk home. It was not his intent to steal. He became overwhelmed and flustered while trying to return a comforter set and forgot about the statues. As a senior noncommissioned officer (NCO), he had a lapse in judgement. It was an anomaly.

c. In three statements in his behalf, the applicant's Senior Rater, Sergeant Major, and Senior Maintenance Warrant Officer requested the GOMOR be filed locally. They stated, in effect, he was a dedicated senior leader, with exceptional duty performance, who served with distinction. He had a lapse in judgement. Although he should be held accountable, it would be a detriment if he were removed from the organization.

d. The applicant's immediate commander recommended the GOMOR be placed in the applicant's Army Military Human Resource Record (AMHRR), stating he demonstrated conduct unbecoming of his age and rank.

e. On 23 October 2017, the imposing general directed the GOMOR be permanently filed in the applicant's AMHRR.

5. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice, on 12 September 2018, for six specifications of failure to go at the time prescribed to his appointed place of duty, between on or about 1 June 2018 and August 2018, and two specifications of making a false official statement with the intent to deceive, on or about 4 August and 7 August 2018.

6. On 14 September 2020, the applicant was disapproved for award of the Army Good Conduct Medal for the period of active duty service from 4 June 2019 to 4 June 2022.

7. General Court-Martial Order (GCMO) Number 4, U.S. Army Combined Arms Center, Fort Leavenworth, KS, dated 5 March 2021, shows that the hearing outlined below is a re-hearing of a case as promulgated in GCMO Number 10, Headquarters, 8th Theater Sustainment Command, Fort Shafter, HI, dated November 2019. The findings and

sentence of which were set aside on 11 August 2020, by the U.S. Army Court of Criminal Appeals. GCMO Number 10 and the review from the U.S. Army Court of Appeals is not available for review in the available service record.

8. Before a general court-martial, at Fort Leavenworth, KS on 11 December 2020, the applicant pled guilty to and was found guilty of attempting to steal apparel from Footlocker, stealing eight credit/debit cards, one military common access card, one Georgia license, the 307th Signal Battalion rug, one Invictus 50ml fragrance, and one pair of Puma men's shoes, violating a lawful general regulation by wrongfully possessing hypodermic needles in the barracks, wrongfully distributing some amount of hydrocodone, and wrongfully using methamphetamine, between on or about 6 February 2018 and 1 November 2018.

a. He was sentenced to reduction to private/E-1, confinement for 18 months, and a BCD.

b. On 17 March 2021, the convening authority approved the sentence, and except for the portion of the sentence extending to the discharge, ordered the sentence executed.

c. The applicant's service record does not contain documentation affirming the findings and the sentence or the order for execution of the BCD.

9. The applicant was discharged on 7 October 2022, under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 3, as a result of court-martial, in the rank/grade of private/E-1. His DD Form 214 confirms his service was characterized as bad conduct, with separation code JJD and reentry code RE-4. He was credited with 20 years, 10 months, and 3 days of net active service. He had lost time from 11 June 2019 to 10 December 2020. He was authorized or awarded the:

- Army Commendation Medal (6th award)
- Army Achievement Medal (6th award)
- Meritorious Unit Commendation (2nd award)
- Army Good Conduct Medal (4th award)
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Afghanistan Campaign Medal with one campaign star
- Iraq Campaign Medal with two campaign stars
- Noncommissioned Officer Professional Development Ribbon (3rd award)
- Army Service Ribbon
- Overseas Service Ribbon (5th award)
- North Atlantic Treaty Organization Medal

- Senior Army Instructor Badge
- Combat Action Badge
- Basic Aviation Badge
- Expert Marksmanship Qualification Badge with Rifle bar
- Driver and Mechanic Badge with Mechanic clasp

10. The applicant's DD Form 214, Item 18 (Remarks) contains the statements "CONTINUOUS HONORABLE ACTIVE SERVICE: 20000605 – 20121014" and "MEMBER HAS COMPLETED FIRST FULL TERM OF SERVICE."

11. The applicant provides copies of two requests for assistance from the Office of Congressman M.G., dated 11 August 2023 and 28 September 2023.

12. 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.

13. Army Regulation 635-5 (Personnel Separations – Separation Documents) prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. Since October 1, 1979, military personnel discharged for the purpose of immediate reenlistment are no longer issued a separate DD Form 214.

14. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

15. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade of his bad conduct discharge (BCD) and separation of his service dates via two separate DD214s. He contends he experienced an undiagnosed mental health condition that mitigates his misconduct.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted into the Regular Army on 5 June 2000 and reenlisted on 22 December 2004, 22 November 2008, and 15 October 2012.

- The applicant served in Iraq from December 2007 to February 2009 and again in January 2010 to August 2010. He also served in Afghanistan from March 2012 to December 2012.
- The applicant received a GOMOR for the larceny of three Hawaiian statues from the Navy Exchange and acknowledged the receipt of the GOMOR on 4 October 2017.
- The applicant accepted NJP on 12 September 2018, for six specifications of failure to go at the time prescribed to his appointed place of duty, between on or about 1 June 2018 and August 2018, and two specifications of making a false official statement with the intent to deceive, on or about 4 August and 7 August 2018.
- Before a general court-martial on 11 December 2020, the applicant pled guilty to and was found guilty of attempting to steal apparel from Footlocker, stealing eight credit/debit cards, one military common access card, one Georgia license, the 307th Signal Battalion rug, one Invictus 50ml fragrance, and one pair of Puma men's shoes, violating a lawful general regulation by wrongfully possessing hypodermic needles in the barracks, wrongfully distributing some amount of hydrocodone, and wrongfully using methamphetamine, between on or about 6 February 2018 and 1 November 2018.
- The applicant was discharged on 7 October 2022 and was credited with 20 years, 10 months, and 3 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts that his mental health caused a rapid decline and eventually caused his BCD. There were no medical or mental health records included in his application. There was insufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed a post-deployment mental health assessment conducted on 19 October 2010 where the applicant endorsed depression and anxiety symptoms as well as excessive alcohol use. He related having financial difficulty and going through a divorce. Documentation does not indicate a diagnosis was rendered, and the applicant was provided with information related to options for counseling and/or mental health treatment. He was next seen by behavioral health in August 2014 where he reported significant distress, sleep difficulty, easily angered, and "feeling as though he had undergone significant changes in his personality following his Iraqi deployment." He admitted to using alcohol to induce sleep and indicated he had received numerous written counselings for failure to report (oversleeping). He discussed trauma exposure during deployment, including "I've had confirmed kills; had to move dead bodies from vehicles; seen guys blown up." The author noted he was somewhat guarded during this questioning and leery of a diagnosis of PTSD. He also reported a childhood history of trauma exposure. He was diagnosed

with Major Depressive Disorder and prescribed an antidepressant medication. The applicant was command referred to ASAP in September 2014 following an incident outside a bar where he allegedly "slammed" his ex-girlfriend's head against a vehicle (he denied). He was diagnosed with Alcohol Abuse and Alcohol Dependence and attended individual and group sessions through December 2014, and it was noted that he had a history of a positive drug screen for LSD in 2002. Upon conclusion of ASAP involvement, the applicant also dropped out of mental health treatment (medication was discontinued two weeks after initiation due to side effects). The applicant was next seen on 1 March 2018 when he self-referred to mental health due to several life stressors, including the death of his sister and Army career-related stress (possible chapter out of the Army). He endorsed symptoms of depression, anxiety, and PTSD, and he was diagnosed with Adjustment Disorder with mixed anxiety and depressed mood. Documentation addressed the shoplifting incidents as well as history of assault charges in 2005, 2007, and 2014. A more thorough family history was provided, which included abuse and neglect, being raised by his older sister due to abandonment by his mother, and death by suicide of his father. On 15 March 2018 an evaluation for clearance for administrative separation was conducted, and the applicant was deemed to meet retention standards and cleared for separation. No diagnosis was rendered, although documentation showed that he endorsed symptoms of depression in the severe range; symptoms of anxiety in the mild range; and PTSD symptoms indicative of the presence of PTSD. Between March and August 2018, the applicant had five encounters with therapists and/or psychiatrists and focus of treatment was on managing situational stress related to his potential loss of his military career. Documentation discussed his trauma history, including "five deployments" and childhood trauma, and he was started on another medication for depression. His diagnosis continued to be Adjustment Disorder with mixed anxiety and depressed mood, but there was also documentation of possible personality disordered traits (antisocial and narcissistic). There was indication he was referred for trauma-focused therapy and discussion of behaviors exhibited by the applicant that were inconsistent with a senior NCO (i.e. being late for duty). On 28 August 2018, he reported suicidal ideation and was hospitalized for evaluation and stabilization. While inpatient, it was determined that he had attempted suicide via injecting himself with an unknown drug cocktail and that he had experienced thoughts of asphyxiation and walking into traffic. He reported symptoms of PTSD as well as adjustment difficulty in returning from deployment, and he was diagnosed with Adjustment Disorder and PTSD. The documentation discussed a history of opioid addiction following a spinal surgery, and it was noted that he had a history of TBI with loss of consciousness. He was restarted on an antidepressant medication, referred for substance abuse treatment, and discharged to command on 5 September 2018, and he immediately engaged with follow up care through the outpatient clinic. However, he missed several appointments and calls and did not reengage until 15 October 2018, which was just prior to incarceration. He continued seeing behavioral health while incarcerated through the end of 2018, and documentation reflects continued follow up primarily for medication management during 2019. His final mental health visit through

the DoD was on 19 July 2021 and indicated he was no longer incarcerated and was awaiting retrial.

e. The applicant engaged with the VA in April 2023 through their homeless/housing program. He was denied admission into their residential rehabilitation program and was referred for outpatient treatment. The applicant utilized the Veterans Justice Outreach (VJO) programming and has regularly engaged counseling services with them. His most recent note, dated 17 July 2024, indicated sobriety from drugs and alcohol and attempts at making positive lifestyle changes.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support that the applicant had a mental health condition at the time of his misconduct. DoD documentation supports that the applicant had a history of mental health symptoms dating back to 2010 with more prominent symptoms associated with alcohol abuse developing in 2014. He had a history of depression, PTSD symptoms, polysubstance abuse, and difficulty with adjustment following deployment as well as a significant childhood history of trauma exposure. These symptoms were co-occurring during the time in which he engaged in misconduct. The mental health symptoms associated with his cumulative trauma experiences, coupled with his legal problems and demise of his military career, culminated in a suicide attempt in 2018.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had a mental health condition at the time of the misconduct. Records from the DoD indicated he was diagnosed with Adjustment Disorder with mixed anxiety and depressed mood, Alcohol Abuse, Major Depressive Disorder, and PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service, and documentation provides sufficient evidence to support this.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. While failure to show up for duty and substance abuse can be a natural sequelae to mental health conditions associated with traumatic or stressful events, there is no nexus between his mental health diagnoses, including PTSD, and his misconduct related to larceny, theft, and distribution of hydrocodone: 1) these types of misconduct are not part of the natural history or sequelae of a mental health condition; 2) his mental health conditions do not affect one's ability to distinguish right from wrong and act in accordance with the right.

h. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, 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 review based on law, policy, and regulation. The evidence of record shows the applicant enlisted in the Regular Army on 5 June 2000. He reenlisted on 22 December 2004, 22 November 2008, and 15 October 2012. Item 18 (Remarks) of his DD Form 214 shows "Continuous Honorable Active Service: 20000605 [First Day of Service for which DD Form 214 was not issued] to 20121014 [Date Before Commencement of Current Enlistment]." The Board concluded the applicant's DD Form 214 is an accurate record of service at the time of his discharge and therefore relief is not warranted.



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.

■

■

■

---

■

■

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. Section 1556 of Title 10, USC, 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. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR is not an investigative body and decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application.

4. AR 635-5 (Personnel Separations - Separation Documents), in effect at the time, prescribed the separation documents that must be prepared for Soldiers at the time of retirement, discharge, or release from active duty service or control of the Active Army. It established standardized policy for preparing and distributing the DD Form 214.

a. In pertinent part, the regulation states the DD Form 214 is a synopsis of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active Army service at the time of release from active duty retirement or discharge. Since October 1, 1979, military personnel discharged for the purpose of immediate reenlistment are no longer issued a separate DD Form 214.

b. The regulations provides for an additional entry on the DD Form 214 for continuous honorable active service when a Soldier who previously reenlisted without being issued a DD Form 214 was discharged with any characterization of service except honorable.

5. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

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. 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.

6. 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.

7. 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; TBI; 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.

8. 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//