

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 July 2024

DOCKET NUMBER: AR20230012242

APPLICANT REQUESTS: his dishonorable discharge be upgraded. Additionally, he requests an appearance before the Board via video/telephone.

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

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 he was allowed to join and serve without an evaluation from a recent traumatic event that led directly to the cause. He signed a plea agreement under duress and although his behavior was wrong, he did nothing to dishonor the Army or his country. The delay in his request is because he never knew he had a recourse. He was suffering from post-traumatic stress disorder (PTSD) when he entered the service. He requested relief. He was denied. Then he was threatened with 93 years and signed the plea deal under duress. He also lists other mental health as related to his request.
3. The applicant enlisted in the Regular Army on 7 March 1984 for a period of 3 years. His military occupational specialty was 13B (Cannon Crewmember).
4. In conjunction with his enlistment, the applicant underwent a psychiatric consultation on 13 December 1983 that shows the applicant gave a history of suicidal gesture at the age of 14 years by cutting his wrist. The mental status exam was within normal limits. No evidence of depression or character of behavior disorder was detected. No major psychopathology shown. His family background was significant. His parents separated, and the father drank and knocked him around. He felt responsible for the breakup. His father kicked him out and then reported him to the police as a runaway. The impression was adjustment disorder with mixed disturbance of mood and conduct, under stress, recovered. The recommendation was no psychiatric contraindication to enlistment.

5. The applicant served in Germany from 14 June 1984 through 10 January 1985.
6. The applicant was absent without leave (AWOL) on 26 July 1984. He was apprehended and present for duty (PDY) on 27 July 1984.
7. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on 31 July 1984, the reason for the Article was not available for review. His punishment consisted of forfeiture of \$100.00 and confinement for 7 days. On 23 August 1984 the offense was vacated based on the applicant being AWOL on or about 15 August 1984 until 23 August 1984.
8. The applicant was AWOL on 11 January 1985. He was apprehended and PDY on 17 January 1985.
9. Before a general court-martial on 17 July 1985, the applicant was found guilty of:
  - AWOL, on or about 11 January 1985 until apprehend on or about 17 January 1985
  - wrongfully having in his possession drug abuse paraphernalia fashioned into a smoking device, on or about 7 January 1985
  - wrongfully possessing more than one identification card issued by military authorities, on or about 17 January 1985
  - wrongfully possess approximately 2.31 grams of marijuana in the hashish form, a schedule I controlled substance, on or about 17 January 1985
  - having been restricted to the limits of his unit by a person authorized to do so, did break said restriction, on or about 26 January 1985
  - stealing money, of a total value of about \$786.20 in U.S. currency, the property of the Army and Air Forces Exchange Service (AAFES), at diverse times from 12 through 13 January 1985
  - stealing money, of a value of about \$745.00 in U.S. currency, the property of the U.S Army, on or about 14 January 1985
  - with intent to defraud, falsely making the signature of [REDACTED] as the drawer of six checks, drawn on [REDACTED] bank, five made payable to AAFES and one to the Finance Officer in the amounts of \$215.80, 240.00, \$50.00, and \$745.00 which would, if genuine, apparently operate to the legal harm of another, at diverse times between 12 and 14 January 1985
  - with intent to defraud and for procurement of lawful currency and articles of value, wrongfully and unlawfully utter to AAFES about twenty-three checks in the total amount of about \$1489.96, then knowing that he did not or would not have sufficient funds in or credit with said bank for payment of said drafts in full upon their presentment, at diverse times from 15 July 1984 through 24 August 1984

10. The court sentenced the applicant to forfeiture of all pay and allowances, to be confined for a period of three years, and to be dishonorably discharged from the U.S. Army. The sentence was approved on 16 September 1985 and would be executed except for the dishonorable discharge.

11. A Report of Mental Status Evaluation, dated 29 January 1985, shows the applicant had the mental capacity to understand and participate in the proceedings, was mentally responsible, and met retention requirements. The diagnosis was adjustment disorder with disturbance of conduct; rule out antisocial personality disorder; watch for further efforts to escape or hurt himself (the applicant feared jail).

12. The U.S. Army Court of Military Review affirmed the findings and corrected the words "pursuant to" the following words and figures: Court Martial Convening Order Number 303, this headquarters, dated 27 December 1984, as amended by" and sentence on 14 March 1986.

13. The applicant petitioned the Court for review of his conviction on 3 April 1986.

14. General Court-Martial Order Number 295, dated 6 August 1986, U.S. Army Combined Arms Center, Fort Leavenworth, KS, shows the sentence had been finally affirmed and ordered the dishonorable discharge would be executed.

15. The applicant did not request a separation physical on 4 September 1986.

16. The applicant was discharged on 17 September 1986. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), paragraph 3-10, as a result of court-martial, other with Separation Code JJD and Reenlistment Code RE-4. His service was characterized as dishonorable. He completed 10 months and 6 days of net active service. He lost time from 26 July 1984 to 27 July 1984, 15 August 1984 to 22 August 1984, 11 January 1985 to 16 January 1985 and 28 January 1985 to 17 September 1986.

17. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

18. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

**19. MEDICAL REVIEW:**

a. The applicant is applying to the ABCMR requesting his dishonorable discharge be upgraded. He contends he experienced mental health conditions including PTSD which mitigates his misconduct. 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: 1) The applicant enlisted in the Regular Army on 7 March 1984; 2) There is evidence the applicant went AWOL four times between June and January 1985; 3) Before a general court-martial on 17 July 1985, the applicant was found guilty of: A) Being AWOL; B) possession of drug paraphernalia; C) possession of hashish; D) wrongfully possessing more than one military ID card; E) stealing money from AAFES; F) stealing money from the Army; G) breaking restriction; H) making false signatures with intent to defraud; I) writing false checks to AAFES; 4) The applicant was discharged on 17 September 1986, Chapter 3-10, as a result of court-martial. His service was characterized as dishonorable.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided.

c. The applicant asserts he was experiencing mental health conditions including PTSD while on active service, which mitigates his misconduct. There is evidence the applicant had a history of trauma and resultant mental health conditions prior to his enlistment. In conjunction with his enlistment, the applicant underwent a psychiatric consultation on 13 December 1983 that shows the applicant gave a history of suicidal gesture at the age of 14 years by cutting his wrist. He had been exposed childhood trauma, and he experienced depression and suicidal thoughts and behavior as a result. However, his mental status exam was within normal limits, and his earlier behavioral health concerns were attributed to an adjustment disorder. The applicant was approved for military service. The applicant underwent a mental status exam on 29 January 1985. The applicant was found to have the mental capacity to understand and participate in the proceedings, was mentally responsible, and met retention requirements. The diagnosis was adjustment disorder with disturbance of conduct; rule out antisocial personality disorder. There was concern that he may be at risk of self-harm to avoid his jail time.

d. A review of JLV was void of medical information, and the applicant does not receive any service-connected disability. No additional medical documentation was provided for review.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a condition or experience that partially mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions including PTSD, which mitigates his misconduct. The applicant was diagnosed with an adjustment disorder prior and during his enlistment.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD, which mitigates his misconduct. The applicant was diagnosed with an adjustment disorder prior and during his enlistment.

(3) Does the condition experience actually excuse or mitigate the misconduct? Partially, there is sufficient evidence beyond self-report the applicant had a history of trauma and mental health concerns prior to his military service. It is likely he was experiencing difficulty adjusting to the military due to his history of mental health concerns and exposure to trauma. Avoidant behavior such as going AWOL and substance abuse are often a natural sequelae to the negative emotions associated with difficulty adjusting to the military and a history of trauma. However, there is insufficient evidence the applicant has ever been diagnosed with PTSD. However, the applicant was also found guilty of multiple other crimes to include theft and fraud, and there is no nexus between PTSD and adjustment disorder and these types of significant misconduct: 1) these types of misconduct is not a part of the natural history or sequelae of PTSD or an adjustment disorder; 2) PTSD and adjustment disorders do not affect one's ability to distinguish right from wrong and act in accordance with the right Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

#### BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the pattern of misconduct leading to the applicant's separation including multiple incidents of criminal activity (stealing from others), and the findings of the medical review only finding partial mitigation for the misconduct leading to the applicant's separation, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

1/6/2025

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, 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, 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.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

4. 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 provided that an enlisted person 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.

5. 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.

6. 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 Service 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

7. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//