

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 July 2024

DOCKET NUMBER: AR20230012847

APPLICANT REQUESTS: an upgrade of his character of service from a bad conduct discharge (BCD) to honorable due to post-traumatic stress disorder (PTSD).

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

- DD Form 149 (Application for Correction of Military Record)
- Standard Form (SF) 180 (Request Pertaining to Military Records)

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 he requests for an upgrade to his BCD to an honorable due to PTSD. His record as a civilian has been clean from the moment he was discharged. He is employed, he is a voter and a taxpayer. He only wishes he could have completed his military service and made the Army his career. He was even willing to enlist during wartime, however due to his age at the time he was unable to do so.
3. The applicant's service record reflects the following information:
  - a. DD Form 4 (Enlistment/Reenlistment Document – Armed Forces of the United States) shows he enlisted in the Regular Army on 22 May 1980 for three years.
  - b. DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)) shows he received NJP on 4 February 1981 for treating a superior noncommissioned (NCO) with contempt by arguing with him and for sleeping upon his post as a Fire Guard. His punishment consisted of reduction to PVT/E-1, forfeitures of pay of \$116.00, and 14 days extra duty and restriction. He did not appeal.

c. DA Form 4430-R (Department of the Army Report of Result of Trial) shows he was tried by Special Court-Martial on 8 December 1982 at Nuernberg, Germany. He was sentenced to reduction to PVT/E-1, forfeitures of pay of \$382.00 per month for six months, six months confinement at hard labor and to be discharged with a BCD. He was charged with the following Articles of the UCMJ:

- Charge I: Violation of the UCMJ, Article 80
  - Specification 1: attempt to transfer hashish – pled not guilty – found not guilty
  - Specification 2: attempt to sell hashish – pled not guilty – found guilty
- Charge II: Violation of the UCMJ, Article 134, one specification of possession of 21 grams of hashish – pled guilty – found guilty

d. DA Form 4187 (Personnel Action Form), reflects the following change in the applicant's duty status on 8 December 1982 from present for duty (PDY) to confined by military authorities as a result of court-martial.

e. Orders 302-7, dated 9 December 1982 show the applicant was permanently assigned to the United States Army Disciplinary Barracks, Fort Leavenworth, Kansas, with a reporting date to be established by the confinement facility.

f. Special Court-Martial Order Number 015, issued by the Department of the Army, Headquarters, 1<sup>st</sup> Armored Division, dated 2 February 1983 reflects the applicant's sentence was approved. Forfeitures shall apply to pay becoming due on and after the date of this action. The record of trial was forwarded to The Judge Advocate General of the Army for review by a Court of Military Review. Pending completion of appellate review.

g. On 4 May 1983 the applicant understood he was not required to undergo a medical examination for separation from active duty. He elected not to do so.

h. Special Court-Martial Order Number 56, issued by the Department of the Army, Headquarters, U.S. Army Training Center and Fort Dix, NJ, dated 8 May 1983 reflects the sentence was affirmed pursuant to Article 66. The provisions of Article 71(c) having been complied with, the sentence was duly executed. That portion of the sentence pertaining to confinement has been served.

i. DA Forms 4187, reflect the following change in the applicant's duty status on 15 April 1983, from confined by military authorities to PDY.

j. DA Form 3822-R (Report of Mental Status Evaluation), dated 16 July 1984, shows his command requested he undergo a mental status evaluation as part of his discharge for the good of the service. This document shows the following in remarks:

- Had normal behavior
- He was fully alert
- He was fully oriented
- His mood or affect was unremarkable
- His thinking process was clear
- His thought content was normal
- His memory was good
- He had the mental capacity to understand and participate in the proceedings
- He was mentally responsible

k. Orders 209-89, dated 27 July 19884 shows the applicant was reassigned to the U.S. Army Separation Transfer Point for separation processing, with a reporting date of 10 August 1984.

l. His DD Form 214 for the period ending 10 August 1984, shows he was discharged pursuant to AR 635-200 (Personnel Separations – Enlisted Personnel), Chapter 3, Section IV with a BCD, As a Result of Court-Martial – Other. He completed 3 years, 10 months, and 12 days of net active service this period. Lost time during this period was from 8 December 1982 to 14 April 1983. His grade at the time of discharge was PVT/E-1.

m. The record does not reflect, and the applicant does not provide any medical documents in support of his PTSD claim.

4. Due to the applicant's claim of PTSD, the case is being forwarded to the Behavioral Health staff at the Army Review Boards Agency.

#### 5. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from bad conduct discharge (BCD) to honorable. He contends he experienced PTSD 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 22 May 1980.

- The applicant received NJP in February 1981 for treating a superior with contempt and arguing as well as sleeping upon his post. On 8 December 1982, he was tried and found guilty by Special Court-Martial of possession of hashish and attempting to sell hashish. He was confined and later returned to duty status on 15 April 1983. A mental status examination was conducted in July 1984, and the applicant was discharged under AR 635-200, Chapter 3, Section IV with a BCD, As a Result of Court-Martial – Other.
- The applicant was discharged on 10 August 1984, and he completed 3 years, 10 months, and 12 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 he has PTSD and needs his discharge changed so he can file for service-connected disability. The application contained a Report of Mental Status Evaluation dated 16 July 1984, which indicated the applicant's mental status was within the normal range, and he had the mental capacity to understand and participate in the proceedings. No other medical or mental health records were provided. There was insufficient evidence that the applicant was diagnosed with PTSD while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed no mental health records.

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

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed PTSD at the time of the misconduct. No mental health records were included in the application, and JLV showed no mental health records.

(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.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence, beyond self-report, that the applicant was experiencing PTSD while on active service. Additionally, there is no nexus between his asserted mental health condition and his misconduct related to possession of and selling hashish: 1) these types of misconduct are not typically part of the natural history or sequelae of PTSD; 2) his asserted mental health condition does not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the

applicant contends he was experiencing PTSD 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 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 short term of honorable service completed prior to a pattern of misconduct leading to the applicant's separation, the type of misconduct involved and the findings of the the medica review related to any mitigation, 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.

1/7/2025

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, 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 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 15-185 (Army Board for Correction of Military Records) 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

3. Army Regulation AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, MSO, or period for which called or ordered to active duty.

c. 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, security reasons, or in lieu of trial by court-martial.

d. Chapter 3, Section IV, paragraph 3-10, provides that a Soldier will be given a BCD pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing staff judge advocate.

4. Army Regulation 635-8 (Separation Processing and Documents). The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of REFRAD, retirement, or discharge. The DD Form 214 is not intended to have any legal effect on termination of a Soldier's service.

5. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE code "1" applies to personnel who have completed their obligated term of active service and are considered qualified to reenter the U.S. Army if all other criteria are met
- RE code "2" Applies to persons not eligible for immediate reenlistment
- RE code "3" applies to personnel who are not considered fully qualified for reentry or continuous service at time of separation, but whose disqualification is waivable. They are ineligible unless a waiver is granted
- RE code "4" applies to personnel separated from last period of active-duty service with a nonwaivable disqualification

6. Army Regulation 635-5-1 (Separation Program Designator Codes) states that the Separation Program Designator (SPD) codes are three-character alphabetic combinations which identify reasons for, and types of, separation from active duty. SPD code "JJD" is the appropriate code to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200, Chapter 3, based on Court Martial. RE code of "4" is the appropriate corresponding RE code for SPD code "JJD".

7. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

8. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review

of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

9. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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. 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 based on 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. 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.

10. Title 10, U.S. Code, section 1552, the authority under which this Board acts, provides that 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 modify the severity of the punishment imposed.

11. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.

//NOTHING FOLLOWS//