

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 August 2024

DOCKET NUMBER: AR20230013802

APPLICANT REQUESTS: an upgrade of his bad conduct discharge (BCD).

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

- DD Form 149 (Application for Correction of Military Record)
- Two letters from the Veterans [REDACTED]
- A self-authored letter
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 12 May 1983

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 in effect, he requests an upgrade of his character of service. His mother did her best as a single parent to provide for him and his five other siblings, but he still needed a father figure. His brother, a retired Army command sergeant major, later became his role model and motivation to join the military. He did not realize that being away from home would have a negative impact on him. He was stationed in Germany, when he joined the US boxing team in hopes to help cope with his feelings. This resulted in multiple injuries to his head that have led to altered thinking and understanding. During this time, he also witnessed a Soldier's serious injury that was also traumatic and altered his life. He knows right from wrong; he acted out of character but not to harm others, and his behavior only harmed him and his family.
3. The applicant provides two letters from the Veterans [REDACTED], which reflect the following:

a. Mr. [REDACTED] states the applicant is enrolled in an intense treatment program that teaches him the coping skills he needs to maintain a sober life. He attends multiple classes and although he struggles at times, he is highly motivated in terms of his recovery.

b. Mr. [REDACTED] states the applicant is working diligently to regain stability in his life and is using all resources available to him in the program, to become a productive member of society. He consistently meets the program requirements and continues to enhance his knowledge on chemical dependency.

4. The applicant's service record reflects the following:

a. He enlisted in the Regular Army on 26 November 1979.

b. DA Forms 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)) reflect the applicant received the following non-judicial punishments (NJPs) under the provisions of Article 15, UCMJ:

(1) 22 April 1981: On 8 and 9 April 1981, for: without authority failing to go at the time prescribed to his appointed place of duty, a violation of Article 86, UCMJ. In addition, on 7 April 1981, for: having received a lawful order from a noncommissioned officer (NCO) and willfully disobey the same, a violation of Article 91, UCMJ. His punishment consisted of reduction to the grade of private E-2 (PV2) (Suspended for 60 days), forfeiture of pay of \$130.00 per month for one month, and 14 days restriction. He appealed his NJP, but his appeal was denied.

(2) 1 September 1981: On 18 July 1981, for: without authority absent himself and did remain so absent until on or about 21 July 1981, a violation of Article 86, UCMJ. In addition, on 22 July 1981, for: without authority failing to go at the time prescribed to his appointed place of duty, a violation of Article 86, UCMJ. His punishment consisted of reduction to the grade PV2, forfeiture of pay of \$100.00 per month for one month, and 10 days extra duty. He did not appeal.

d. Orders 041-206, dated 10 February 1982, show the applicant was reassigned to the United States (US) Army Disciplinary Barracks, Fort Leavenworth, KS.

e. General Court-Martial (GCM) Order Number 39, dated 29 April 1982, shows that the applicant was arraigned and tried before a GCM. On 9 February 1982, the sentence was adjudicated: To be reduced to the grade of private/ E-1, to forfeit all pay and allowances for a period of 36 months, to be confined at hard labor for a period of three years, to be discharged from the service with a BCD, (No previous convictions considered). Only so much of the sentence as provided for a BCD, confinement at hard labor for 15 months, forfeiture of all pay and allowances per month for 36 months and

reduction to the grade of PVT/ E-1 was approved. 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, the accused was confined in the US Army Disciplinary Barracks, Fort Leavenworth, KS. He plead guilty and was found guilty of all charges and specifications as follows:

(1) Charge I: Violation of the Uniform Code of Military Justice, Article 92.

Specification: On or about 2 August 1981, for wrongfully having in his possession a rubber tourniquet, a hypodermic syringe, with a hypodermic needle, all of the foregoing devices not having been issued in the cause of official duty or pursuant to valid prescription.

(2) Charge II: Violation of the Uniform Code of Military Justice, Article 134.

- Specification I: On or about 2 August 1981, for wrongfully having in his possession .083 grams, more or less, of a habit forming narcotic drug, heroin
- Specification II: On or about 2 August 1981, for wrongfully have in possession .37 grams, more or less, of marihuana in the hashish form, and 4.30 grams, more or less, of marihuana

f. On 15 October 1982, the Court having found the approved findings of guilty and the sentence correct in law and fact, and having determined on the basis of the entire record that they should be approved, such findings of guilty and the sentence were affirmed.

g. On 27 October 1982, the applicant was advised that he had 60 days from the date of notification of the decision of the US Army Court of Military Review to petition the US Court of Military Appeals for a grant of review with respect to any matter of law. He acknowledged receipt of the decision.

h. GCM Order Number 447, dated 3 December 1982, reflects that the unexecuted portion of the sentence to confinement was remitted, effective 30 December 1982.

i. GCM Order Number 337, dated 2 May 1983, shows that the sentence to BCD, forfeiture of all pay and allowances per month for 36 months becoming due on and after the date of the convening authority's action, confinement at hard labor for 15 months, and reduction to the grade of PVT, adjudicated 9 February 1982, has been affirmed and the unexecuted portion of the sentence to confinement was remitted, effective 30 December 1982. The provisions of Article 71(c) having been complied with, the sentence, as thus modified, was duly executed.

j. His DD Form 2-1 shows in:

- Item 5 (Overseas Service): he was stationed in Germany from 9 March 1980 through 8 February 1982 for a period of 23 months
- Item 21 (Time Lost): “810718 thru 810720 3 days AWOL” and “820209 thru 921229 324 impr[isonment]”

j. His DD Form 214 for the period ending 12 May 1983, shows he was discharged pursuant to AR 635-200 (Personnel Separations – Enlisted Personnel), Chapter 3-11. with a BCD, as a result of Court-Martial, other. He received a separation code of “JJD” and a reentry code of “4”. He completed 2 years, 6 months, and 23 days of active service. He had lost time from 18 July 1981 to 20 July 1981 and 9 February 1982 to 29 December 1982. His grade at the time of discharge was PVT/E-1.

5. The applicant did not provide any medical documentation to substantiate his claim of PTSD.

#### 6. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant’s ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 12 May 1983 bad conduct discharge. He has indicated on his DD 149 that PTSD is related to his request.

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. His DD 214 for the period of service under consideration shows he entered the Regular Army on 26 November 1979 and discharged with a bad conduct characterization of service on 12 May 1983 from Ft. Leavenworth, KS under the provisions provided in paragraph 3-11 of AR 635-200, Personnel Management – Enlisted Personnel (1 October 1982): As a Result of Court-Martial. His separation code of JJD denotes this separation was the result of court martial. The DD 214 shows no periods of Service in a hazardous duty pay area.

d. General Court-Martial Order #39 dated 29 April 1982 show the applicant pled guilty to and was found guilty of possession of drug paraphernalia, possession of heroin, and possession of marijuana.

e. His sentence was "a bad conduct discharge, confinement at hard labor for 15 months, forfeiture of all pay and allowances per month for 36 months and reduction to the grade of Private E-1."

f. Because of the period of Service under consideration, there are no clinical encounters in AHLTA.

g. JLV shows the applicant is receives humanitarian emergency care as a non-service-connected Veteran. He has been evaluated several times in 2023 for treatment of his alcohol dependence and assistance with 2 years of homelessness. On one of these lengthy evaluations, it is noted the applicant has military related PTSD. He is ineligible for service connection because of his bad conduct discharge.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant asserts PTSD.

(2) Did the condition exist or experience occur during military service? VA documentation shows he has military service-related PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge?  
YES: The condition is associated with avoidant behaviors and self-medication with alcohol and/or illicit drugs and therefore mitigates his periods of absence without leave and illegal drug possession.

#### 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 warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct leading to the applicant's separation and the findings of the medical review, the Board concluded there was sufficient evidence of an error or injustice warranting a change to the applicant's characterization. The Board recommended changing the applicant's characterization of service to Under Honorable Conditions (General).

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Under Honorable Conditions (General)
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

2/13/2025

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 3-11, 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.

4. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. By law, Title 10, U.S. Code, section 1552, this Board 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. The ABCMR does not have authority to set aside a conviction by a court-martial.

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

6. Army Regulation 635-5 (Personnel Separations - Separation 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.

7. 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

8. 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".

9. 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.



10. 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.

11. 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.

12. 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//