

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 July 2024

DOCKET NUMBER: AR20230014365

APPLICANT REQUESTS:

- an upgrade of his bad conduct discharge (BCD) to honorable
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to change his rank/grade from private/E-1 (PV1) to specialist/E-4 (SPC)
- a personal appearance hearing before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- self-authored statement, undated
- Certificate of Training, 5 August 2000
- Military dental record extracts, 17 January 2002 to 31 January 2008
- Memorandum of Assignment, 4 June 2002
- Permanent Order (PO) 123-1, 3 May 2003
- Certificate of Award, undated
- PO 78-2814 and Orders 78-3135, 18 March 2004
- Airborne Course Diploma, 26 March 2004
- five letters of support, 12 February 2008, and 14 February 2008 (4)
- DD form 214, 18 March 2010
- three letters of support, undated (2) and 13 October 2017
- ten-page psychological evaluation from Christian Psychotherapy Services, 25 October 2017
- two letters of support, 26 March 2022 and 24 May 2022
- Certificate of Training and Graduation program pamphlet, 17 February 2023

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:

a. Upon his return from a combat deployment, he immediately faced family issues, including his wife being missing, his father being admitted into an alcohol rehabilitation facility, and the death of his grandmother. All these issues, along with the trauma he dealt with while being on combat deployment, led to his mental health issues.

b. His military record before his return from deployment was stellar; it was not until his return that he began to have issues that affected his mental health. At the time of his court-martial, his military counsel did not provide nor request any mental health medical evaluation. Nothing related to mental health was used in his defense, nor was a mental health evaluation offered or requested by his military counsel before, during, or after his court-martial.

c. The Army did not provide him with the necessary medical treatment to assess, diagnose, or treat him for any possible mental health conditions after his combat deployment. He is seeking relief due to an untreated, undiagnosed mental health condition and hopes to be able to receive the benefits he feels he is entitled to after serving his country.

d. Although he received a BCD, he is currently a Virginia Beach Police Officer since August 2022. He has been married since May 2014 and has four children, with his oldest being a freshman in college. He serves in his position as a Police Officer with pride and is immensely proud of the family he has built; however, he still, along with his family, deals with the effects of his post-traumatic stress disorder (PTSD) in their daily lives. The applicant notes transgender as a condition related to his request; however, he provides no further details.

3. The applicant enlisted in the Regular Army on 15 January 2002, for 4 years. The highest rank/grade he held was SPC/E-4.

4. General Court Martial Order (GCMO) Number 24, issued by Headquarters, U.S. Army Infantry Center and Fort Benning, Fort Benning, GA on 15 February 2008, shows the applicant was found guilty of one specification of being absent without leave (AWOL) terminated by apprehension, from on or about 8 July 2004 through on or about 11 January 2008.

a. The court sentenced him to reduction to E-1, confinement for 3 months, and to be discharged from the service with a BCD. The sentence was approved on 10 April 2008.

b. The convening authority approved, and except for the portion of the sentence pertaining to a BCD, ordered the sentence executed. The record of trial was forwarded for appellate review.

5. The U.S. Army Court of Criminal Appeals upheld the findings of guilty and the sentence as approved by the convening authority. The findings of guilty and the sentence were affirmed on 20 May 2009.

6. GCMO Number 197, issued by Headquarters, U.S. Army Armor Center and Fort Knox, Fort Knox, KY on 11 December 2009, shows the sentence having been affirmed, was ordered duly executed.

7. The applicant was discharged on 18 March 2010, in the grade of E-1, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 3, as a result of court-martial – other. His service was characterized as bad conduct, with separation code “JJD” and reentry code “4.” He was credited with 4 years, 4 months, and 20 days of active service. His DD Form 214 shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized):
 - National Defense Service Medal
 - Global War on Terrorism Service Medal
 - Army Service Ribbon
 - Combat Infantryman Badge
 - Expert Infantry Badge
- Item 18 (Remarks):
 - CONTINUOUS HONORABLE ACTIVE SERVICE: 15 January 2002 thru 7 July 2004
 - MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE
- Item 29 (Dates of Time Lost During This Period):
 - 8 July 2004 thru 11 January 2008
 - 12 January 2008 thru 21 April 2008

8. The applicant provides the following documents, which are available in their entirety for the Board’s review within the supporting documents:

- a. Various military documents that show his dental health, record of assignment, and training before and after discharge.
- b. A ten-page psychological evaluation from Christian Psychotherapy Services that shows he was diagnosed with PTSD on 25 October 2017.

c. Ten letters of support, which state that he was a brave, smart, and phenomenal Soldier who, despite going AWOL, deserves a second chance. The letters further state that the applicant is a loving and caring father, husband, friend, employee, and co-worker with outstanding character and good standing in his community. He loves to help others and sets a notable example for others to follow at work, at home, and in his community.

9. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, 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.

10. 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.

11. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his bad conduct discharge (BCD) to honorable. He contends he experienced PTSD that 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 15 January 2002; 2) There is evidence the applicant deployed to Iraq in 2003; 3) General Court Martial Order on 15 February 2008, shows the applicant was found guilty of one specification of being absent without leave (AWOL) terminated by apprehension, from on or about 8 July 2004 through on or about 11 January 2008; 4) The applicant was discharged on 18 March 2010, in the grade of E-1, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 3, as a result of court-martial – other. His service was characterized as bad conduct.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) and civilian medical documentation provided by the applicant were also examined.

c. The applicant asserts he was experiencing PTSD while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with service-connected PTSD, and he does not receive any service-connected disability. The applicant did provide civilian medical documentation, dated 25 October 2017. It was a psychological evaluation completed by a Licensed Clinical Psychologist from Virginia Beach, VA. The applicant was provided a complete psychological evaluation, and he was diagnosed with PTSD related to his combat experiences in Iraq. It was noted the applicant was experiencing PTSD while on active service, and he would benefit from individual therapy.

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 mitigates his misconduct which led to his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed with PTSD by a civilian psychologist as a result of his experiences in combat while deployed to Iraq.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed with PTSD by a civilian psychologist as a result of his experiences in combat while deployed to Iraq.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. The applicant did go AWOL after extensive combat exposure. Going AWOL can be avoidant behavior, which is a natural sequelae to PTSD. Therefore, per Liberal Consideration, the applicant's misconduct, which led to his discharge is mitigable.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for conviction by court-martial for being absent without leave in desertion from 8 July 2004 to 11 January 2008. The Board found no error or injustice in the separation proceedings. However, the Board

reviewed and concurred with the medical advisor's review finding the applicant was experiencing post-traumatic stress disorder (PTSD) symptoms while on active duty which can be avoidant behavior associated with PTSD and therefore voted to grant partial relief to upgrade his discharge to under honorable conditions (General).

2. The applicant was given a bad conduct 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.

3. Additionally, the applicant requested restoration of his rank/grade to specialist (SPC)/E-4, which the Board determined was not in error or unjust and was executed as part of the approved sentence of the General Court-Martial and denied that portion of his request.

4. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 18 March 2010, to show his character of service as under honorable conditions (General).

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to restoring his rank/grade to SPC/E-4.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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. Title 10, U.S. Code, 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) 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.
4. 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 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.
 - 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.
5. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, 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 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. 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.

7. 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//