

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 July 2024

DOCKET NUMBER: AR20230014524

APPLICANT REQUESTS:

- an upgrade of his dishonorable discharge (DD)
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to change Item 12c (Net Active Service This Period) from 23 January 2001 to 13 December 2001
- a personal appearance before the Board

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. Counsel states:

a. The applicant was discharged following a court-martial over the alleged abuse of a trainee while the applicant was assigned as a drill sergeant. He had untreated mental health conditions stemming from post-traumatic stress disorder (PTSD) and other mental health disorders.

b. His first bout with PTSD was in 1986 when attempting to go absent without leave (AWOL) after an incident in the field in which he ran over another Soldier sleeping on the ground at a training area. The Army punished the applicant over his attempt to quit the Army, but he never received mental health counseling. The stigma at the time was only weak Soldiers went to see mental health. If a Soldier sought mental health, it would have affected their career. After the incident, the applicant was assigned to recruiting duty, where he observed several improprieties from his supervisors and other elements of his chain of command. The applicant remained on recruiting duty but again wanted to quit.

c. The applicant was later assigned to drill duty as a Drill Sergeant; a thorough evaluation of his mental health would have determined that he was not fit for duty as a Drill Sergeant because, by then, he had several other mental health issues that were untreated. The applicant admitted to being a heavy alcohol drinker to the point where he was having 6 to 8 alcoholic beverages per day; his command was aware of his alcohol use and would allow him to drink while on duty in the field.

d. The first time the applicant received any treatment was when he was referred to the Eisenhower Army Hospital for Alcohol Treatment. The Army failed to serve the needs of the applicant; however, this is a problem that at the time passed under the radar of Army Senior Officials. It was only after the wars in Iraq and Afghanistan that the Army began to recognize the needs for service members to receive counseling and treatment for mental health disorders without affecting their career prospects. The applicant was court-martialed and dishonorably discharged from the Army for offenses that, if he had received proper mental health treatment, could have been avoided.

3. The applicant enlisted in the Regular Army on 12 April 1983, for 4 years. He reenlisted four times from 8 April 1987 to 11 January 2000. The highest rank/grade he held was sergeant first class/E-7.

4. On 9 February 1987, he accepted nonjudicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice, for being derelict in the performance of his duty by failing to post a ground guide, on or about 21 October 1986. His punishment included reduction to specialist/E-4 (suspended to be automatically remitted if not vacated before 1 April 1987), forfeiture of \$100.00 pay per month for one month, and 45 days extra duty.

5. On 4 August 1989, the applicant received a letter of reprimand for violating a U.S. Army Recruiting Command regulation by maintaining an improper personal relationship with a prospect.

6. General Court Martial Order (GCMO) Number 2, issued by Headquarters, United States Army Training Center, Fort Jackson, SC, on 8 March 2001, shows the applicant was found guilty of:

a. Eight specifications of violating a Fort Jackson regulation by engaging in illegal association with Soldiers in-training, between on or about 24 June 2000 and 8 July 2000, one specification of unlawfully striking a Soldier, between on or about July 2000 and August 2000, and one specification of unlawfully striking a Soldier, on diverse occasions, between on or about May 2000 and August 2000.

b. The court sentenced him to reduction to private/E-1, confinement for 3 years, and to be discharged from the service with a DD on 23 January 2001.

c. The convening authority approved only so much of the sentence as provided for reduction to the grade of private/E-1, confinement for 18 months and a DD, and except for the portion of the sentence pertaining to a DD, ordered the sentenced executed. The record of trial was forwarded for appellate review.

7. A notice of court-martial order correction, U.S. Army Court of Criminal Appeals, dated 30 November 2001, ordered correction to GCMO Number 2, dated 8 March 2001 as follows:

- by deleting in line one Specification 1, Charge IV, the dates July 2000 and August 2000 and substituting therefor the dates July 1999 and August 1999
- by deleting in line one of Specification 2, Charge IV, the word and date and August 2000

8. The U.S. Army Court of Military Review documentation affirming the approved findings of guilty and the sentence, is not available in the record.

9. GCMO Number 166, issued by Headquarters, U.S. Army Field Artillery Center and Fort Sill, OK, on 6 March 2003, shows the sentence having been affirmed, was ordered duly executed.

10. The applicant was discharged on 30 January 2004, 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 dishonorable, with separation code “JJD” and reentry code “4.” His DD Form 214 contains the following entries:

- Item 12c: 19 years, 10 months, and 24 days of net active service
- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized):
 - Meritorious Service Medal (2nd Award)
 - Army commendation Medal (4th Award)
 - Army Achievement Medal (9th Award)
 - Army Good Conduct Medal (5th Award)
 - National Defense Service Medal with one bronze service star
 - Armed Forces Expeditionary Medal
 - Noncommissioned Officers Professional Development Ribbon with numeral 3
 - Army Service Ribbon
 - Overseas Service Ribbon (2nd Award)
 - Expert Infantry Badge
 - Driver and Mechanic Badge with Driver-W bar
 - Drill Sergeant Identification Badge

- U.S. Army Basic Recruiter Badge with one gold achievement star
- Item 18 (Remarks):
 - CONTINUOUS HONORABLE ACTIVE SERVICE: 12 April 1983 thru 7 April 1987
 - IMMEDIATE REENLISTMENTS THIS PERIOD: 8 April 1987 thru 7 April 1988, 8 April 1988 thru 3 November 1994, and 4 November 1994 thru 3 November 2000
 - MEMBER HAS COMPLETED FIRST FULL TERM OF SERVICE
- Item 29 (Dates of Time Lost During This Period): 23 January 2001 thru 13 December 2001

11. 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.

12. 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.

13. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his dishonorable discharge and correction of his DD Form 214 to change item 12c from 23 January 2001 to 13 December 2001. He contends he experienced Posttraumatic Stress Disorder (PTSD) and Other Mental Health Issues 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 12 April 1983 and he re-enlisted four times between April 1987 and January 2000. The highest rank he held was sergeant first class/E-7, 2) the applicant received an Article 15 on 09 February 1987 for being derelict in the performance of his duty by failing to post a ground guide on 21 October 1986, 3) on 04 August 1989 he received a letter of reprimand for violating U.S. Army Recruiting Command regulation by maintaining an improper personal relationship with a prospect, 4) a General Court Martial Order (GCMO) on 08 March 2001 shows the applicant was found guilty of 8 specifications of violating a Ft. Jackson regulation by engaging in illegal association with Soldiers in-training between June and July 2000, one specification of unlawfully striking a Soldier between July 2000 and August 2000, and one specification

of unlawfully striking a Soldier on diverse occasions between on or about May 2000 and August 2000. The U.S. Army Court of Criminal Appeals dated 30 November 2001 ordered correction by deleting the dates July 2000 and August 2000 and substituting thereafter the dates July 1999 and August 1999 for specification one and by deleting the word and date August 2000 in specification 2, Charge IV, 5) the applicant was discharged on 30 January 2004 under the provisions of Army Regulation (AR) 635-200, Chapter 3, as a result of court-martial-other, 6) the applicant earned numerous medals, ribbons and awards during his service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. Limited military treatment records were available for review in JLV. The applicant did not provide a copy of any BH-related service treatment records for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. Limited military in-service treatment records were available for review in JLV from 09 October 1998 through 27 March 2001. An MRI report dated 07 November 2000 was ordered due to 'rapid speech, reduced sleep, possible hypomania.' The report noted the impressions as 'negative MRI examination of the brain.' There were no other military BH-related treatment records available for review in JLV. The applicant's self-statement and VA Disability Benefits Questionnaire (DBQ) documents that the applicant reported he underwent treatment for alcohol use while in-service (no dates available); however, no in-service BH treatment records were available for review. A consultation report from a Regional Confinement Facility [original date of submission not specified] with an authorization date through 30 March 2001 though not closed until 14 February 2007 documented a request for consult with the reason stating, 'inmate at RCF with anti-social personality disorder on depakote and zyban. Inmate requesting change in meds due to inability to control rage.'

d. Per review of JLV the applicant is 100% service-connected through the VA for PTSD. He is also service-connected for several physical health conditions. The applicant completed two Compensation and Pension (C&P) examination(s) dated 20 January 2021 and 29 July 2023. The Disability Benefits Questionnaire (DBQ) dated 20 January 2021 diagnosed the applicant with Alcohol Use Disorder and Intermittent Explosive Disorder. The evaluation completed on 29 July 2023 documented the applicant as being diagnosed with the following conditions: PTSD; Schizoaffective Disorder, Bipolar Type; Alcohol Use Disorder, Severe, Recurrent; Amphetamine Use Disorder, Severe; Cannabis Use Disorder, Severe. The DBQ identified the applicant's stressor associated with his diagnosis of PTSD as being 'exposed to significant violence including the mutilation of others' while deployed to Haiti during a crisis. The provider noted that the applicant was actively psychotic during the interview and a poor reporter of history. It was noted that Schizoaffective Disorder and PTSD do not share a nexus

but that each of the conditions “worsens the other” and that substance use disorders are more likely for individuals with either diagnosis and that each diagnosis “worsens the others.”

e. VA records were available for review in JLV from 23 November 2018 through 01 July 2024. There were numerous VA BH records and the relevant information will be summarized below. The applicant initiated BH services through the VA on 27 September 2019 and completed BH intake on 11 October 2019. At that time, it was documented that the applicant was reporting seizures and rage that is directed towards the person he is angry with. The applicant reported he was treated with Fluoxetine for “rage-aholic” and stated his medication was given to HR to administer to him until the episode passes. It was documented that the applicant stated that his symptoms started in 1988 and prevented him from performing his military duties. Furthermore, it was documented that the applicant stated he cannot be controlled or sleep unless intoxicated. It was documented that the applicant reported he was medically referred for alcohol treatment (date note specified) when in the military after a physician smelled alcohol on his breath and assumed he was drinking on duty. The applicant thought he was also going to get treatment for his physical health concerns but was not and was in pain and angry every day. The applicant has remained in BH treatment with the VA to present day with his most recent BH visit occurring on 26 June 2024 and diagnoses noted as PTSD, Schizoaffective Disorder, Bipolar Type, Alcohol Dependence, Uncomplicated, Cannabis Dependence, Uncomplicated, and Other Stimulant Dependence, In Remission. For treatment of his BH conditions, the applicant is currently prescribed Naltrexone, Depakote, and Duloxetine and he has been trialed on other mood stabilizers, antipsychotics, and anti-depressant medications on-and-off throughout treatment. It was documented in his record that the applicant has had several suicide attempts since being discharged from the Army. The available documentation also notes that the applicant has engaged in inpatient substance abuse treatment both in the military and post-discharge (as previously noted, military treatment records are unavailable for review). It was also documented that the applicant has experienced legal problems since his discharge, including DWI and domestic disputes, though has not had any legal issues in more recent years.

f. An outside medical record was available for review in JLV. A medical note from SSM Health Medical Group-Family Medicine dated 03 June 2020 documented the applicant had depression, PTSD and anxiety. It was noted he was prescribed with Effexor XR and Citalopram and his symptom presentation included depressed mood, loss of interest, psychomotor agitation, difficulty concentrating, poor sleep, recurrent thoughts of death.

g. The applicant is applying to the ABCMR requesting an upgrade of his dishonorable discharge. He contends he experienced Posttraumatic Stress Disorder (PTSD) and Other Mental Health Issues that mitigates his misconduct. There are no BH records available from the applicant's time in service; however, there is documentation

from an MRI consult report documenting the applicant was referred for evaluation due to symptoms consistent with hypomania. There is also a DoD consult note available that documented the applicant was treated with a mood stabilizer while incarcerated. Post-discharge the applicant has been 100% service-connected through the VA for PTSD and also diagnosed with Schizoaffective Disorder, Bipolar Type as well as alcohol and substance use disorders.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant is 100% service-connected through the VA for PTSD and has also been diagnosed with Schizoaffective Disorder, Bipolar Type.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 100% service-connected through the VA for PTSD and has also been diagnosed with Schizoaffective Disorder, Bipolar Type. Service connection establishes that the condition existed during service.

(3) Does the condition experience actually excuse or mitigate the discharge? No. A review of JLV was void of any military BH treatment records. However, it was documented that the applicant was referred for an MRI in-service due to some symptoms consistent with hypomania (e.g., rapid speech and decreased sleep) in 2000. Additionally, while incarcerated in the military a consult was placed (date of consult unknown) and it was documented that the applicant was diagnosed with anti-social personality disorder and being treated with Depakote, which is a mood stabilizer. Since being discharged from the military, the applicant has been 100% service-connected through the VA for PTSD and has also been diagnosed with Schizoaffective Disorder, Bipolar Type as well as alcohol and substance use disorders.

i. The applicant's misconduct included 8 specifications of violating a Ft. Jackson regulation by engaging in illegal association with Soldiers in-training, unlawfully striking a Soldier, and striking a Soldier on diverse occasions. There is a possible association between mania and erratic behavior, poor decision making, impulsivity, increased irritability and aggression potentially leading to violence. Given the above, there is a possible nexus between his diagnosis of Schizoaffective Disorder, Bipolar Type and his misconduct. It is acknowledged by this Advisor that there is no date of onset specified for this condition though some of the limited in-service documentation is indicative of manic-like symptoms. However, given the seriousness of the applicant's misconduct as related to illegal associations with trainees and striking Soldiers, as suggested by the Kurta Memorandum, the misconduct characterized by physical assault and illegal associations appears to outweigh relief offered under the Liberal Consideration guidance. Regarding the applicant's assertion of PTSD, this condition does not interfere with one's ability to distinguish between right and wrong and act in accordance with the right. As such, BH medical mitigation is not supported.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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 wrongfully engaging in illegal associations with Soldiers in training as a drill sergeant, including kissing, touching private parts, passing notes, and providing alcohol to said Soldiers. The Board found no error or injustice in the separation proceedings based on the court-martial conviction. Based on a preponderance of the evidence, the Board concluded the characterization of service the applicant received upon separation was appropriate.
2. The applicant was given a dishonorable 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 his net active service period be adjusted to reflect 13 December 2001 vice 23 January 2001. The Board determined the applicant's separation date of 30 January 2004 is accurate and voted to deny relief. The Board noted the applicant's total net active service as 19 years, 10 months, and 24 days.
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:

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. 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) 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, 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 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//