

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 September 2024

DOCKET NUMBER: AR20230014662

APPLICANT REQUESTS: an upgrade of his bad conduct discharge.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Cover Letter, Department of Military and Veterans Affairs, Veteran Services Officer, undated
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 3 September 2014
- Army Service Records (10 pages)
- Compensation and Pension Exam Report, dated 30 May 2012

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 suffers from service-connected post-traumatic stress disorder (PTSD) caused by his service in Operation Iraqi Freedom in 2004 to 2005. During his deployment in support of Operation New Dawn, he was unable to manage his PTSD symptoms. The symptoms became so severe, he was unable to perform his duties or function appropriately. The alleged incidents where he did not obey orders and had altercations with others were directly caused by his unmanaged PTSD symptoms.
3. The applicant enlisted in the U.S. Army Reserve (USAR) on 30 March 1992.
4. The applicant was discharged on 31 March 1993, under the provisions Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 11-3a, by reason of entry level status. His DD Form 214 shows his service was uncharacterized, with separation code JGA and reentry code RE-3. He completed 5 months and 26 days of active service.

5. The applicant reenlisted in the USAR on 23 May 2003. He was awarded military occupational specialty 42A (Human Resources Specialist).

6. He deployed in support of Operation Iraqi Freedom from 7 September 2004 to 26 June 2005.

7. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 14 May 2005, for two specifications of violating a lawful general order (possessing pornographic material and wrongfully visiting the opposite gender's quarters); for disobeying a lawful order (a no contact order); and for being derelict in the performance of his duties, on or about 20 March 2005. His punishment consisted of reduction to specialist/E-4, forfeiture of \$978.00 pay, and 45 days of extra duty. His appeal of his punishment was denied.

8. The applicant was released from active duty on 26 July 2005, under the provisions of AR 635-200, Chapter 4, by reason of completion of required active service. His DD Form 214 shows his characterization of service was honorable, with separation code LBK. He completed 11 months and 16 days of active service. He was awarded or authorized:

- Army Good Conduct Medal
- National Defense Service Ribbon
- Iraqi Campaign Medal
- Global War on Terrorism Service Medal
- Armed Forces Reserve Medal with "M" device
- Army Service Ribbon
- Combat Action Badge

9. The applicant was ordered to active duty and deployed to Balad, Iraq, in support of Operation New Dawn on or about 15 March 2011.

10. Special Court-Martial Order Number 1, dated 12 January 2012, shows the applicant was arraigned at Victory Base Complex, Iraq, on 27 May 2011, for violations of the UCMJ. The charges were terminated by the convening authority. The charges and their specifications were withdrawn, without prejudice, on 24 June 2011.

11. The applicant's service record is void of a General Court-Martial Order. However, a DD Form 2707 (Confinement Order) shows that a General Court-Martial was arraigned at Joint Base Balad, Iraq, on 12 September 2011. The applicant was charged with four specifications of making a false official statement, four specifications of larceny of government property, and forgery. The applicant was sentenced to reduction to private/E-1, to be fined \$5,000.00 (with additional 6 months confinement if failed to pay

in 6 months), forfeiture of all pay and allowances, confinement for 6 months, and a bad conduct discharge.

12. On 25 January 2012, the applicant signed a Statement of Option, waiving a separation medical examination.

13. On 16 February 2012, the applicant was extended on active duty for the purpose of completing his confinement and UCMJ processing.

14. On 19 June 2012, the convening authority approved the applicant's sentence and, except for the bad conduct discharge, ordered the sentence executed.

15. The applicant was relieved from active duty and discharged on 3 September 2014, under the provisions of AR 635-200, Chapter 3, by reason of court-martial (other). His DD Form 214 shows his characterization of service was bad conduct, with separation code JJD. He completed 3 years and 18 days of active service, with lost time from 9 September 2011 to 9 February 2012. In addition to his previous awards, he was awarded or authorized the Iraqi Campaign Medal with campaign star and the Overseas Service Ribbon.

16. The applicant provides:

a. Copies of his Army Service Records (10 pages), which are summarized, in pertinent part, in the proceedings above.

b. A Compensation and Pension Exam Report, dated 30 May 2012, which will be reviewed and summarized in the "Medical Review."

17. 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.

18. Regulatory guidance provides a Soldier will receive a bad conduct discharge 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.

19. 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.

20. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his bad conduct discharge. He contends post-traumatic stress disorder (PTSD) mitigates his discharge.

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 in the U.S. Army Reserve (USAR) on 30 March 1992. He entered active duty on 5 October 1992 for the purpose of completing initial entry training.
- Applicant was discharged on 31 March 1993, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 11-3a, by reason of entry level status. His DD Form 214 shows his service was uncharacterized, with separation code JGA and reentry code RE-3.
- Applicant reenlisted in the USAR on 23 May 2003. He was awarded military occupational specialty 42A (Human Resources Specialist). The highest rank he would attain was sergeant/E-5.
- Applicant deployed in support of Operation Iraqi Freedom from 7 September 2004 to 26 June 2005.
- Applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on 14 May 2005, for two specifications of violating a lawful general order (possessing pornographic material and wrongfully visiting the opposite gender's quarters); for disobeying a lawful order (a no contact order); and for being derelict in the performance of his duties, on or about 20 March 2005.
- Applicant was released from active duty on 26 July 2005, under the provisions of AR 635-200, Chapter 4, by reason of completion of required active service. His DD Form 214 confirms his character of service was honorable, with separation code LBK.
- Applicant was ordered to active duty and deployed to Balad, Iraq, in support of Operation New Dawn on or about 15 March 2011.
- Special Court-Martial Order Number 1, dated 12 January 2012, shows the applicant was arraigned at Victory Base Complex, Iraq, on 27 May 2011, for violations of the Uniform Code of Military Justice. The charges were terminated by the Convening Authority. The charges and their specifications were withdrawn, without prejudice, on 24 June 2011.
- Applicant's service record is void of a General Court-Martial Order. However, a DD Form 2707 (Confinement Order) shows that a General Court-Martial was arraigned at Joint Base Balad, Iraq, on 12 September 2011. The applicant was charged with four specifications of making a false official statement, four specifications of larceny of government property, and forgery. The applicant was sentenced to reduction to private/E-1, to be fined \$5,000.00 (with additional six

months confinement if failed to pay in six months), forfeiture of all pay and allowances, confinement for six months, and a bad conduct discharge.

- Applicant was relieved from active duty and discharged on 3 September 2014, under the provisions of AR 635-200, Chapter 3, by reason of court-martial (other). His DD Form 214 confirms his character of service was bad conduct, with separation code JJD. He was credited with 3 years and 18 days of net active service, with lost time from 9 September 2011 to 9 February 2012.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, he "suffers from service-connected post-traumatic stress disorder (PTSD) caused by his service in Operation Iraqi Freedom in 2004 to 2005. During his deployment in support of Operation New Dawn, he was unable to manage his PTSD symptoms. The symptoms became so severe, he was unable to perform his duties or function appropriately. The alleged incidents where he did not obey orders and had altercations with others were directly caused by his unmanaged PTSD symptoms."

d. Active-duty electronic medical records available for review show a note dated 25 May 2007 indicating the applicant was assessed related to his combat tour in Iraq and was diagnosed with mild symptoms of PTSD. He was referred for therapeutic support but despite outreach he did not attend scheduled appointments. While in theater, on 9 April 2011, the applicant was assessed following a physical altercation. The applicant was provided with follow-up therapeutic supportive care (on 12,13,15,19 April 2011) but was not diagnosed with any BH condition. However, on 3 May 2011, he was diagnosed with Adjustment Disorder with Anxiety related to work stressor and issues with coworkers. The applicant was provided with supportive therapy focused on stress reduction.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected for PTSD.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence the applicant had an experience, deployment to a combat zone, and subsequent mental health condition during military service. However, his BH condition does not mitigate his misconduct.

g. Kurta Questions:

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

(2) Did the condition exist or experience occur during military service? Yes. The applicant is service connected for PTSD and the available active-duty electronic medical record indicates he was diagnosed with the following conditions while in service: PTSD and Adjustment Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Contrary to the applicant's statement that he was discharged due to "alleged incidents where he did not obey orders and had altercations with others," the available evidence indicates he was court martialed due to four specifications of making false official statements, four specifications of larceny of government property, and forgery. The applicant's BH condition does not mitigate theft/larceny, forgery, or making a false official statement. None of these acts are part of the history or natural sequelae of the applicant's BH conditions. In addition, the repeated pattern of his misconduct, along with the forethought required to create the false documents and impersonate another person's signature, indicates this was not a spur of the moment or impulsive decision. The applicant engaged in purposeful, conscious decision-making. Even if PTSD symptoms were present at the time of his misconduct, they do not affect the ability to distinguish right from wrong and act in accordance with the right.

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 false official statement, larceny of government property, and forgery. The Board found no error or injustice in the separation proceedings. The Board noted the applicant's contention of post-traumatic stress disorder; however, reviewed and concurred with the medical advisor's review finding sufficient evidence to support a behavioral health condition existed, but not that the condition mitigated his misconduct. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. The applicant was given a bad conduct discharge pursuant to an approved sentence of a 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.

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.

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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 (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. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.
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. prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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. It is not an investigative body.
4. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), 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//