

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 September 2024

DOCKET NUMBER: AR20230014683

APPLICANT REQUESTS:

- reconsideration of his request for upgrade of his dishonorable discharge to under honorable conditions (General) or honorable
- favorable change to his narrative reason for separation
- personal appearance before the Board

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

- DD Form 293 (Application for the Review of Discharge)
- Medical note from A\_D\_, licensed clinical social worker

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20180006968 on 16 July 2020.

2. The applicant states he went to the mental health combat clinic, two weeks before he committed "murder" of a detained Taliban commander. He was having serious mental health issues after earning his Combat Infantryman Badge. He told the clinic he was losing his "shit." Weeks go by; he couldn't sleep, and he was stressed out. He was taken off all duty, except guard duty. He snapped while on guard duty and executed the detained Taliban commander, in his cell. He watched his friends die. The Army did not assist him with his mental health issues, then they put him in prison. A cable news media organization is starting to cover his case. If he has to continue to fight for an upgrade, he will pull everyone he knows from the media into this matter.

3. Having previous honorable service in the Army National Guard, the applicant enlisted in the Regular Army on 29 October 2009.

4. The applicant served in Afghanistan from 1 August 2010 through 20 October 2010.

5. Before a general court-martial on 25 May 2011 at Fort Carson, CO, the applicant was found guilty of one specification of premeditated murder of an Afghan detainee by shooting him with a firearm, on or about 17 October 2010.

6. The court sentenced the applicant to reduction to reduction to E-1, confinement for life with the possibility of parole, and a dishonorable discharge. The sentence was approved on 20 October 2011, and the record of trial was forwarded for appellate review.

7. The available record is void of the appellate review and General Court-Martial Order affirming the applicant's sentence and ordering the discharge to be duly executed.

8. The applicant was discharged on 22 March 2013. He completed 1 year, 6 months, and 26 days of active service this period with 668 days of lost time. His DD Form 214 (Certificate of Release or Discharge from Active Duty) contains the following entries in:

- item 24 (Character of Service) – Dishonorable
- item 25 (Separation Authority) – AR [Army Regulation] 635-200 (Active Duty Enlisted Administrative Separations), Chapter 3
- item 26 (Separation Code) – JJD
- item 27 (Reentry Code) – RE-4
- item 28 (Narrative Reason for Separation) – Court-martial

9. Additionally his DD Form 214 shows he was awarded or authorized the:

- Afghanistan Campaign Medal with Campaign Star (Bronze Service Star)
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Combat Infantryman Badge

10. The applicant petitioned the ABCMR requesting upgrade of his dishonorable discharge. On 16 July 2020, the Board voted to deny relief and determined the overall merits of the case were insufficient as a basis to for correction of the applicant's records.

11. The applicant provides a medical note, dated 21 October 2023, which shows during his incarceration, he was diagnosed and treated for post-traumatic stress disorder (PTSD), major depressive disorder and generalized anxiety disorder. This letter is provided in its entirety for the Board's review within the supporting documents.

12. 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.

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

14. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a reconsideration of his previous request for upgrade of his dishonorable discharge to honorable (general) or honorable as well as a favorable change to his narrative reason for separation. His previous request for relief is summarized in Docket Number AR 20180006968 dated 16 July 2020. He contends he experienced Other Mental Health Issues that mitigates his misconduct. More specifically, the applicant asserts that he was having serious mental health issues after earning his Combat Infantryman Badge. He indicated that he was stressed, and he could not sleep and had been taken off of all duty except guard duty for mental health reasons. The applicant stated he 'snapped' while on guard duty and executed the detained Taliban commander. He reported that he had to watch his friends die and then snapped with mental health issues that the Army did not help him with. 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 previously honorably served in the Army National Guard. He enlisted in the Regular Army (RA) on 29 October 2009, 2) the applicant served in Afghanistan from 01 August 2010 through 20 October 2010, 3) on 25 May 2011, a general court-martial found the applicant guilty of one specification of premeditated murder on an Afghan detainee by shooting him with a firearm on or about 17 October 2010, 4) the applicant was discharged on 22 March 2013 under the provisions of Army Regulation (AR) 635-200, Chapter 3, separation code JJD and re-entry code RE-4, and the narrative reason indicated as court-martial, 5) the applicant was awarded several ribbons and medals during his service, some of which included the Combat Infantryman Badge and Afghanistan Campaign Medal with Campaign Star (Bronze Service Star), 6) on 16 July 2020 the Board voted to deny relief as the overall merits of the case were deemed insufficient as a basis for correction of the applicant's records.

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. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant's in-service BH history is well-outlined in the previous ABCMR proceedings. As such, a brief summary of the Advisor's findings and treatment history will be noted here and otherwise a more detailed history can be reviewed in Docket Number AR20180006968. There were no new treatment records available for review. Regarding the previous Medical Advisory, it was noted that premeditated murder was not a natural progression or normal sequelae of PTSD. It was also noted that although he had a prior in-service diagnosis of Psychosis, the available documentation, including objective testing, multiple hospitalizations, and ongoing outpatient observation and assessment indicated the applicant did not have psychosis or a thought disorder. The Advisor concluded that the applicant's premeditated murder of an Afghani detainee was not mitigated by PTSD and is more consistent with a characterological disorder.

d. The applicant initiated BH treatment in-service on 10 September 2010 while deployed and reported that he had been depressed and anxious prior to deployment with a worsening of his symptoms since deploying. The applicant was diagnosed with Acute Stress Disorder and was prescribed Trazodone and Sertraline. The applicant was re-evaluated by BH on 21 October 2010 under the auspices of a command-directed behavioral health evaluation (CDBHE) following the misconduct that led to his discharge and endorsed experiencing auditory hallucinations. The provider documented that there were no overt signs of psychosis at the time of the evaluation; however, that a diagnosis of a psychotic disorder should be considered. The applicant was deemed unfit for theater/duty due to being an acute safety risk and was recommended he be returned CONUS for further observation/evaluation and mental health treatment. He was also admitted to the Role 3 Ward as an extra safety precaution for additional monitoring in a structured environment. While admitted to the Role 3, the applicant was diagnosed with Adjustment Disorder with Disturbance of Emotions and Conduct. A Ft. Hood (now known as Ft. Cavazos) psychiatric discharge summary dated 05 November 2010 documented the applicant's discharge diagnosis as Psychosis Not Otherwise Specified (NOS) and was prescribed Zyprexa (antipsychotic), Klonopin (anxiolytic), and Ativan (anxiolytic). On 18 November 2018, he was diagnosed with Depression, Anxiety, and Psychosis NOS (noted to be reported by the applicant though not observed by the provider). His diagnosis of Psychotic Disorder NOS was maintained until 20 December 2010 when it was changed to Anxiety by his military treating psychiatrist, noting that his 'presentation, testing, and multiple psychiatric hospitalizations were inconsistent with psychosis.' The provider subsequently discontinued the applicant's antipsychotic medications. The applicant was psychiatrically hospitalized on January 2011 and the discharge paperwork documented that the applicant was re-started on antipsychotic medications and diagnosed with Psychosis NOS, Mood Disorder NOS, Rule out Malingering. On 10 January 2011, it was documented the applicant was transferring his psychiatric care to a civilian psychiatrist though would continue to follow-up with military

providers as a check-in. He was trialed on numerous antipsychotic, anxiolytic, and antidepressant medications while in-service. The applicant was transferred to Ft. Leavenworth on 26 May 2011 and his final diagnosis prior to transfer was documented as Mood Disorder NOS.

e. While incarcerated at Ft. Leavenworth, the applicant continued BH services and was treated for anxiety, PTSD, and insomnia. Records show he was also diagnosed with Adult Antisocial Behavior and Cluster B Traits. On 09 January 2014, one of his treating providers noted the applicant underwent two Sanity Board evaluations while in-service and documented that the initial sanity board diagnosed the applicant with Schizophrenia and PTSD and at the second evaluation he was diagnosed with Adjustment Disorder and Malingering [*Advisors Note*: the Sanity Board evaluations were unavailable for review to this Advisor]. It was documented in his records that the applicant had been doing well off of all of his medications, with the exception of Ambien and Atarax, and no longer needed to be treated for psychosis. The applicant's last BH encounter while incarcerated was dated 23 January 2018 and documented his diagnosis as Adjustment Disorder with Mixed Anxiety and Depressed Mood.

f. The applicant provided a letter dated 21 October 2023 from his treating provider at the United States Disciplinary Barracks. It was documented that the applicant started treatment with the provider in January 2016 until his release in 2017 [*Advisor's note*: presumed error as the applicant was release in 2018], to include individual psychotherapy and diagnostic evaluation(s). The provider diagnosed and treated the applicant for Posttraumatic Stress Disorder (PTSD), Major Depressive Disorder (MDD), and Generalized Anxiety Disorder (GAD), which the provider attributed to his time in the military. The provider documented that the applicant's BH symptoms started while in the military after experiencing combat. It was noted that the applicant witnessed multiple killings, to include that of his mentor and friend, the Chaplain. The provider documented that the applicant began having sleep disturbances, auditory hallucinations, mood disturbances, and homicidal ideation while overseas and during combat. The provider noted that at the time of his release from the Disciplinary Barracks his symptoms were not resolved and he has struggled since that time. The provider noted that the applicant continues to experience problems with mood disturbances, decreased motivation, nightmares, problems sleeping, pressured speech, disorganized thoughts, fixations on things/topics and obsessive thinking. Furthermore, the provider opined that the applicant would require ongoing treatment and his symptoms and difficulties will require lifelong treatment.

g. The applicant is not service-connected through the VA. However, it is noted that due to his discharge he is ineligible for VA services.

h. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence the applicant had a BH condition in-

service as his records indicate he was diagnosed with Mood Disorder NOS, Anxiety, Depression, and Psychosis NOS. It is of note that the applicant's diagnosis of Psychosis NOS was changed to Anxiety by his military treating providers following objective psychological testing, several inpatient psychiatric hospitalizations, and continued observation as his presentation was documented to be inconsistent with a psychotic disorder, though was later reinstated by a civilian treating provider during a civilian psychiatric hospital stay. While incarcerated, the applicant was diagnosed with anxiety, PTSD, insomnia, and Adult Antisocial Behavior. Although there is evidence that the applicant was diagnosed with several potentially mitigating BH conditions in-service, it is of note that he was charged with premeditated murder, which is not a natural progression or normal sequelae of any of his diagnosed BH conditions. Furthermore, the severity of the misconduct outweighs the relief offered by Liberal Guidance. As such, consistent with the previous Advisor's findings, BH mitigation is not supported.

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with Mood Disorder NOS, Anxiety, Depression, and Psychosis NOS while in-service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with Mood Disorder NOS, Anxiety, Depression, and Psychosis NOS while in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. While the applicant was diagnosed with several potentially mitigating BH conditions in-service to include Mood Disorder NOS, Anxiety, Depression, and Psychosis NOS, premeditated murder is not part of the natural progression or normal sequelae of any of these conditions. Moreover, his in-service diagnosis of Psychosis NOS was changed by his military treating providers to Anxiety following objective psychological testing, observation, and several inpatient psychiatric hospitalizations noting that his presentation was inconsistent with a psychotic disorder. Additionally, the applicant underwent two Sanity Board evaluations while in-service and although they were unavailable for review by this Advisor, regularity is presumed as it pertains to his discharge and sentencing. Available documentation from his treating provider while incarcerated documented the results of his second Sanity Board evaluation determined he met criteria for Adjustment Disorder and Malingering, which are not mitigating. Despite inconsistencies regarding his diagnosis of Psychosis NOS, the misconduct that led to his discharge is outweighed by the relief offered by liberal guidance due to the severity and premeditated nature of the misconduct. Consistent with the previous Advisor's findings, BH mitigation is not supported.

**BOARD DISCUSSION:**

1. 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 murder of a detained Afghan male by shooting him with a firearm. The Board noted the applicant's diagnosed mood disorder, anxiety, depression, and psychosis while in service; however, reviewed and concurred with the medical advisor's review finding the egregiousness of the misconduct outweighs the relief offered by liberal consideration and found mitigation was not supported. The Board found no error or injustice in the separation proceedings. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate. Additionally, the narrative reason assigned during separation processing was appropriate and the Board denied relief.

2. The applicant was given a dishonorable 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.

3. 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.

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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, Section 1556, 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.

2. 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.

a. Paragraph 2-9 states 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.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

c. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. At the time, this regulation prescribed the separation code "JJD" is the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, for court-martial.

4. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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.

c. Chapter 3, Section IV provided that a member would be given a dishonorable pursuant only to an approved sentence of a general court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed.

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. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, 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.

7. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating 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 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.

8. 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, Boards 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//