

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 October 2024

DOCKET NUMBER: AR20240000506

APPLICANT REQUESTS:

- Upgrade his bad conduct discharge
- Permission to appear personally before the Board

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

DD Form 293 (Application for Army Discharge Review Board (ADRB))

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 wants the bad conduct discharge off his DD Form 214 (Certificate of Release or Discharge from Active Duty) because he served his country, and his command did not treat him fairly.
 - a. The applicant adds he believes he was poisoned intentionally, and when he spoke out against his unfair treatment, they told him he would be sent home; they court-martialed him instead. The applicant argues he should be entitled to Veterans' benefits due to his service and because he was harmed as a result of his service during the Gulf War.
 - b. On his application, the applicant has checked blocks for PTSD (post-traumatic stress disorder), Other Mental Health issues, Sexual Harassment, and Reprisal/Whistleblower; however, he offers no further explanation and does not include any supporting documentary evidence.
3. A review of the applicant's service record shows the following:

a. On 13 October 1987, the applicant enlisted into the U.S. Army Reserve (USAR) for 8 years. On 15 October 1987, he entered initial active duty for training and, on 23 March 1988, following the award of military occupational specialty (MOS) 94B (Food Service Specialist), the Army released the applicant from active duty and returned him to his USAR unit.

b. On 23 July 1988, Permanent Orders awarded the applicant the Army Achievement Medal for meritorious service during the period 4 to 18 June 1988. On 18 August 1988, the applicant enlisted into the Regular Army for 4 years; at the time of his enlistment, he held the rank/grade of private (PV2)/E-2. On 15 October 1988, following the completion of airborne training, the applicant arrived at his new duty station in Korea. Effective 1 July 1989, the applicant's leadership promoted him to specialist (SPC)/E-4.

c. On or about 14 October 1989, the applicant completed his tour in Korea, and orders reassigned him to an airborne field artillery battalion at Fort Bragg, NC (now renamed Fort Liberty); he arrived at his unit on 16 November 1989.

d. On 20 August 1990, the applicant deployed to Southwest Asia in support of Operations Desert Shield/Desert Storm; he redeployed on 25 March 1991.

e. On 5 September 1991, and consistent with the applicant's pleas, a special court-martial empowered to adjudge a bad conduct discharge convicted the applicant of Uniform Code of Military Justice (UCMJ) violations.

(1) The applicant's command charged him with the following UCMJ Articles:

- Article 121 (Larceny of property valued in excess of \$100) – on 14 May 1991, the applicant stole property from PV2 [REDACTED]
- Article 130 (Housebreaking) – on 14 May 1991, the applicant unlawfully entered PV2 [REDACTED] barracks room with the intent of committing larceny

(2) The court sentenced the applicant to a bad conduct discharge and 5-months' confinement; the court immediately remanded the applicant to confinement.

f. On 19 September 1991, the Staff Judge Advocate (SJA) provided his recommendations for the convening authority's action on the applicant's case. The SJA incorrectly stated the court had convicted the applicant of "attempted larceny," and wrongly identified the applicant as "single" (the applicant was married, and his wife had testified at trial).

g. On 2 October 1991, and in accordance with a pre-trial agreement, the court-martial convening authority approved the bad conduct discharge, but reduced the

confinement sentence to 4 months (in addition, per Article 58a (Sentences: Reduction in Enlisted Grade upon Approval), UCMJ, the applicant was automatically reduced to the lowest enlisted grade). On 15 December 1991, the confinement facility released the applicant and returned him to duty.

h. On 16 January 1992, the Court of Military Review found the SJA's recommendations constituted a "plain error" and directed that the convening authority's action be set aside.

i. On 19 June 1992, after receiving revised SJA recommendations and issuing a replacement special court-martial order, the convening authority again approved the bad conduct discharge and directed the reduction of the applicant's term of confinement to 4 months.

j. On 2 February 1993, the command placed the applicant on involuntary excess leave pending the completion of his appellate process. On 24 November 1993, a special court-martial order announced the completion of the applicant's appellate process and directed the execution of the applicant's bad conduct discharge. On 15 February 1994, orders discharged the applicant accordingly.

k. The applicant's DD Form 214 shows he completed 5 years, 3 months, and 13 days of his 4-year enlistment contract. The report additionally reflects the following:

(1) Items 4a (Grade, Rate, or Rank) and 4b (Pay Grade) – Private (PV1)/E-1.

(2) Item 12h (Record of Service – Effective date of Pay Grade) – 2 October 1991.

(3) Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized):

- Southwest Asia Service Medal with two bronze service stars
- Army Achievement Medal
- National Defense Service Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Parachutist Badge
- Two marksmanship qualification badges

(4) Special Additional Information:

- Item 25 (Separation Authority) – Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 3 (Character of

Service/Description of Separation), section IV (Dishonorable and Bad Conduct Discharge)

- Item 26 (Separation (Separation Program Designator (SPD)) Code) – "JJD"
- Item 27 (Reentry (RE) Code) – RE-4
- Item 28 (Narrative Reason for Separation) – "Court-Martial, Other"

4. AR 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

5. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service as Bad Conduct Discharge (BCD). He contends he experienced an undiagnosed mental health condition, including PTSD, sexual assault/harassment (MST) and reprisal that mitigates his misconduct.

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 into the U.S. Army Reserve on 13 October 1987, and on 18 August 1988 he enlisted into the Regular Army. In August 1990 he deployed to Southwest Asia and redeployed in March 1991.
- The applicant was convicted on 5 September 1991 by a special court-martial of larceny of property and housebreaking, which resulted in a BCD. Following an appeal, he was discharged on 15 February 1994 and completed 5 year, 3 months, and 13 days of his enlistment contract.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he was treated unfairly as part of his discharge, and he indicated PTSD, MST, mental health, and reprisal as mitigating factors to his discharge. The application was void of any medical or mental health documentation. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed no history of mental health related treatment or diagnoses. The applicant is ineligible for VA healthcare.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, and a history of MST at the time of the misconduct. No records were provided, and no evidence was found in JLV.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. However, the applicant contends he had a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record and published DoD guidance for consideration of discharge upgrade requests, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's contentions, his statement regarding his conditions, his record and length of service to include deployed service in SWA, the nature of the charges and the results of the Court-martial that led to his separation. The Board considered the review and conclusions of the medical advisor. The Board agreed that there was insufficient evidence of medical or behavioral health documentation the military record or that he was diagnosed with PTSD or another psychiatric condition while on active service. The Board considered his statement regarding PTSD and that he says he was experiencing a mental health condition during service. However, the Board found that his self-report did not overcome the misconduct that led to separation. The applicant did not provide evidence of post-service achievement or conduct in support of clemency. Based on a preponderance of evidence, the Board determined that the applicant's character of service, as a result of a court-martial was not in error or unjust. The Board concurred with the correction in the Administrative Notes below.

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, except for the correction in the Administrative Notes that follow, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

6/10/2025

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.

ADMINISTRATIVE NOTE(S):

1. The applicant's DD Form 214, for the period ending 23 March 1988, reflects an uncharacterized character of service in item 24 (Character of Service); based on subsequent policy changes, the character of service should be honorable. Correct the applicant's DD Form 214, ending 23 March 1988, by deleting the current entry in item 24 and replace it with "Honorable."

2. The applicant served a tour in Korea and deployed for Operations Desert Shield/Desert Storm; however, his DD Form 214, ending 15 February 1994, is missing three authorized awards: Korea Defense Service Medal, Kuwait Liberation Medal, and Kuwait Liberation Medal. The awards should be added to item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized).

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides the following:

a. 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.

b. With respect to courts-martial, and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of a Secretary's Department may only extend to actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. The Secretary of the Army shall make such corrections by acting through boards of civilians within the executive part of the Army.

2. Title 10, USC, section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

3. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge). An honorable discharge was separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when subsequent honest and faithful service over a greater period outweighed disqualifying entries in the Soldier's military record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 3-7b (General Discharge). A general discharge was a separation from the Army under honorable conditions. When authorized, separation authorities could issue a general discharge to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-11 (Bad Conduct Discharge). A Soldier received a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate authority must have completed the review process, and the affirmed sentence ordered duly executed.

d. Section II (Secretarial Authority), chapter 5 (Separation for the Convenience of the Government) stated the separation of Soldiers was the prerogative of the Secretary of the Army. Except as otherwise delegated, such separations only occurred by the Secretary's authority and were to be based on a determination that the separation was in the best interests of the Army.

4. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation.

a. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in item 28 (Narrative Reason for Separation).

b. For item 27 (RE Code), the regulation referred preparers to the regulations governing enlistment/reenlistment.

5. AR 635-5-1, in effect at the time, stated Soldiers separated with a bad conduct discharge received an SPD of "JJD"; the associated narrative reason for separation was "Court-Martial, Other."

6. AR 601-210 (Regular Army and Army Reserve Enlistment Program), in effect at the time, covered eligibility criteria, policies, and procedures for the Active Army and RC enlistment program. Table 3-6 (Armed Forces RE Codes, RA (Regular Army) RE Codes) included the following list of the RE codes:

- RE-1 – for Soldiers who completed their term of active service and were considered qualified to reenter the U.S. Army
- RE-3 – applied to Soldiers who were not considered fully qualified for reentry or continuous service at time of separation, but the disqualification was waivable
- RE-4 – pertained to Soldiers with a nonwaivable disqualification

7. The SPD/RE Code Cross Reference Table, in effect at the time, provided instructions for determining the RE code for Active Army Soldiers. This cross-reference table showed the SPD code and a corresponding RE code. The SPD code of "JJD had a corresponding RE code of "4."

8. 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.

9. 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 (DRBs) and Board for Correction of Military/Naval Records (BCM/NRs) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including Post Traumatic Stress Disorder (PTSD); Traumatic Brain Injury (TBI); sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

10. 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.

11. Title 10, U.S. Code, section 1034 (Military Whistleblower Protection Act (MWPA), enacted 29 September 1988, amended Title 10 provisions relating to communications with a Member of Congress by prohibiting any person from restricting a member of the U.S. Armed Forces to communicate with an Inspector General (IG), except for communications that were prohibited by statute.

a. The law prohibited retaliatory personnel actions against a member for making or preparing to make such a communication.

b. The law also directed the Department of Defense IG (DOD IG) to promptly investigate any allegation that a prohibited personnel action has taken place or been threatened with respect to any communication to a Member of Congress or IG complaining or disclosing information reasonably believed to evidence a violation of law, mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. Within 10 days of completing such an investigation, the IG was required to report the results to the Secretary of Defense.

c. Members of the U.S. Armed Forces could, within 30 days after receipt of a copy of such investigative report, to petition the appropriate military board for correction of his or her military record concerning the matter, and the members were entitled to receive legal assistance by a judge advocate in any such matter before a military corrections board. The Act provided administrative procedures for the hearing of such petitions, together with appropriate corrective and disciplinary action to be taken and allowed for judicial review of any order resulting from such hearing, if petitioned for within 60 days after notice of the hearing's result.

12. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states:

a. The ABCMR decides cases on the evidence of record; it is not an investigative body.

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

b. An applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

//NOTHING FOLLOWS//