

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 September 2024

DOCKET NUMBER: AR20240001052

APPLICANT REQUESTS: an upgrade of his dishonorable character of service to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Certificate of Live Birth, J.T., dated 6 November 1946
- Delayed Certificate of Birth, dated 15 September 1967
- Social Security Cards (2)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 9 November 1989
- Unofficial Transcripts, Florida Agricultural and Mechanical (A&M) University dated 1995 to 1998
- letter, National Personnel Records Center (NPRC), dated 30 August 2018
- Dental Records (5 pages)
- Service Treatment Records (8 pages)
- Georgia Death Certificate, J.T., dated 21 December 2019
- letter, Child Support Program, dated 13 June 2023
- letter, U.S. Department of Education, dated 14 July 2023
- Social Security Administration (SSA) Informational Sheet
- letter, SSA, dated 17 October 2023
- letter, SSA, dated October 2023
- Lodging Receipts, dated 26 October 2023 to 10 November 2023
- Identification Card, Georgia Department of Community Health
- Driver License, State of Florida
- Certificate of Recognition, Mitchell County Branch National Association for the Advancement of Colored People (NAACP), dated 10 November 2023

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 was a top recruit and a junior officer at 18 years of age. He was too small and too young to be a brigade level legal specialist. He was overwhelmed with general court-martials, "a lot of murder and mayhem." He broke the Uniform Code of Military Justice (UCMJ) to provide for his disabled mother. He has lived below poverty because of his dishonorable discharge. The applicant notes post-traumatic stress disorder (PTSD) and other mental health as conditions related to his request.

3. The applicant enlisted in the Regular Army on 8 October 1985, for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty 71D (Legal Specialist). The highest rank he attained was specialist four/E-4.

4. Before a general court-martial, at Fort Stewart, GA on 15 March 1988, the applicant was found guilty of

- Charge I: one specification of wrongful distribution of cocaine on or about 16 June 1987 and one specification of wrongful possession of cocaine on or about 6 April 1987
- Charge II: one specification of unauthorized absence from his unit, from on or about 15 September 1987 until on or about 9 October 1987

a. The court sentenced him to separation from service with a dishonorable discharge, forfeiture of all pay and allowances, confinement for 36 months, and reduction to private/E-1.

b. The convening authority approved the sentence on 21 June 1988, and except for the portion of the sentence pertaining to a dishonorable discharge, ordered the sentence executed.

c. The record of trial was forwarded to the U.S. Court of Military Review for appellate review. The U.S. Court of Military Review found the findings and sentence correct in law and fact, and subsequently affirmed the findings and the sentence on 10 May 1989.

5. On 7 September 1989, the U.S. Court of Military Appeals denied the applicant's petition for a grant of review.

6. General Court-Martial Order Number 382, issued by the U.S. Disciplinary Barracks, U.S. Army Combined Arms Center, Fort Leavenworth, KS on 26 October 1989, shows the sentence was finally affirmed, the provisions of Article 71(c) had been complied with, and the dishonorable discharge was ordered to be duly executed.

7. The applicant was discharged on 9 November 1989, under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), paragraph 3-10, as a result of court-martial, in the rank of private/E-1. His DD Form 214 confirms his service was characterized as dishonorable, with separation code JJD and reentry code RE-4. He was credited with 1 year, 11 months, and 28 days of net active service, with lost time from 14 September 1987 to 16 September 1987, 9 October 1987 to 7 October 1988, and 8 October 1988 to 9 November 1989 (after normal expiration term of service). He was awarded or authorized the following:

- Army Service Ribbon
- Expert Marksmanship Qualification Badge with Rifle bar (M-16)
- Expert Marksmanship Qualification Badge with Grenade bar

8. The applicant provides:

a. The birth certificates and Social Security cards of him and his father, J.T., a copy of his father's death certificate, a copy of the applicant's Georgia Department of Health Identification card, and Florida State driver license.

b. Unofficial transcripts, from Florida A&M University, for the fall semester 1995 to spring semester 1998.

c. A letter, dated 30 August 2018, from the NPRC shows the applicant requested his medical records. NPRC provided the applicant's dental records, immunization records, and entry physical exams, which will be reviewed and summarized in the "Medical Review" section of this Record of Proceedings (ROP).

d. A letter from the Florida Department of Revenue, Child Support Program, dated 13 June 2023, shows the applicant was behind in his child support payments and risked having his driver license and motor vehicle registration suspended.

e. An informational sheet, from the SSA, shows the Expedited Veterans Disability Claim process; a letter from the U.S. Department of Education, dated 14 July 2023, shows the applicant was eligible for Total and Permanent Disability (TDP) discharge of his student loans due to his TDP eligibility from the SSA; an additional hand-written letter, shows the applicant requested a backpay disbursement from the SSA due to financial hardship.

f. Eleven pages of receipts show lodging expenses from 26 October 2023 to 10 November 2023.

g. A Certificate of Recognition was presented to the applicant on 10 November 2023, from the Mitchell County Branch NAACP, in appreciation of his tireless efforts in support of the U.S. Armed Forces.

9. In the processing of this case, the Army Review Boards Agency (ARBA) sent a letter to the applicant, on 7 May 2024, requesting medical documentation to support his request. In a response, dated 16 May 2024, the applicant stated evidence of his PTSD was noted in an independent medical examination included in a Workman's Compensation Claim and Supplemental Security Income Claim.

10. 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.

11. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

12. Based upon the applicant's contentions of PTSD and other mental health as mitigating factors surrounding his discharge, the ARBA medical staff provides a written review of the applicant's medical records, outlined in the "MEDICAL REVIEW" section of this ROP.

13. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his dishonorable character of service to honorable. 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 (RA) on 08 October 1985 as a 71D (Legal Specialist), 2) on 15 March 1988 before a general court-martial the applicant was found guilty of the wrongful distribution of cocaine, wrongful possession of cocaine, and an unauthorized absence from his unit, 3) the applicant was discharged on 09 November 1989 under the provisions of Army Regulation (AR) 635-200, paragraph 3-10, as a result of court-martial. His service was characterized as dishonorable with a separation code of JJD and re-entry code RE-4.

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. The

electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. A Report of Medical Examination conducted for the purposes of enlistment dated 01 November 1984 documented item number 42, psychiatric, as 'normal' on clinical evaluation. The associated Report of Medical History shows the applicant did not endorse any history of BH-related concerns (e.g., no history of suicide, nervous trouble of any sort, etc.). A review of JLV was void of medical information. It is of note that the applicant's dishonorable discharge renders him ineligible for VA services. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends his misconduct was related to PTSD and Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

d. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to PTSD and Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of PTSD or Other Mental Health Issues. In absence of documentation supporting his assertion there is insufficient evidence to establish his misconduct was related to or mitigated by PTSD or Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation.

BOARD DISCUSSION:

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 DoD guidance for liberal consideration of discharge upgrade requests. The applicant's trial by a court-martial was warranted by the gravity of the offense charged (possession, distribution, and unauthorized absence). The applicant's conviction and discharge were conducted in accordance with applicable laws and regulations and the discharge appropriately characterizes the misconduct for which he was convicted. He

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. The Board found no error or injustice in his separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding insufficient evidence to support the applicant had a behavioral health condition/diagnosis during his time in military service. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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, 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 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 provided that 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. Paragraph 3-7b provided that 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 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.
4. 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.

5. 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.

6. 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//