

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 October 2024

DOCKET NUMBER: AR20240002089

APPLICANT REQUESTS: his bad conduct discharge (BCD) be upgraded. Additionally, he requests and appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement

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 suffering from post-traumatic stress disorder (PTSD) from the death of his mother while on active duty. He developed a serious drinking problem to cope. He asked his chain of command for help numerous times but was denied. His duty was put first.

a. He provides a letter and states his commander told him his mother had died. He went home on emergency leave and when he returned, he started to drink heavily because he couldn't cope with her death. His alcoholism started to interfere with him and his duty. He told his leadership that he needed help, but he was denied after trying several times.

b. He loaned a sergeant some record albums and the sergeant did not return them. The applicant was drunk when he confronted the sergeant to get his albums back after asking several times. The sergeant hit him in his face and knocked him to the floor. The applicant was not thinking because he was very intoxicated and wanted to scare the sergeant, so he grabbed an axe and knocked on his door. The sergeant did not answer. The applicant never took a swing at him or raised the axe. The military police came, and he was arrested for aggravated assault. He was returned to the unit the next morning

and the chain of command tried to get him some help, but it was too late he was court martialled.

c. The applicant plead guilty at the advice of his attorney, but he didn't want to. He wanted to face his accusers. He was sentenced to confinement and reduced from specialist/E-4 to private/E-1. The applicant notes PTSD and Traumatic Brain Injury (TBI) as conditions related to his request.

3. The applicant enlisted in the Regular Army on 16 December 1980, for 3 years. His military occupational specialty was 64C (Motor Transport Operator).

4. The applicant served Korea from 22 April 1981 through 28 April 1982.

5. The Psychiatric Evaluation, dated 30 September 1983 shows a diagnosis of mixed personality disorder. The applicant had past difficulties and personality disorder traits. There was no psychiatric disease or defect which warranted disposition through medical channels. The recommendations were that the applicant be held responsible for his own actions as he knows right from wrong. He was restricted to the barracks and watched constantly to prevent him from harming other individuals.

6. Before a special court-martial adjudged on 21 November 1983, the applicant was found guilty of:

- without proper authority, willfully damaging by hitting with an axe a window and a door, of a value of greater than \$100, on or about 26 September 1983
- commit an assault upon Sergeant E.D.S\_\_ by striking at him with a means or force likely to produce grievous bodily harm, on or about 26 September 1983
- the court sentenced him to reduction to private/E-1, to be discharged from the service with a BCD, forfeiture of \$382.00 pay per month for four months, and confinement for four months

7. The applicant was confined by military authorities on 21 November 1983. He was convicted by court martial.

8. DA Form 3822-R (Report of Mental Status), dated 1 December 1983 shows the applicant had the capacity to understand and participate in the proceedings, was mentally responsible, and met retention requirements.

9. SF 93 (Report of Medical History) shows in item 25 (Physician's Summary) depressed over recent death of mother. The applicant was qualified for separation.

10. The convening authority approved the sentence on 23 December 1983 and the record of trial was forwarded to the U.S. Army Court of Military Review for appellate review.

11. The applicant was present for duty on 24 February 1984 after being released from confinement.

12. The U.S. Army Court of Military Review affirmed the findings of guilty and the sentence, on 1 May 1984.

13. General Court-Martial Order Number 46, issued by Headquarters, 1st Infantry Division, Fort Riley, KS on 6 August 1984, shows the sentence having been complied with, was ordered to be duly executed.

14. The applicant was discharged on 24 August 1984. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), Chapter 3, Section IV, as a result of court-martial, with Separation Code JJD and Reenlistment Code 4. His service was characterized as bad conduct. He completed 3 years, 5 months, and 4 days of net active service this period. He lost time from 21 November 1983 to 23 February 1984. His awards include the Army Service Ribbon, Overseas Service Ribbon, Army Achievement Medal, and the Noncommissioned Officer Professional Development Ribbon (1).

15. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

16. On 23 July 2024, an agency staff member requested the applicant provide medical documents that support his issue of PTSD and TBI.

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

18. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his bad conduct discharge (BCD). The applicant notes PTSD and Traumatic Brain Injury (TBI) as conditions related to his request.

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:

- Applicant enlisted in the Regular Army on 16 December 1980.
- Applicant served in Korea from 22 April 1981 through 28 April 1982.
- Before a special court-martial adjudged on 21 November 1983, the applicant was found guilty of:
  - without proper authority, willfully damaging by hitting with an axe a window and a door, of a value of greater than \$100, on or about 26 September 1983
  - commit an assault upon Sergeant E.D.S\_\_ by striking at him with a means or force likely to produce grievous bodily harm, on or about 26 September 1983
  - the court sentenced him to reduction to private/E-1, to be discharged from the service with a BCD, forfeiture of \$382.00 pay per month for four months, and confinement for four months
- Applicant was discharged on 24 August 1984. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), Chapter 3, Section IV, as a result of court-martial, with Separation Code JJD and Reenlistment Code 4. His service was characterized as bad conduct. He completed 3 years, 5 months, and 4 days of net active service this period. He lost time from 21 November 1983 to 23 February 1984.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states he was suffering from post-traumatic stress disorder (PTSD) from the death of his mother while on active duty. He developed a serious drinking problem to cope. He asked his chain of command for help numerous times but was denied. His duty was put first. He provides a letter and states his commander told him his mother had died. He went home on emergency leave and when he returned, he started to drink heavily because he couldn't cope with her death. His alcoholism started to interfere with him and his duty. He told his leadership that he needed help, but he was denied after trying several times. He loaned a sergeant some record albums and the sergeant did not return them. The applicant was drunk when he confronted the sergeant to get his albums back after asking several times. The sergeant hit him in his face and knocked him to the floor. The applicant was not thinking because he was very intoxicated and wanted to scare the sergeant, so he grabbed an axe and knocked on his door. The sergeant did not answer. The applicant never took a swing at him or raised the axe. The military police came, and he was arrested for aggravated assault. He was returned to the unit the next morning and the chain of command tried to get him some help, but it was too late he was court martialled.

d. Due to the period of service no active-duty electronic medical records were available for review. Hardcopy medical documentation evidences a psychiatric evaluation, dated 30 September 1983, which indicates the applicant did not meet criteria for any significant psychiatric disorder but his actions were as a result of personality disordered traits. The applicant was diagnosed with Mixed Personality

Disorder. The medical provider indicated there was no psychiatric disease or defect which warranted disposition through medical channels. The applicant should be held responsible for his own actions as he knows right from wrong. He was restricted to the barracks and watched constantly to prevent him from harming other individuals and it was recommended he be considered for expeditious discharge. The applicant also participated in a mental status evaluation on 1 December 1983. The evaluation indicates the applicant had no significant mental illness or diagnosis, he was mentally responsible, able to distinguish right from wrong, able to adhere to the right, and had the mental capacity to understand and participate in board proceedings.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and there is no evidence of the applicant receiving any mental health services.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts PTSD and TBI as related to his request.

(2) Did the condition exist or experience occur during military service? No. The available medical documentation indicates the applicant had no psychiatric disease or defect but evidenced personality disordered traits.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was discharged due to willfully damaging a window and a door with an axe and assault by striking with a means or force likely to produce grievous bodily harm. He was charged with damage of government property and aggravated assault. Although, the applicant asserts PTSD based on the death of his mother during active military service, grief is a natural response to the death of a loved one and does not meet diagnostic criteria for PTSD. The applicant did not provide any indication for his assertion of TBI and provides no medical documentation substantiating his assertions. There is no evidence of an in-service diagnoses of PTSD or TBI and the VA has not service-connected the applicant for any BH condition. And while the applicant self-asserts PTSD and TBI, he did not provide any medical documentation substantiating either diagnosis. However, regardless of diagnosis, neither PTSD or TBI would mitigate assault or destruction of property. Assault and destruction of property are not natural sequelae of either BH condition, and would not mitigate the reason for his discharge. In addition, neither PTSD nor TBI impact the ability to distinguish right from wrong and act in accordance with the right.

**BOARD DISCUSSION:**

1. The Board determined 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.

2. 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.

a. The evidence shows the applicant was convicted by a court-martial that sentenced him to a bad conduct discharge. The applicant's trial by a court-martial was warranted by the gravity of the offenses charged (willfully damaging by hitting with an axe a window and a door and committing an assault). 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 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. The Board found no error or injustice in his separation processing.

b. 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 during military service that mitigates his discharge. 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 available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, 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.

ADMINISTRATIVE NOTES:

Based on the applicant's service in Korea from\_22 April 1981 through 28 April 1982, he is eligible for award of the Korea Defense Service Medal.

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.

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. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. 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.

4. Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), 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 provided that an enlisted person would be given a BCD 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.



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 Service 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 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.

7. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and BCM/NRs on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//