

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 December 2024

DOCKET NUMBER: AR20240002637

APPLICANT REQUESTS: upgrade of his bad conduct discharge (BCD) to under honorable conditions (general) or honorable.

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

- DD Form 293 (Application for the Review of Discharge)
- Self-authored letter
- Character reference letters (4)
- Various in-service documents

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 the day his life took a dramatic change is hard to forget. His unit had been back from Iraq for maybe a month or two. He was in the barracks and had started drinking early with a few friends. At some point someone had the idea to go out to a local bar. While at the bar, a Soldier from his unit told the applicant and his friends that another Soldier tricked him out of \$300.00 in euros. After hearing this they decided to get the money back, which sounded like a good idea. A physical altercation ensued, and the police were involved. That night, the applicant made young, dumb, and drunken decisions. He was never a troublemaker while in the Army. He wishes to be forgiven. Justice has been served; over time he has paid for his actions.
3. On his DD Form 293, the applicant notes post-traumatic stress disorder (PTSD) is related to his request.
4. The applicant enlisted in the Regular Army on 23 April 2003. The highest grade he attained was E-4.

5. A Defense Finance and Accounting Service foreign service verification email shows the applicant began service in Kuwait on 10 February 2004.

6. He reenlisted on 9 November 2004. He applicant departed Kuwait 18 December 2004.

7. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ); however, the relevant DD Form 458 (Charge Sheet) is not available for review.

8. Before a general court-martial on 21 November 2006, at Vilseck, Germany, the applicant was found guilty of one specification of stealing a cellphone by means of force and violence from another Soldier and 320 euros of a value of approximately \$384 on or about 15 March 2006.

10. The court sentenced the applicant to reduction to E-1, five months confinement, and to be discharged from the service with a BCD. The sentence was approved on 23 May 2007, and the record of trial was forwarded for appellate review.

11. General Court-Martial Order Number 26, issued by Seventh U.S. Army Joint Multinational Training Command, on 21 September 2009, noted the applicant's sentence had been affirmed and ordered the BCD to be duly executed.

12. The applicant was discharged on 12 May 2011. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 3, by reason of court-martial. His service was characterized as bad conduct (Separation Code JJD and Reentry Code 4). He was credited with 7 years, 8 months, and 18 days of net active service this period with 122 days of lost time. The Remarks Block listed his continuous honorable service

13. The applicant provides four character reference letters that collectively attest to his high moral compass, professionalism, work ethic, reliability, compassion, and the selfless service he provides others.

14. 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.

15. 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.

16. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his Bad Conduct Discharge (BCD) to under honorable conditions (general) or honorable. On his DD Form 293, the applicant indicated Posttraumatic Stress Disorder (PTSD) is related to his request. 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 on 23 April 2003, 2) the applicant began service in Kuwait on 10 February 2004 and departed on 18 December 2004, 3) on 21 November 2006 the applicant was found guilty by a general court-martial for stealing a cellphone by means of force and violence from another Soldier and 329 euros, a value of approximately \$384 on or about 15 March 2006, 4) the applicant was discharged on 12 May 2011 under the provisions of Army Regulation (AR) 635-200, Chapter 3, by reason of court-martial.

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) and Veterans Benefits Management System (VBMS) were also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. In-service medical records were available for review via JLV from 01 August 2005 through 25 June 2007, none of which were BH related. Included as part of his application, a Report of Medical Examination for the purposes of enlistment shows psychiatric was marked as 'normal' on clinical evaluation.

d. Review of the applicant's service records shows he earned a Good Conduct Medal on 12 July 2006 for his period of service from 23 April 2003 through 22 April 2006.

e. Review of JLV shows the applicant is not service connected through the VA for any BH conditions. A Psychology note dated 08 June 2022 shows the applicant is 10% service connected for Foot Condition and 0% service connected for Pyelonephritis and Eczema. An Initial PTSD Disability Benefits Questionnaire (DBQ) dated 04 February 2016 was reviewed. The evaluating provider diagnosed the applicant with Personality Disorder and Alcohol Use Disorder (AUD) and noted that he did not meet diagnostic criteria for PTSD. It was documented that the applicant reported while he was drinking heavily, he "engaged in an altercation in a public brawl, and as a result was released from the Army with a Bad Conduct Discharge." It was also documented that around this

time one of his close relatives had passed away. The provider documented he was on the following medications at the time of the evaluation: Xanax (anxiety), Ambien (sleep), Latuda (mood stabilizer), and Quetiapine (appeared to be used for treatment of sleep/nightmares). It was noted that he was claiming service connection for PTSD due to the following stressor “enemy fire coming across wall barely missing building and blowing out the back wall of camp and service and Iraq.” VA Rating Decision Letter(s) dated 31 March 2016 and 20 April 2016 show service connection for PTSD was denied.

f. The applicant’s VA treatment records were also reviewed. Review of the applicant’s VA problem list shows he has been diagnosed with PTSD, Chronic, Bipolar II Disorder (his problem list shows the date of onset as 2016), and Anxiety Disorder, Unspecified. His BH history was first documented through the VA on 02 March 2022 at a primary care visit. The applicant reported a previous treatment history for PTSD by a civilian/non-VA provider and reported experiencing flashbacks, nightmares, avoidance of large crowds, needing to have access to a door, and anxiety about ‘going out and doing stuff.’ The applicant also endorsed having memory issues noting he had been involved in an IED [blast]. He was referred to BH and neuropsychology due to his concerns related to memory and PTSD. In response to the referral, a neuropsychology consult note dated 03 March 2022 documented that there were likely several contributing factors to the applicant’s cognitive decline to include affective symptoms (e.g., PTSD), sleep apnea, and possibly B12. The neuropsychologist recommended referral to speech pathology to aid in developing compensatory skills for cognitive concerns, the TBI team for further evaluation, and BH for treatment of affective symptoms. He attended an initial BH appointment through the VA on 08 June 2022. The provider documented the applicant’s previous medication trials as noted in the C&P examination and noted that he reported symptoms consistent with PTSD, mania, and depression. At the time of the evaluation, the applicant was diagnosed with Unspecified Mood Disorder and Unspecified Trauma and Stressor Related Disorder with Rule Outs (R/O) of Bipolar II Disorder, Cyclothymia, and PTSD. The applicant was restarted on Latuda on 22 June 2022 for mood stabilization. It was also documented in the note that he had run out of his previous prescription for Latuda in 2015/2016 and had been off the medication since that time. The applicant reported his problems with anger started when he returned from Iraq in 2005/2006, noting he would ‘drink to kill the memories.’ The provider documented his diagnoses as Unspecified Mood Disorder, Rule Out (R/O) Bipolar II vs. Mood Disorder Secondary to GMC/Recently Diagnosed severe OSA and Unspecified Anxiety Disorder with a note to R/O PTSD related to combat as he did not meet full DSM 5 criteria. A consult note dated 14 September 2022, for the purposes of providing justification for his prescription of Latuda shows he was diagnosed with Bipolar Disorder, Current Episode Depressed Moderate and that he has PTSD resulting from military combat. A follow-up note from a clinical pharmacist shows the applicant was diagnosed with Chronic PTSD on 13 October 2022 and Prazosin was added to his medication regimen for treatment of nightmares. The applicant continued with medication management for his BH conditions through the VA with his last visit dated 24

July 2024 showing his diagnoses as Bipolar II Disorder, PTSD and Anxiety with medications noted as Latuda, Bupropion (antidepressant), and Melatonin (sleep).

g. Based on the available information, it is the opinion of the Agency Medical Advisor that there is evidence that the applicant has been diagnosed with several potentially mitigating BH conditions since being discharged from the military to include PTSD, Chronic, Bipolar II Disorder, Unspecified Mood Disorder, Unspecified Trauma and Stressor Related Disorder, and Unspecified Anxiety Disorder. His diagnoses of Unspecified Trauma and Stressor Related Disorder, and Unspecified Anxiety Disorder are subsumed by his diagnosis of PTSD and his diagnosis of Unspecified Mood Disorder is subsumed by his diagnosis of Bipolar II Disorder. The applicant was also diagnosed with Personality Disorder and AUD via a VA C&P examination which do not constitute mitigating conditions. The available clinical documentation through the VA indicates the applicant was being treated for Bipolar II Disorder in 2015/2016 and noted the onset of his diagnosis as 2016. While it is recognized by this Advisor that the applicant reported that he started experiencing symptoms consistent with mania during his service, his VA treating providers did not opine as to if the condition existed prior to 2016/2016 as documented nor associate the condition with his service. Although the applicant's treating providers associated his diagnosis of PTSD with his service in Iraq, the severity of the misconduct outweighs the relief under Liberal Guidance. As such, BH mitigation is not supported.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed with PTSD, Chronic by his VA treating providers.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed with PTSD, Chronic by his VA treating providers.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant's in-service medical records were void of an BH diagnosis or treatment history. A review of the applicant's service records shows that he was awarded the Good Conduct Medal prior to the misconduct, which is indicative of a possible change in behavior as there is no evidence of misconduct prior to the events that led to the applicant's discharge. Under Liberal Consideration, a change in behavior and performance may be considered as evidence of the presence of a BH condition. Review of the applicant's VA records shows that he has been diagnosed with at least one potentially mitigating BH condition post-discharge that is associated with his service, PTSD, Chronic. Although the applicant's treating providers associated his diagnosis of

PTSD with his service in Iraq, the severity of the misconduct outweighs the relief under Liberal Guidance. As such, BH mitigation is not supported.

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 (stealing a cellphone by means of force and violence from another Soldier and 320 euros). 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. 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 agreed with the medical reviewer's finding that although the applicant's treating providers associated his diagnosis of PTSD with his service in Iraq, the severity of the misconduct outweighs the relief under Liberal Guidance and as such, behavioral health mitigation is not supported. Furthermore, although the applicant provided character reference letters in support of a clemency determination, the Board did not find those sufficient to outweigh the misconduct he committed. Therefore, 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.

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 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, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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 (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 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.

4. 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.

5. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy 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.

6. 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.

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, 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//