

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 October 2024

DOCKET NUMBER: AR20240002698

APPLICANT REQUESTS: an upgrade of his characterization of service from "Bad Conduct" to either "Under Honorable Conditions" (General)" or "Honorable."

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- Character reference letters (9)
- Civilian Behavioral Healthcare Record (442 pages)

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 is seeking an upgrade of his Bad Conduct Discharge (BCD) to a discharge that will qualify him for Veterans Affairs (VA) benefits that will help with his mental health care costs. At the time of his misconduct, he was experiencing his first bout with a mental health condition that was not fully diagnosed by the Army medical system. His condition was diagnosed only as depression. He has since been diagnosed with severe bipolar I with schizo affective disorder with anxiety and depression. He was also having family hardships at the same time, which included his mother being diagnosed with severe mental illness and the passing of his grandmother. He was trying to get a hardship reassignment in order to be closer to his family.

a. His career started out great. He enlisted to fight for his country and the innocent lives taken on 9/11 and he took his oath very seriously. He worked hard and trained harder. He had a security clearance, his superiors recognized his level of performance, and trusted him to maintain and control the distribution of equipment. As a result, he was ascending through the enlisted ranks.

b. Unfortunately, he began experiencing depression and the start of a lifelong battle. He was prescribed anti-depressants which sent him into an out of control spiral unbeknownst to him, his doctors, and his chain of command. This led to him self-medicating with other drugs to alleviate the side effects of the prescription drugs.

c. He was court-martialed for using drugs. He feels he was unfairly represented because he was advised not to tell his story to the judge. Instead, it was recommended that he remain apologetic and take his punishment so the judge would be lenient on him. When asked by the judge if he was self-medicating, his lawyer advised him to answer "No." At that time, he was easily influenced due to his illness and not in a solid frame of mind.

d. He understands there was little known about his illness at the time and that training was not available to his superiors. However, if the proper channels had been in place and a proper diagnosis was made, he would likely have been able to continue his career. He has struggled with severe bipolar I with schizo effective disorder with anxiety and depression since his time in service. He is ashamed of his actions and has taken significant actions to give back to his country, his community, and those who have served.

3. On 4 February 2004, the applicant enlisted into the Regular Army for a period of 3 years. Upon completion of initial entry training, he was awarded military occupational specialty (MOS) 19K (M1 Armor Crewman). He was assigned to a unit located in Germany. He was advanced to private (PV2)/E-2 on 4 February 2005.

4. General Court-Martial Number 30 issued by Headquarters, 1st Armored Division on 14 September 2006 shows the applicant was arraigned at Hanau, Germany at a General Court-Martial convened by Commander, 1st Armored Division.

a. He pled guilty and was found guilty of the following charges and specifications in violation of the Uniform Code of Military Justice (UCMJ).

(1) Charge II, Article 112a, UCMJ: Specification 3: In that he did, at or near Friedberg, Germany, on or about 1 August 2005 and about 15 August 2005, wrongfully distribute four (4) pills of methylenedioxymethamphetamine (MDMA), a Schedule I controlled substance.

(2) Charge II, Article 112a, UCMJ: Specification 4: In that he did, at or near Friedberg, Germany, on divers occasions between on or about 1 August 2005 and about 15 August 2005, wrongfully use MDMA, a schedule I controlled substance.

(3) Charge II, Article 112a, UCMJ: Specification 5: In that he did, at or near Friedberg, Germany, between on or about 1 August 2005 and about 15 August 2005, wrongfully distribute some pills of MDMA, a Schedule I controlled substance.

(4) Charge II, Article 112a, UCMJ: Specification 6: In that he did, at or near Friedberg, Germany, between on or about 1 August 2005 and about 15 August 2005, wrongfully distribute some pills of MDMA, a Schedule I controlled substance.

(5) Charge II, Article 112a, UCMJ: Specification 7: In that he did, at or near Friedberg, Germany, between on or about 1 August 2005 and about 15 August 2005, wrongfully distribute some pills of MDMA, a Schedule I controlled substance.

(6) Charge II, Article 112a, UCMJ: Specification 8: In he did, at or near Friedberg, Germany, on or about 1 September 2005, wrongfully use amphetamine, a Schedule II controlled substance.

(7) Charge II, Article 112a, UCMJ: Specification 9: In that he did, at or near Friedberg, Germany, on or about 1 September 2005, wrongfully possess some amount of amphetamine, a Schedule II controlled substance, with the intent to distribute.

(8) Charge III, Article 134, UCMJ: Specification 1: In that he did, at or near Friedberg, Germany, on or about 2 September 2005, wrongfully endeavor to impede an investigation in the case of United States v. [the applicant] by flushing amphetamines, a Schedule II controlled substance, down a toilet.

(9) Charge III, Article 134, UCMJ: Specification 2: In that he did, at or near Friedberg, Germany, on or about 2 September 2005, wrongfully endeavor to impede an investigation in the case of United States v. [the applicant] by disposing of a plastic bag that contained amphetamines, a Schedule II controlled substance.

b. The applicant's sentence consisted of reduction to private/E-1, to be confined for fifteen months, and a BCD. The sentence was adjudged on 27 April 2006 and subsequently approved.

5. Orders and his DD Form 214 (Certificate of Release or Discharge from Active Duty) show the applicant was discharged in the grade of E-1 on 21 September 2007 under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 3, as a result of "Court-Martial." His service was characterized as "Bad Conduct." He was credited with completion of 2 years, 7 months, and 11 days of net active service. He had lost time due to confinement from 27 April 2006 until 3 May 2007. He did not complete his first full term of service.

6. The applicant provides the following documents which are available in their entirety for the Board's consideration.

a. Nine letters wherein the authors rendered favorable remarks about the applicant's character and his struggle to overcome drug and alcohol abuse. They also praise his contributions to his local chapter of the Veterans of Foreign Wars and his community.

b. The applicant's civilian Behavioral Healthcare Record (442 pages) shows he was treated several years for, in part, post-traumatic stress disorder (PTSD), bipolar affective disorder, anxiety, chronic depression, and attention deficit hyperactivity disorder.

7. 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.

8. Army Regulation 635-200 provides that a Soldier would be given a BCD pursuant only to an approved sentence of a general or special court-martial and that the appellate review must be completed, and the affirmed sentence ordered duly executed.

9. 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. Applicants do not have a right to a hearing before the ABCMR.

#### 10. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his characterization of service from "Bad Conduct" to either "Under Honorable Conditions" (General) or "Honorable." He contends OMH as 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 into the Regular Army on 4 February 2004.
- General Court-Martial Number 30 issued by Headquarters, 1st Armored Division on 14 September 2006 shows the applicant was arraigned at Hanau, Germany at a General Court-Martial convened by Commander, 1st Armored Division. He pled guilty and was found guilty of the following charges and specifications in violation of the Uniform Code of Military Justice (UCMJ):
  - Charge II, Article 112a, UCMJ: Specification 3: In that he did, at or near Friedberg, Germany, on or about 1 August 2005 and about 15 August 2005, wrongfully distribute four (4) pills of

- methylenedioxymethamphetamine (MDMA), a Schedule I controlled substance.
- Charge II, Article 112a, UCMJ: Specification 4: In that he did, at or near Friedberg, Germany, on divers occasions between on or about 1 August 2005 and about 15 August 2005, wrongfully use MDMA, a Schedule I controlled substance.
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  - Charge III, Article 134, UCMJ: Specification 1: In that he did, at or near Friedberg, Germany, on or about 2 September 2005, wrongfully endeavor to impede an investigation in the case of United States v. [the applicant] by flushing amphetamines, a Schedule II controlled substance, down a toilet.
  - Charge III, Article 134, UCMJ: Specification 2: In that he did, at or near Friedberg, Germany, on or about 2 September 2005, wrongfully endeavor to impede an investigation in the case of United States v. [the applicant] by disposing of a plastic bag that contained amphetamines, a Schedule II controlled substance.
  - Orders and his DD Form 214 (Certificate of Release or Discharge from Active Duty) show the applicant was discharged in the grade of E-1 on 21 September 2007 under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 3, as a result of "Court-Martial." He was assigned SPD code "JJD" and Reentry code "4." His service was characterized as "Bad Conduct." He was credited with completion of 2 years, 7 months, and 11 days of net active service. He had lost time due to confinement from 27 April 2006 until 3 May 2007. He did not complete his first full term of service.

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 states, he is seeking an upgrade of his Bad Conduct Discharge (BCD) to a discharge that will qualify him for Veterans Affairs (VA) benefits, that will help with his mental health care costs. At the time of his misconduct, he was experiencing his first bout with a mental health condition that was not fully diagnosed by the Army medical system. His condition was diagnosed only as depression. He has since been diagnosed with severe Bipolar I with schizoaffective disorder with anxiety and depression. He was also having family hardships at the same time, which included his mother being diagnosed with severe mental illness and the passing of his grandmother. He was trying to get a hardship reassignment in order to be closer to his family.

d. Active-duty electronic medical records available for review shows an initial behavioral health encounter on 17 March 2006 where the applicant was brought in my command since he was crying and distraught due to having a case with CID and charged with possession with intent to distribute and was potentially going to prison for 18 months. He reported being caught with ecstasy and having used an extensive amount of drugs. The clinician stated that it was unclear why he was not in the Substance Abuse Program. The applicant did not meet criteria for a diagnosis at that time but was referred for a psychiatric screening and to ASAP for substance abuse counseling. He participated in a psychiatric screening on 23 March 2006 and was diagnosed with Depression and occupational problems since he reported depressive symptoms due to his pending court martial for using and distributing MDMA. The applicant was again seen by psychiatry on 12 April 2006, and reported a childhood history of depression along with symptoms of anxiety and depression during military service, he was diagnosed with Dysthymic Disorder. While in confinement he was treated by primary care via medication management for Dysthymic Disorder and Insomnia. On 2 August 2006 the applicant participated in a psychiatric evaluation and was diagnosed with Depression. He continued to receive psychiatric care while in confinement with the final encounter dated 17 April 2007.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. The applicant provides medical documentation post-military service from civilian providers ranging from March 2013 to November 2023. His most recent behavioral health encounter dated 2 November 2023 indicates he was diagnosed with Schizoaffective Disorder, bipolar type, and Generalized Anxiety Disorder. In addition, the note indicates past psychiatric diagnoses, include: Bipolar Disorder, ADHD, Anxiety, PTSD related to childhood trauma, and chronic Depression. He further reported a history of heavy alcohol use, stating he drank up to a "40 rack" a day without getting intoxicated. However, had stopped drinking and stated he "quit a few years ago" and denied cravings. Overall, the medical

documentation shows the applicant was followed by this provider from April 2019 to November 2023 and had a brief encounter in September 2016. The applicant was psychiatrically hospitalized in April 2019 for medication stabilization due to Bipolar Disorder, single episode. The medical documentation further evidences a psychiatric evaluation dated 22 October 2012, from a separate civilian provider diagnosing the applicant with Mood Disorder, not otherwise specified; Rule out Major Depressive Disorder versus Bipolar Disorder; Posttraumatic Stress Disorder (PTSD); and Attention Deficit Hyperactivity Disorder (ADHD) by history.

Given the applicant's extensive reported history of alcohol abuse, it is likely the applicant had mental health issues during military service. However, his more significant mental health disorders may have developed as a result of alcohol-induced mental disorders given his reported history of alcohol abuse.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a behavioral health condition during military service. However, his BH condition only partially mitigates his misconduct, with his more serious offense of distribution and impeding an investigation not mitigated by his BH condition.

g. Kurta Questions:

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

(2) Did the condition exist or experience occur during military service? Yes. There is medical documentation indicating the applicant was diagnosed with Dysthymic Disorder and Depression during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. Given the association between the use of substances as a mechanism to cope with depression, the applicant's misconduct of wrongful possession of amphetamine and wrongfully using MDMA are mitigated by his BH conditions of Dysthymic Disorder and Depression during his time in service. However, the applicant also engaged in multiple instances of wrongfully distributing methylenedioxymethamphetamine (MDMA) a controlled substance, wrongfully endeavoring to impede an investigation by flushing amphetamines down a toilet and disposing of a plastic bag. His behavior evidenced purposeful, conscious decision-making and the clear capacity to understand consequences. The applicant's BH conditions would not mitigate distribution of a controlled substance along with impeding an investigation. This misconduct is not part of the natural history or sequelae of his mental health conditions and, even if symptoms of his mental health

conditions were present at the time of his misconduct, they do not impact one's ability to distinguish right from wrong and act in accordance with the right.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's mental health claim and the review and conclusions of the ARBA Behavioral Health Advisor. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct being only partially mitigated by a mental health condition. The multiple specifications of distribution of an illegal substance and impeding an investigation are not mitigated. Based on a preponderance of the evidence, the Board determined 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.

4/1/2025

XCHAIRPERSON  


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, 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. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. Title 10, USC, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Court-martial convictions stand as adjudged or modified by appeal through the judicial process, 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.
4. 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. prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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. It is not an investigative body.

5. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. 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. 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. A discharge under other than honorable conditions (UOTHC) is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, homosexual conduct, security reasons, or in lieu of trial by court martial in the following circumstances.

(1) An under-other-than-honorable-conditions discharge will be directed only by a commander exercising general court-martial authority, a general officer in command who has a judge advocate or legal advisor available to his/her command, higher authority, or the commander exercising special court-martial convening authority over the Soldier who submitted a request for discharge in lieu of court-martial (see chapter 10) when delegated authority to approve such requests.

(2) When the reason for separation is based upon one or more acts or omissions that constitutes a significant departure from the conduct expected of Soldiers of the Army. Examples of factors that may be considered include the following:

- Use of force or violence to produce bodily injury or death
- Abuse of a position of trust
- Disregard by a superior of customary superior-subordinate relationships

- Acts or omissions that endanger the security of the United States or the health and welfare of other Soldiers of the Army
- Deliberate acts or omissions that seriously endanger the health and safety of other persons

d. A bad conduct discharge will be given to a Soldier pursuant only to an approved sentence of a general or special court-martial. The appellate review had to have been completed and the affirmed sentence then ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing staff judge advocate.

e. A dishonorable discharge will be given to a Soldier pursuant only to an approved sentence of a general court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing staff judge advocate.

f. Chapter 5, paragraph 5-3 states separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums.

6. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC 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. 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 DRBs and BCM/NRs 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. 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.

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, 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//