

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 November 2024

DOCKET NUMBER: AR20240002960

APPLICANT REQUESTS:

- reconsideration of his previous request for an upgrade of his bad conduct discharge
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Letter from Commander, Headquarters, 3d Battalion, 11th Field Artillery, Fort Lewis, Washington to Applicant's Mother, 7 March 1991
- DD Form 2586 (Verification of Military Training and Experience)
- Four Character Letters
- Medical Documents

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20200008125 on 29 March 2021.

2. The applicant states after the war, he developed mental health issues. He received a bad conduct discharge for a driving under the influence (DUI). He self-medicated with alcohol. He was not aware and was in denial of having problems mentally. He continued self-medicating with alcohol for many years. He was diagnosed with post-traumatic stress disorder (PTSD) from the war. He has finally stopped medicating with alcohol and he takes medications for depression and anxiety now. He had mental issues for several years without realizing it. Once he realized it, he wants his honor of being a Soldier who proudly served this country back.

3. The applicant provides:

a. A letter, dated 7 March 1991, from the applicant's commander to his mother that he was deployed as part of Operation Desert Storm and since he did not deploy with the

entire battalion, he wanted to take this opportunity to assure her that the commander would attempt to keep track of him and respond to her concerns if it is within his capability to do so.

b. Verification of Military Experience and Training reflects the applicant's military experience, service occupations, and duty descriptions.

c. Character letters that attest to the applicant being a good friend serving commendably and his family and faith. It is unfortunate the applicant was medically diagnosed in 2019 with PTSD most likely a result of his duties and service during Desert Storm in 1991. Nevertheless, despite years of nightmares, depression, anxiety, and insomnia, he remains resilient! He refused to accept defeat and he will never quit. He is a good neighbor and served as youth choir member. He is currently employed and has never been afraid of work and has contributed greatly to the community. He is married and a father. After discharge he returned to serve his community. He provided guidance, strength and love for his children and family. He always displays a can-do attitude. He served proudly and returned home a stronger more mature man however he was diagnosed with PTSD a few years ago. Despite "it" he continued to do his best to be a better person.

4. The applicant's service record shows the following information:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) reflects the applicant enlisted in the Regular Army on 28 November 1988.

b. His DA Form 2-1 (Personnel Qualification Record – Part II) shows in item 5 (Oversea Service) he served in Saudi Arabia from 17 January to 30 March 1991.

c. The General Officer Memorandum of Reprimand (GOMOR), 10 April 1992, shows the applicant received GOMOR for being apprehended on 15 July 1990 by civilian law enforcement officials for DUI.

d. The GOMOR, 8 July 1992, shows the applicant received a second GOMOR for being apprehended on 7 June 1992 by civilian law enforcement officials for DUI.

e. Before a special court martial on 15 July 1992, the applicant was found guilty of operating a passenger car while drunk on or about 7 June 1992 and for driving with a suspended license on or about 7 June 1992. The court sentenced him to be discharged from the service with a bad conduct discharge; confinement for 2 months, forfeiture of \$485 pay per month for a period of 6 months, and reduction to the grade of private/E1.

f. The applicant's DA Form 2-1 shows in item 21 (Time Lost) he was in confinement from 15 July 1992 to 3 September 1992.

g. Special Court Martial Number 10, 26 July 1994, Headquarters, I Corps, Fort Lewis, WA shows the sentence having been affirmed and the provisions of Article 71 (c), Uniform Code of Military Justice, having been complied with, the bad conduct discharge was ordered executed.

h. The applicant was discharged on 18 May 1995. 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, by reason of court-martial, other with separation Code JJD and reentry code 4. His service was characterized as bad conduct. He completed 6 years, 4 months, and 2 days of active service. He had lost time from 15 July 1992 to 3 September 1992. He was awarded or authorized the:

- Army Achievement Medal (3rd oak leaf cluster)
- Army Good Conduct Medal
- National Defense Service Medal
- Southwest Asia Service Medal with 1 service star
- Army Service Ribbon
- Expert Marksmanship Qualification Badge with Rifle bar (M-16)
- Sharpshooter Marksmanship Qualification Badge Grenade

5. 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.

6. On 29 March 2021, the ABCMR determined 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 applicant's records and denied his application. A medical review was provided regarding this application: After reviewing the available information and in accordance with the 3 Sep 2014 Hagel Liberal Consideration Memorandum and the 25 Aug 2017 Clarifying Guidance, it is the opinion of the Agency Behavioral Health advisor that the applicant does not have a mitigating diagnosis. The applicant met retention standards at the time of discharge. The applicant does not have a service connection . Under liberal guidance, he does not have a mitigating factor for misconduct. Should medical documentation pertinent to the applicant's time in service become available, the Agency BH advisor will gladly reconsider the applicant's request for medical mitigation.

7. By regulation, (AR 15-185), the ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. 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.

8. 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.

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request for an upgrade of his bad conduct discharge. He contends he experienced mental health conditions including PTSD 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 on 28 November 1988; 2) The applicant served in Saudi Arabia from 17 January-30 March 1991; 3) On 10 April 1992, the applicant received a GOMOR for being apprehended on 15 July 1990 by civilian law enforcement officials for DUI; 4) Before a special court martial on 15 July 1992, the applicant was found guilty of operating a passenger car while drunk and for driving with a suspended license on 7 June 1992; 5) The applicant was discharged on 18 May 1995, Chapter 3, by reason of court-martial, other. His service was characterized as bad conduct.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service. The VA's Joint Legacy Viewer (JLV) and hardcopy civilian medical documentation provided by the applicant were also reviewed.

c. The applicant asserts he was experiencing mental health conditions including PTSD as a result of his deployment, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service.

d. A review of JLV was void of medical documentation, and the applicant does not receive any service-connected disability. The applicant provided hardcopy medical evidence dated 16 July 2019 that he was prescribed psychiatric medication by a physician to treat anxiety and associated disorders such as panic disorder, phobias, and PTSD. He also provided corresponding civilian medical documentation from the same provider the applicant was seen for major depression, exacerbated by PTSD stemming from combat exposure. The applicant was diagnosed with PTSD and major depressive disorder. The medical documentation did not provide information on the history of the onset of psychiatric symptoms, and it was unclear if the provider was a behavioral health provider.

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

## f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced mental health conditions including PTSD that mitigates his misconduct. There is evidence the applicant had been diagnosed by a civilian provider with major depression and PTSD in 2019. The applicant's PTSD diagnosis was attributed to the applicant's report of exposure to combat.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD while on active service. There is evidence in 2019, the applicant was diagnosed with PTSD stemming from combat exposure.

(3) Does the condition/experience actually excuse or mitigate the discharge? Partially, there is sufficient evidence beyond self-report the applicant in 2019 was diagnosed with major depressive disorder and PTSD. The applicant's civilian provider reported the applicant's PTSD stems from his combat exposure. Yet, there was insufficient evidence presented on the timeframe of the onset of his symptoms. The applicant was engaged in alcohol related misconduct during his active service. Specifically, he was found guilty of two incidents of DUI. Excessive alcohol consumption can an example of self-medicating or avoidant behavior, which is a natural sequelae to PTSD. However, there is no nexus between the applicant's major depressive disorder and PTSD and his misconduct of driving with a suspended license in that: 1) this type of misconduct is not a part of the natural history or sequelae of major depressive disorder and PTSD; 2) The applicant's major depressive disorder and PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing 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, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for conviction by court-martial. The Board majority found no error or injustice in the separation proceedings. Based on a

preponderance of the evidence, the Board majority concluded that the characterization of service the applicant received upon separation was appropriate.

2. The applicant 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.

3. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration, the Board majority determined relief was not warranted. The Board minority determined the applicant's assertion was sufficient enough to warrant a recommendation for relief and recommended a discharge upgrade to under honorable conditions (General).

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced mental health conditions including PTSD that mitigates his misconduct. There is evidence the applicant had been diagnosed by a civilian provider with major depression and PTSD in 2019. The applicant's PTSD diagnosis was attributed to the applicant's report of exposure to combat.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD while on active service. There is evidence in 2019, the applicant was diagnosed with PTSD stemming from combat exposure.

(3) Does the condition/experience actually excuse or mitigate the discharge? Partially, there is sufficient evidence beyond self-report the applicant in 2019 was diagnosed with major depressive disorder and PTSD. The applicant's civilian provider reported the applicant's PTSD stems from his combat exposure. Yet, there was insufficient evidence presented on the timeframe of the onset of his symptoms. The applicant was engaged in alcohol related misconduct during his active service. Specifically, he was found guilty of two incidents of DUI. Excessive alcohol consumption can an example of self-medicating or avoidant behavior, which is a natural sequelae to PTSD. However, there is no nexus between the applicant's major depressive disorder and PTSD and his misconduct of driving with a suspended license in that: 1) this type of misconduct is not a part of the natural history or sequelae of major depressive disorder and PTSD; 2) The applicant's major depressive disorder and PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

4. 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, the Board determined the overall merits of this case are insufficient as a basis for amendment of the ABCMR decision rendered in Docket Number AR20200008125 on 29 March 2021.

6/10/2025

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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.

REFERENCES:

1. Section 1556 of Title 10, U.S. Code (USC), 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 applicants (and/or their counsel) prior to adjudication.
2. Army Regulation 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The regulation in effect at the time of the applicant's discharge provided in:
  - a. Paragraph 3-7a, an honorable discharge is a separation with honor. 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, 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. Paragraph 3-11, 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 had been ordered duly executed.
3. 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.
4. 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 post-traumatic stress disorder (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.

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 Service Discharge Review Boards (DRB) and Service 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. 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.

6. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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.

7. Army Regulation 635-5 (Separation Documents), states, the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

8. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The separation code JJD (is to be used for Soldiers discharged for bad conduct).

9. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table shows the SPD code as "JJD" for bad conduct.

10. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

11. 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.

//NOTHING FOLLOWS//