

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 November 2024

DOCKET NUMBER: AR20240003696

APPLICANT REQUESTS:

- an upgrade of his bad conduct discharge to under honorable conditions (General)
- an upgrade of his narrative reason of separation to Secretarial Authority
- an upgrade of his corresponding separation and reentry codes

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

- DD Form 149 (Application for Correction of Military Record)
- The Veterans Consortium Letter
- The Veterans Consortium Agreement
- Self-Authored Statement
- Counsel's Petition
- Two Army Achievement Medal Certificates
- DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)), 17 July 1985
- Honorable Discharge Certificate
- Letter of Distinction
- Letter of Commendation
- Memorandum of Appreciation
- General Officer Letter of Commendation
- Memorandum for Distinct Performance
- Two Letters of Appreciation
- Permanent Orders 092-023 (Army Good Conduct Medal (Second Award)), 15 May 1990
- DD Form 2266 (Information for Hometown News Release)
- Assertions Issues (Pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982))
- Special Court-Martial Order Number 37, 30 October 1992
- Appellate Decision, 2 August 1993
- Summary of Request for Employment of Expert Witness
- Urinalysis Custody and Report Record

- Orders 200-13, 21 August 1997 (Promotion to Sergeant (SGT)/E-5)
- VA-Form 21-0781 (Department of Veteran Affairs Statement in support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD))
- Psychologist Evaluation

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 his misconduct and self-medication is directly tied to his PTSD, which is a mitigating factor. Had he received mental health counseling and medication for his PTSD back in 1992, he would not have needed to self-medicate and his path to a bad conduct discharge could have been interrupted. Further, had he served today, he likely would have received a general discharge under the dual processing system. Per the directives and considering similarly situated service members today, respectfully requests that the honorable Board should view his mental health condition as a mitigating factor in the misconduct and upgrade his discharge to an under honorable conditions (General). He served in the Army for 9 years and has suffered with a bad discharge for 30 years, but he was only recently able to access legal assistance from The Veterans Consortium.
3. The applicant provides:
 - a. The Veterans Consortium letter that indicates support on behalf of the applicant in seeking relief for his request for upgrade in his discharge.
 - b. The Veterans Consortium Pro Bono Program Agreement to engage an attorney which shows the applicant agrees and accepts free legal service.
 - c. A Self-Authored Statement to the Board recalling when he almost killed Bedouin boy begging for food.
 - d. Counsel's Petition that provides a very detailed summary of the applicant's military service.
 - e. Two Army Achievement Medal Certificates awarded for outstanding achievement while serving with the 2nd Armored Cavalry Regiment.

- f. The applicant has provided seven letters of distinction, commendation, and appreciation from notable colonels and a general officer noting his outstanding, performance, his demonstration of intelligence, good character, and high principles during his military service.
- g. DD Form 2266 shows information for hometown news release the reenlistment under the new excellence in the retention program.
- h. A copy of Assertions issues that indicates personal assertion of the applicant pursuant to United States v. Grostefon.
- i. Summary of Request for Employment of Expert Witness indicates Dr. J__ H__ be employed at government expense for purposes of testifying for the defense.
- j. A copy of Urinalysis Custody and Report Record that shows the laboratory results.
- k. VA-Form 21-0781 the applicant applied for support of a claim for service connection for PTSD, dated 3 March 2022.
- l. A copy of Psychologist Evaluation that provides the professional opinion of a licensed clinical psychologist the diagnosis of PTSD.

4. A review of the applicant's service record shows:

- a. He enlisted in the Regular Army on 10 May 1984.
- b. On 17 July 1985, he accepted nonjudicial punishment for wrongfully using marijuana between 31 March 1985 and 30 April 1985. His punishment included reduction to private (PVT)/E-2.
- c. On 1 September 1987, he was promoted to SGT/E-5.
- d. He served in Saudi Arabia from 6 October 1990 to 28 March 1991.
- e. On 20 August 1992, by Special Court Martial Order Number 37, he was convicted of one specification of wrongfully using cocaine between 17 May and 19 May 1992. His sentence was adjudged on 20 August 1992 and consisted of a bad conduct discharge. On 30 October 1992, the sentence was approved by the convening authority.
- f. On 2 August 1993, The U.S. Army Court of Military Review, on consideration of the entire record, including consideration of the issues personally specified by the appellant, held the findings of guilty and the sentence as approved by the convening

authority correct in law and fact. Accordingly, those findings of guilty and the sentence are affirmed.

g. Special Court-Martial Order Number 47 dated 5 November 1993, after Article 71(c) were complied with and the sentence was affirmed, ordered the bad conduct discharge executed.

h. On 1 December 1993, he was discharged from active duty with a bad conduct discharge characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 9 years, 6 months, and 22 days of active service. He was assigned separation code JJD and the narrative reason for separation listed as "As A Result of A Court-Martial," with reentry code 4. It also shows he was awarded or authorized:

- Army Achievement Medal (Fourth Award)
- Good Conduct Medal (2nd award)
- NCO Professional Development Ribbon (2nd Award)
- Overseas Service Ribbon
- National Defense Service Medal
- Southwest Asia Service Medal
- Bronze Service Star (2nd Award)
- Drivers Mechanic Badge with T Device
- Army Commendation Medal
- Saudi Arabian Medal of the Liberation of Kuwait
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- Marksman Marksmanship Qualification Badge with Hand Grenade Bar

5. By regulation, a member will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed and the affirmed sentence ordered duly executed.

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

7. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his bad conduct discharge to under honorable conditions (general), as well as a change in the narrative reason for separation to Secretarial Authority, along with favorable corresponding separation and reentry codes. The applicant asserts PTSD 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:

- The applicant enlisted into the Regular Army on 10 May 1984.
- On 2 August 1993, he was convicted by a general court-martial of one specification of wrongfully using cocaine between on or about 17 May and 19 May 1992. His sentence included a bad conduct discharge.
- On 1 December 1993, he was discharged from active duty with a bad conduct discharge characterization of service. His DD Form 214 shows he completed 9 years, 12 months, and 1 day of active service with no lost time. He was assigned separation code JJD and the narrative reason for separation listed as "As A Result of A Court-Martial," with reentry code 4.

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, his misconduct of self-medication is directly tied to his PTSD, which is a mitigating factor. Had he received mental health counseling and medication for his PTSD back in 1992, he would not have needed to self-medicate and his path to a Bad Conduct Discharge could have been interrupted. Further, had he served today, he likely would have received a general discharge under the dual processing system. Per the directives and considering similarly situated service members today, respectfully requests that the honorable Board view his mental health condition as a mitigating factor in the misconduct and upgrade his discharge to a general, under honorable conditions. He requests a waiver of the three-year time limit for requesting an upgrade. The Carson Memorandum specifically allows the Board to waive this limit where a veteran has been diagnosed with a mental health condition in this matter. He served in the United States Army for nine years and has suffered with a bad discharge for 30 years, but he was only recently able to access legal assistance from the Veterans Consortium. He requests that the Board waive the time limit in the interest of equity and justice.

d. Due to the period of service no active-duty electronic medical records were available for review.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and he has not received any treatment/behavioral health services via the VA. The applicant provides a mental health evaluation, dated 19 September 2023, completed by a licensed clinical psychologist. The evaluation was done entirely via a one-time self-report interview with the applicant and does not include any objective measures. In addition, it contains unsubstantiated information, as well as statements that are contrary to the existing VA electronic medical record, such as the applicant indicating he was treated by the VA for six months in 2013 and for two years between 2021 to 2023. In addition, the applicant reports being treated via antidepressant

medication by his primary care physician but provides no medical documentation. Despite the reported inconsistency, the evaluation does diagnose the applicant with Post-Traumatic Stress Disorder based on his reported involvement in combat while deployed.

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 BH condition during military service that mitigates his misconduct.

g. Kurta Questions:

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

(2) Did the condition exist or experience occur during military service? Yes. The applicant served in a combat zone and asserts experiencing traumatic events. He was diagnosed post-military service with PTSD by a licensed clinical psychologist based on his reported combat related trauma.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to one specification of wrongful use of cocaine. Given the association between PTSD and the use of substances to cope with the symptoms of the condition, the applicant's misconduct is mitigated by his BH condition. It is recommended the Board consider granting the applicant's request of an upgrade of his characterization to under honorable conditions (general) with separation code JKN.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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 for an offense under the Uniform Code of Military Justice. The Board found no error or injustice in the separation proceedings. However, the Board reviewed and concurred with the medical advisor's review finding the applicant was experiencing post-traumatic stress disorder (PTSD) symptoms while on active duty which can be avoidant behavior associated with PTSD and therefore voted to grant partial relief to upgrade his discharge to under honorable conditions (General).

2. The applicant was given a bad conduct discharge pursuant to an approved sentence of a general 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. Additionally, the applicant requested amendment of his separation code from JJD, narrative reason for separation, and corresponding codes; however, the Board found no error or injustice in the separation code, narrative reason for separation, or associated codes assigned during separation processing.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

██████ ████████ ████████ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 1 December 1993, to show his character of service as under honorable conditions (General).
2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to amendments of his DD Form 214 concerning his separation code, narrative reason for separation, and corresponding codes.

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. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a (Honorable discharge) states 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 the 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 (General discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Paragraph 3-7c (Under Other Than Honorable Conditions) states a discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, homosexuality, security reasons, or for the good of the service.
 - d. Paragraph 3-11 (DD Form 259A (Bad Conduct Discharge Certificate) states a member will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed and the affirmed sentence ordered duly executed.
3. Army Regulation 635-5 (Separations Documents) in effect at the time, 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. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).
4. Army Regulation 635-5-1 (Separation Program Designator Codes), in effect at the time, provides separation program designator (SPD) codes are three-character

alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in Block 28 of the DD Form 214 exactly as listed in the regulation. The separation code JJD lists the narrative reason for separation as "As a Result of a Court-Martial," under the provisions of AR 635-200.

5. Title 10, U.S. Code, section 1552, provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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 based on 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.

7. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) 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 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.

8. 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, on 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.

//NOTHING FOLLOWS//