

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 December 2024

DOCKET NUMBER: AR20240003991

APPLICANT REQUESTS: Upgrade of his bad conduct discharge (BCD).

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Form 10-5345 (Request for Authorization to Release Health Information), dated 13 June 2024

FACTS:

1. The applicant states he was discharged due to circumstances related to his depression, mental health, and attention deficit hyperactivity disorder.
2. The applicant enlisted in the Regular Army on 26 August 2019. Following completion of required training he was awarded military occupational specialty 11B (Infantryman).
3. A Statement of Trial Results shows before a general court-martial on 27 January 2021, by a military judge alone, the applicant was found guilty of:
 - Unlawfully slapping Ms. [REDACTED] on the face with his hand, on or about 17 May 2020;
 - Wrongfully appropriate money the property of Ms. [REDACTED] of a value of about \$100.00, on or about 17 May 2020;
 - Four specifications of willfully disobeying the lawful command of his superior commissioned officer "to not consume alcohol at any time", "to not travel outside of the limits of Joint Base Lewis-McChord, Washington," "not to control any motor vehicle within the limits of Joint Base Lewis-McChord, Washington," and "to sign-out the CQ roster if you intend to leave the company/barracks footprint," between on or about 4 February 2020 and on or about 7 August 2020
 - Being disrespectful in language towards a noncommissioned officer, in the execution of his office on or about 19 June 2020;
 - Wrongfully communicating a threat to slit the throat of another Soldier on or about 11 August 2020.

4. The court sentenced him to confinement for 325 days, forfeiture of all pay and allowances, and to be separated from service with a BCD.
5. On 25 February 2021, the convening authority disapproved the request for deferment of rank reduction as the applicant was serving in the lowest enlisted grade.
6. The sentence was approved on 5 March 2021, and the record of trial was forwarded for appellate review.
7. The U.S. Army Court of Criminal Appeals affirmed the findings and sentence on 15 November 2021.
8. Memorandum, dated 5 April 2022, noted that the applicant's sentence had been finally affirmed and ordered the BCD to be duly executed.
9. The applicant was discharged on 27 April 2022. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), as a result of court-martial. He was assigned separation code JJD and reentry code 4, with lost time from 28 May 2020 thru 22 February 2021. His service was characterized as bad conduct.
10. 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 Army Board for Correction of Military Records (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.
11. On 7 August 2024, the applicant was asked to provide medical documents that support his mental health contentions. He provides a VA Form 10-5345 in support of his request.
12. MEDICAL REVIEW:
 - a. The applicant is applying to the ABCMR requesting an upgrade of his bad conduct discharge (BCD). He contends mental health conditions are related to his request for an upgrade. 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 26 August 2019; 2) Before a general court-martial, on 27 January 2021, the applicant was found guilty of: A) slapping a woman on the face with his hand; B) wrongfully appropriating money from the same woman; C)

four specifications of willfully disobeying the lawful command of his superior commissioned officer "to not consume alcohol at any time", "to not travel outside of the limits of Joint Base Lewis-McChord, Washington," "not to control any motor vehicle within the limits of Joint Base Lewis-McChord, Washington," and "to sign-out the CQ roster if you intend to leave the company/barracks footprint," between 4 February 2020 and 7 August 2020; and for being disrespectful in language towards a NCO on 19 June 2020; and for wrongfully communicating a threat to slit the throat of another Soldier on 11 August 2020; 4) On 27 April 2022, the applicant was discharged as the result of a court-martial with a bad conduct discharge characterization of service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. The applicant stated he experienced mental health conditions, which mitigates his misconduct. The applicant first engaged with behavioral health services for a Chapter 14-12 Mental Status on 28 April 2020. The applicant was reported to be engaged a pattern of misconduct and going through a divorce with his wife, who he married two months prior. The applicant was screened for PTSD, a history of concussion, sexual assault, and depression, but he was not diagnosed with any mental health condition. The applicant was found to meet medical fitness standards from a behavioral health perspective, and he was cleared for administrative separation. The applicant declined any further behavioral health follow-up appointments. On 27 May 2020, the applicant was sent to the Emergency Department by his command for reported suicidal comments. The applicant was evaluated by a behavioral health provider the same day. He reported occupational, marital, and legal problems, but he denied suicidal and homicidal ideation, and he stated a comment he made was take out of context. The applicant tested positive for cocaine use during this appointment, but he did not meet criteria for inpatient behavioral health or medical inpatient treatment. He was returned to his unit and encouraged to follow up at substance abuse treatment. The applicant was initially seen at SUDDC for an initial evaluation on 01 June 2020. He was diagnosed with Alcohol Abuse and recommended for outpatient individual and group therapy. He continued in this treatment program till his imprisonment and then discharge.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with service-connected mental health condition, and he does not receive any service-connected disability. He was provided assistance from the VA in 2024 while he was imprisoned in a civilian detention center for help with homelessness and humanitarian psychiatric services.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he was experiencing mitigating mental health conditions.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing mitigating mental health conditions, while on active service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant experienced mental health conditions while on active service beyond alcohol abuse and illegal substance use. The applicant did engage in some erratic and self-medicating misconduct, but the presence of misconduct is not sufficient evidence of a mental health condition. In addition, there is no nexus between the applicant's reported mental health conditions and his misconduct of assault, theft, and threatening behavior in that: 1) these types of misconduct are not a part of the natural history or sequelae of the applicant's reported mental health conditions; 2) the applicant's reported mental health conditions do not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing mental health conditions or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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 (wrongfully appropriating money, willfully disobeying lawful commands, being disrespectful in language towards NCO, and wrongfully communicating a threat to slit the throat of another Soldier). 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 insufficient evidence to support the applicant had a condition that mitigates his misconduct. Also, the applicant provided insufficient evidence of a persuasive nature of post-service achievements or letters of reference in support of a clemency determination. Therefore, based on a preponderance of available evidence, the Board determined that the narrative reason for separation 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.

12/20/2024



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. Army Regulation 635-200 (Personnel Separations – 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.

2. 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.

3. 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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD); Traumatic Brain Injury; 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.

4. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs for Correction of Military/Naval Records, 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.

//NOTHING FOLLOWS//