

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 August 2025

DOCKET NUMBER: AR20240004423

APPLICANT REQUESTS: in effect:

- An upgrade of his characterization of service from bad conduct to honorable
- A personal appearance hearing before the Board

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

- DD Form 149 (Application for Correction of Military Record), 21 February 2024
- Self-authored letter, 22 January 2024
- DA Form 3647 (Inpatient Treatment Record Cover Sheet), 18 June 1988

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 request is based on the significant impact of post-traumatic stress disorder (PTSD), mental health issues, depression, and a traumatic brain injury (TBI) that resulted in a loss of consciousness. During his court-martial proceedings and the subsequent disciplinary action imposed against him, the mitigating factors related to his mental health, PTSD, and TBI were not adequately considered. These conditions can profoundly affect an individual's cognitive and emotional functioning, potentially influencing their behavior. Rather than receiving appropriate treatment for his mental health, he was discharged from the Army. Given his commendable military service and his long-term struggle with PTSD, he believes his bad conduct discharge was unjust.
3. The applicant enlisted in the Regular Army on 20 March 1987.
4. The DA Form 3647 (Inpatient Treatment Record Cover Sheet), 18 June 1988, shows the applicant was admitted to a medical facility after being pushed to the floor by

another person on 19 June 1988. He was diagnosed with a left frontal hematoma with loss of consciousness. He spent a total of 18 days at the medical facility.

5. On 10 May 1991, the applicant's duty status was changed from Present for Duty to Confined by Military Authorities on 10 May 1991.

6. Headquarters, 9th Infantry Division (Motorized), Special Court-Martial Order Number 5, 31 May 1991, shows the applicant was convicted by a special court-martial violation of Article 121 (Larceny and Wrongful). Specification: Larceny of property of a value of \$399.00, on 21 May 1991. His sentence, adjudged on 10 May 1991, included a bad conduct discharge, forfeiture of \$482.00 pay per month for five months, confinement for five months, and to be reduced to the rank/grade of private/E-1.

7. On 28 August 1991, the applicant elected to not undergo a separation medical examination.

8. On 11 November 1991, the applicant's duty status was changed from Confined by Military Authorities to Present for Duty.

9. Headquarters, U.S. Army Training Center and Fort Dix, Special Court-Martial Order Number 18, 18 May 1992, affirmed the sentence adjudged on 10 May 1991 and ordered the portion of the sentence of bad conduct discharge to be executed. The portion of the sentence pertaining to confinement had been served.

10. The applicant DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged in the rank/grade of private/E-1 on 24 June 1992 under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), chapter 3, section 4, as a result of court-martial. He completed 4 years, 9 months, and 4 days of net active service with lost time from 10 May 1991 to 10 November 1991. His service was characterized as bad conduct. He was issued the separation code "JJD" and the reentry code "4". Item 24 (Decorations, Medals, Badges, Commendations, Citation and Campaign Ribbons Awarded or Authorized), shows he was awarded or authorized the following:

- Army Service Ribbon
- Overseas Service Ribbon
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)

11. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge processing within that Board's 15-year statute of limitations.

12. By regulation AR 635-200, a Soldier 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.

13. 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.

14. 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.

15. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his characterization of service from bad conduct to honorable. He contends PTSD, OMH and TBI 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 20 March 1987.
- Headquarters, 9th Infantry Division (Motorized), Special Court-Martial Order Number 5, 31 May 1991, shows the applicant was convicted by a special court-martial violation of Article 121 (Larceny and Wrongful). Specification: Larceny of property of a value of \$399.00, on 21 May 1991.
- Applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged in the rank/grade of private/E-1 on 24 June 1992 under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), chapter 3, section 4, as a result of court-martial. His service was characterized as bad conduct. He was issued separation code "JJD" and reentry code "4".

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states his request is based on the significant impact of post-traumatic stress disorder (PTSD), mental health issues, depression, and a traumatic brain injury (TBI) that resulted in a loss of consciousness. During his court-martial proceedings and the subsequent disciplinary action imposed against him, the mitigating factors related to his mental health, PTSD, and TBI were not adequately

considered. These conditions can profoundly affect an individual's cognitive and emotional functioning, potentially influencing their behavior. Rather than receiving appropriate treatment for his mental health, he was discharged from the Army. Given his commendable military service and his long-term struggle with PTSD, he believes his bad conduct discharge was unjust.

d. Due to the period of service, no active-duty electronic medical records were available for review. The applicant submitted hardcopy medical documentation from his time in service, showing he was admitted to a medical facility after being pushed to the floor by another person on 19 June 1988. He was diagnosed with a left frontal hematoma with loss of consciousness. He spent a total of 18 days at the medical facility.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and has not participated or sought behavioral health service via the VA.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is evidence the applicant experienced an injury while in military service. However, there is no evidence he has been diagnosed with PTSD, OMH, or residuals of a TBI. Regardless of diagnosis, his misconduct of larceny would not be mitigated by his asserted conditions.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts PTSD, OMH and TBI.

(2) Did the condition exist or experience occur during military service? Yes. The applicant provides medical documentation showing he was injured during military service when he was pushed to the floor by another person and loss consciousness. He was hospitalized and diagnosed with left frontal hematoma with loss of consciousness.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was discharged due to larceny. There is no medical documentation from his time in service substantiating any BH condition, the applicant is not service-connected, and provides no medical documentation of having received behavioral health services via the VA or any other mental health provider. In addition, although he provides evidence of having sustained a head injury while in military service, there is no medical documentation indicating any post-recovery impact of his injury. Full recovery without behavioral impacts or TBI residuals are more likely than not and would be expected, unless medical documentation to the contrary were provided. The applicant asserts, "these conditions can profoundly affect

an individual's cognitive and emotional functioning, potentially influencing their behavior". While residuals of TBI can cause emotional and behavioral changes such as emotional dysregulation, mood disorder, and memory issues; theft is not associated with a TBI. Regardless of BH condition, the applicant's misconduct of larceny is not part of the history or natural sequelae of any of his asserted conditions including PTSD, OMH, or TBI and as such would not mitigate his misconduct. Specifically, none of his asserted BH conditions impair an individual's ability to know right from wrong, understand consequences, and make purposeful, conscious decisions.

h. Per Liberal Consideration guidelines, his assertion of PTSD, OMH, and TBI is sufficient to warrant consideration by the Board.

#### 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military record and medical review, the Board concurred with the medical advisory his misconduct of larceny would not be mitigated by his asserted conditions.

2. The Board considered the following Kurta questions:

a. Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts PTSD, OMH and TBI.

b. Did the condition exist or experience occur during military service? Yes. The applicant provides medical documentation showing he was injured during military service when he was pushed to the floor by another person and loss consciousness. He was hospitalized and diagnosed with left frontal hematoma with loss of consciousness.

c. Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was discharged due to larceny. There is no medical documentation from his time in service substantiating any BH condition, the applicant is not service-connected, and provides no medical documentation of having received behavioral health services via the VA or any other mental health provider. In addition, although he provides evidence of having sustained a head injury while in military service, there is no medical documentation indicating any post-recovery impact of his injury. Full recovery without behavioral impacts or TBI residuals are

more likely than not and would be expected, unless medical documentation to the contrary were provided. The applicant asserts, "these conditions can profoundly affect an individual's cognitive and emotional functioning, potentially influencing their behavior". While residuals of TBI can cause emotional and behavioral changes such as emotional dysregulation, mood disorder, and memory issues; theft is not associated with a TBI. Regardless of BH condition, the applicant's misconduct of larceny is not part of the history or natural sequelae of any of his asserted conditions including PTSD, OMH, or TBI and as such would not mitigate his misconduct. Specifically, none of his asserted BH conditions impair an individual's ability to know right from wrong, understand consequences, and make purposeful, conscious decisions.

3. 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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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.

X //SIGNED//  
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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. 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, in effect at the time, provides for the orderly administrative separation of Soldiers in a variety of circumstances. In addition, it maintains standards of performance and conduct through characterization of service in a system that emphasizes while still providing the suitability of persons to serve in the Army on the basis of their conduct and the ability to meet required standards of duty performance and discipline.

a. Chapter 3 provides guidance and information on the information as it relates to the character of service and the description of separation. Characterization at separation will be based upon the quality of the Soldier's service, including the reason for the separation and guidance, subject to the limitations under the various reasons for separation. Paragraph 3-7 addresses characterization of service as follows:

(1) Honorable discharge is appropriate when the quality of the Soldier's service 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. An honorable discharge may be furnished when disqualifying entries in the Soldier's military record are outweighed by subsequent honest and faithful service over a greater period during the current term of service. It is a pattern of behavior and not the isolated incident that should be considered the governing factor in determination of character of service.

(2) Under honorable conditions (General) is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A General discharge may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

(3) Under other than honorable conditions discharge is an administrative separation from the Service. It may be issued for misconduct, fraudulent entry, homosexual conduct, security reasons, or in lieu of trial by court martial in the following circumstances when the reason for separation is based on a pattern of behavior that constitutes a significant departure from the conduct expected of Soldiers of the Army. In addition, 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 is another valid circumstance. Some examples provided by the regulation are disregard by a superior or customary superior-subordinate relationships. An under other than honorable conditions discharge will be directed by a commander exercising general court-martial authority.

b. Paragraph 3-11 states a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial.

3. 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.

4. 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 code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, chapter 3, court-martial, other, would receive a separation code of "JJD."

6. 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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

7. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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//