

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 October 2024

DOCKET NUMBER: AR20240004535

APPLICANT REQUESTS: upgrade his bad conduct discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement

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 he requests his bad conduct discharge be upgraded to honorable. He has been an upstanding citizen before and after his military service. The only time he was ever in trouble was during his military service. At the time, of his separation from the military, he was suffering from post-traumatic stress disorder (PTSD) from his 2004 deployment to Iraq. He felt alone and unsure how to deal with it. However, recently he has received therapy to deal with the emotional scars. In 2007, he and a friend were traveling [REDACTED] to visit some friends, when they were stopped by law enforcement for speeding. The motor vehicle which he occupied was searched and marijuana was found in the trunk. They both were taken into custody and kept overnight and were released the next day without any charges being filed against them. They wanted to do the right thing, so they self-reported the incident to their chain of command, at which time his command took legal action against them. He was at the wrong place at the wrong time, which led to his discharge from the Army.

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

- a. On 8 July 2004, the applicant enlisted in the Regular Army and served in military occupational specialty 25L (Cable Systems Installer/Maintainer).

b. The applicant's Enlisted Record Brief shows he served in Iraq during the period 26 September 2005 through 3 September 2006.

c. On 12 April 2007, charges were preferred against the applicant for:

(1) One specification of wrongful possession of over 10 pounds of marijuana with the intent to distribute and in order to effect the object of conspiracy to transport the marijuana in the trunk of a motor vehicle.

(2) One specification of operating a motor vehicle without possessing a valid driver license.

d. On 18 May 2007, after examining the charges preferred against him and consult with counsel, he pleaded guilty to possession of marijuana with the intent to distribute and conspiracy to possess marijuana with the intent to distribute. He entered into a written stipulation of facts to the offenses to which he plead guilty. He agreed to be tried by a military judge alone. In exchange for his action to plead guilty; the third charge and specification would be dismissed. The sentencing appendix stated the convening authority agreed to disapprove any confinement adjudged in excess of 18-months any thing else may be approved.

e. On 2 June 2007, the stipulation of fact shows the applicant agreed the facts to be true, susceptible of proof and admissible in evidence. The facts were: on or about 5 November 2006, the applicant unlawfully obtained over 10 pounds of marijuana. The applicant entered into an agreement with another Soldier to distribute the said marijuana. They agreed together to transport the marijuana in the trunk of the other Soldier's motor vehicle with the applicant driving the vehicle. They agreed to transport the marijuana to [REDACTED] to store prior to distribution. Transporting the marijuana in the truck of the vehicle he was driving he exercised control and domination over the marijuana. He transported and possessed the marijuana in order to distribute to others.

f. The applicant was aware of the wrongfulness of his actions and at the time of the charged offenses, he was not suffering from a severe mental disease or defect that made him unable to appreciate the nature and quality or wrongfulness of his conduct. He had no legal authority or justification for committing the offenses and no applicable defense.

g. On 28 June 2007, the General Court-martial convened at Fort Campbell, KY, the applicant was found guilty of conspiracy to possess marijuana with the intent to distribute and possession of marijuana with the intent to distribute. The applicant was sentenced to confinement for 18-months and dishonorably discharged from the military. The sentence was adjudged on 28 June 2007 and was effective on 12 July 2007. He

had 2-days of pretrial confinement. The charge of operating a motor vehicle without a valid driver license was dismissed.

h. On 13 July 2007, Orders Number 194-150, issued by Headquarters (HQs), 101st Airborne Division (Air Assault) and Fort Campbell, assigned the applicant to the Personnel Control Facility, Fort Knox, KY effective 16 July 2007. The additional instructions stated the applicant was court-martialed and sentences to 18-months confinement and dishonorably discharge.

i. On 16 July 2007, as a result of a general court-martial for conspiracy to possess marijuana with intent to distribute and possess of marijuana with the intent to distribute, the applicant was sentenced to confinement for 18-months and a dishonorable discharge.

j. On 30 July 2007, the applicant's duty status was changed to confined by military authorities for pre-trial confinement effective 26 June 2007.

k. On 9 January 2008, General Court-martial Orders Number 1, issued by HQs, 101st Airborne Division (Air Assault) and Fort Campbell, show the applicant was arraigned and found guilty of one specification of conspiracy of wrongful possession of over 10 pounds of marijuana with the intent to distribute by transporting the marijuana in the trunk of a motor vehicle and one specification of possession of over 10 pounds of marijuana with the intent to distribute. The charge of operating a motor vehicle without a valid driver license was dismissed. The applicant was sentenced to confinement for 18-months and a dishonorable discharged from the service. The sentence was adjudged on 28 June 2007. The sentence was approved except the dishonorable discharge would be executed. The automatic forfeiture of all pay and allowances were deferred and terminated effective 27 August 2007. The applicant was credited 2-days of confinement against his sentence.

l. On 18 March 2008, the U. S. Army Court of Criminal Appeals held the findings of guilty and the sentence approved by the convening authority to be correct in law and fact and were affirmed.

m. On 23 July 2008, the U. S. Court of Appeals for the Armed Forces denied the applicant's petition.

n. On 18 August 2008, General Court-martial Orders Number 173, issued by HQs, U. S. Army Armor Center and Fort Knox, the sentence to 18-months confinement and dishonorable discharged was adjudged on 28 June 2007 under provision of HQs, 101st Airborne Division (Air Assault) and Fort Campbell General Court-martial Orders Number 1 has been affirmed. The automatic forfeiture of all pay and allowances was deferred

effective 27 August 2007 and was terminated on 9 January 2008. The applicant was credited with 2-days of confinement against the sentence to confinement and having been complied with, the Dishonorable discharge will be executed.

o. On 21 August 2008, the applicant's duty status was changed to present for duty effective 20 August 2008. He was released from confinement upon completion of his sentence.

p. On 30 December 2008, the applicant was discharged from active duty with a bad conduct discharge with lost time during the period of 26 June 2007 through 19 August 2008. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant completed 3-years, 3-months, and 29-days of active service.

4. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from bad conduct discharge (BCD) to honorable. He contends he experienced an undiagnosed mental health condition, including PTSD, that mitigates his misconduct.

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 8 July 2004, and he served in Iraq from September 2005 to September 2006.
- On 28 June 2007, the General Court-martial convened, and the applicant was found guilty of conspiracy to possess marijuana with the intent to distribute and possession of marijuana with the intent to distribute.
- The applicant was discharged on 30 December 2008 and completed 3-years, 3-months and 29-days of active 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 asserts he was suffering from PTSD due to his deployment to Iraq at the time of his misconduct. A Confinement Order dated 16 July 2007 showed the applicant was considered fit with only a notation related to borderline hypertension. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed that the applicant was evaluated on 2 May 2008 due to "adjustment insomnia" while in confinement, and it was noted that he had not seen the behavioral health clinic. A sleep medication was prescribed. There were no records from VA, and the applicant is ineligible for VA services.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that 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 discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. Documentation showed indication of sleep difficulty associated with adjustment to confinement.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service, and he attributed this to his deployment to Iraq.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. Additionally, there is no nexus between his asserted mental health condition, including PTSD, and his misconduct related to possession of marijuana and intent to distribute: 1) these types of misconduct are not part of the natural history or sequelae of a mental health condition; 2) his asserted 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 had 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, the evidence found within the military record and published Department of Defense guidance for consideration of discharge upgrade requests, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's statement and contentions, his record of service, the frequency and serious nature of his misconduct, the outcome of a court-martial, the reason for his separation and the character of service he received upon discharge. The Board considered the applicant's statement regarding PTSD and the review and conclusions of the medical reviewer. The Board found: (1) The applicant asserts that he had an undiagnosed mental health condition including PTSD at the time of the misconduct. The record supports that he had sleep difficulty associated with confinement; (2) The applicant asserts he was experiencing a mental health condition while on active duty and attributed it to his deployment to Iraq; (3) There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition

while on active service. Additionally, the Board found there is no nexus between his asserted mental health condition, including PTSD, and his misconduct related to possession of marijuana and intent to distribute. The applicant did not provide evidence of post-service achievements or reference letters for the Board to consider in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received when separated was not in error or unjust and that an upgrade of his discharge was not warranted as a matter of liberal consideration.

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.

6/11/2025


X

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 (Active Duty Enlisted Administrative Separations), in effect at the time, sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.
 - a. Paragraph 3-7a (Honorable discharge), an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 (General discharge), 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. A characterization of under honorable conditions 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.
 - c. Paragraph 3-7c (Under other-than-honorable-conditions discharge), 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, homosexual conduct, security reasons, or in lieu of trial by court martial in the following circumstances: when the reason for separation is based upon a pattern of behavior that constitutes a significant departure from the conduct expected of Soldiers of the Army. 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.
 - d. Paragraph 3-8 (Limitations on characterization), characterization will be determined solely by the Soldier's military record which includes the Soldier's behavior and performance of duty during the current enlistment or period of service to which the separation pertains, plus any extensions prescribed by law or regulation or effected with the consent of the Soldier. Exceptions are provided in this paragraph. In determining the

character of service, the following will be used as guidelines: A Soldier is entitled to an honorable characterization of service if limited-use evidence is initially introduced by the Government in the discharge proceedings, and the discharge is based upon those proceedings. The separation authority will consult with the servicing Judge Advocate in cases involving limited use evidence. The following will not be considered in determining the characterization of service: Mental status evaluation or other similar medical evaluation given during the period of service that is being characterized. When the sole basis for separation is a serious offense that resulted in a conviction by a court-martial authorized to impose, but not imposing, a punitive discharge, the soldier's service may not be characterized as under other than honorable conditions unless such characterization is approved by HQDA.

- e. Paragraph 3-10 (Dishonorable discharge), a Soldier will be given a dishonorable discharge 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. Paragraph 3-11 (Bad conduct discharge), 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. Questions concerning the finality of appellate review should be referred to the servicing staff judge advocate.

3. On 3 September 2014, the Secretary of Defense issued supplemental guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests from Veterans for modification of their discharges due in whole, or in part, to previously unrecognized Post Traumatic Stress Disorder (PTSD). In these cases, PTSD was not recognized as a diagnosis at the time of service and in many cases, diagnoses were not made until decades after service was completed. To help ensure consistency across the Services, this memorandum provides supplemental policy guidance for BCMR/NRs on these applications.

4. 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; 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 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 that misconduct which led to the discharge.

5. 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. 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. 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//