

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 January 2025

DOCKET NUMBER: AR20240004867

APPLICANT REQUESTS: reconsideration of his request for upgrade of his dishonorable discharge to under honorable conditions (General) or honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- Two Character reference letters
- Criminal background check
- Durable Power of Attorney document
- Birth document, applicant's son

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 Numbers AR20080007383 and AR20150015685 on 31 July 2008 and 7 March 2017, respectively.

2. In a new argument the applicant states:

a. He made a poor decision that led to his separation from the military and triggered many unintended cascading effects that still affect him to this day. He fully holds himself accountable for his actions and in doing so, understands what he did was wrong. Prior to this situation, he had served for 19 years honorably without incident.

b. Since his separation from the military, he has lived his life in a manner that would showcase his most valuable and redeeming qualities, allowing his family to be proud of him, and me in turn, proud of himself. He became the sole owner of his company, a trusted person in the community, a church member, and served on numerous boards geared towards community service. He mentors young men on the basics of life, making smart choices, and how one bad decision can impact them for a lifetime.

c. His dismissal from the military was such a pivotal moment in his life that he decided right then and there that he would seriously think about the outcome of choices that he makes in life first. He respectfully asks the Board to approve his request. An upgrade of his character of service would make him eligible to receive compensation for service-connected disabilities that now afflict him.

3. The applicant enlisted in the Regular Army, on 12 March 1981. He reenlisted on 24 February 1984, 7 May 1987, and again on 23 January 1992.

4. He served in Saudi Arabia from 3 August 1994 to 2 August 1995.

5. Before a general court-martial on 12 September 2001 at Fort Hood, TX, the applicant was found guilty of one specification of attempting to wrongfully distribute approximately one pound of marijuana on or about 22 January 2001; one specification of wrongful distribution of marijuana on or about 22 January 2001; one specification of possessing approximately 10 pounds of marijuana with intent to distribute on or about 22 January 2001; and one specification of wrongfully distributing some amount of marijuana on or about 22 January 2001.

6. The court sentenced him to reduction to E-1, forfeiture of all pay and allowances, confinement for 10 years, and a dishonorable discharge. The sentence was approved on 26 February 2003, 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 7 March 2006.

8. The U.S. Army Court of Appeals for the Armed Forces affirmed the findings and sentence on 21 March 2007.

9. General Court-Martial Order Number 44, issued by U.S. Army Combined Arms Center and Fort Leavenworth, U.S. Disciplinary Barracks, Fort Leavenworth, KS, on 20 June 2007, noted the applicant's sentence had been affirmed. The dishonorable discharge was ordered to be duly executed.

10. The applicant was discharged on 20 June 2007. He completed 20 years, 1 month, and 25 days of active service this period. His DD Form 214 (Certificate of Release or Discharge from Active Duty) contains the following entries in:

- item 24 (Character of Service) – Dishonorable
- item 25 (Separation Authority) – AR [Army Regulation] 635-200 (Active Duty Enlisted Administrative Separations), Chapter 3
- item 26 (Separation Code) – JJD
- item 27 (Reentry Code) – 4

- item 28 (Narrative Reason for Separation) – Court-martial, Other

11. Additionally his DD Form 214 shows he was awarded or authorized the:

- Army Commendation Medal (2nd Award)
- Army Achievement Medal (3rd Award)
- Army Good Conduct Medal (5th Award)
- National Defense Service Medal
- Southwest Asia Service Medal with Bronze Service Star
- Noncommissioned Officer Professional Development Ribbon (3rd Award)
- Army Service Ribbon
- Overseas Service Ribbon (2nd Award)
- Driver and Mechanic Badge with Drive – Wheeled Vehicle(s) Clasp

12. The applicant petitioned the ABCMR requesting upgrade of his dishonorable discharge. On 31 July 2008, the Board voted to deny relief and determined the overall merits of the case were insufficient as a basis to for correction of the applicant's records.

13. The applicant petitioned the ABCMR a second time, requesting upgrade of his dishonorable discharge. On 7 March 2017, the Board voted to deny relief and determined the overall merits of the case were insufficient as a basis to for correction of the applicant's records.

14. On 24 October 2024, the ABCMR staff requested that the applicant provide medical documents to support his other mental health issues. He was advised that he could contact the doctor that diagnosed him or his Veterans Affairs regional office for assistance. He did not respond.

15. The applicant provides the following:

- a. Two character reference letters that collectively attest to his positive influence within his community, hard work, and humbleness.
- b. Criminal background check from the [REDACTED] Police Department, that shows he has no criminal/misdemeanors located with that agency.
- c. Durable Power of Attorney document that shows the applicant's son has full power and authority to act medically and financially on his behalf.

16. 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.

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

18. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his request for upgrade of his dishonorable discharge. 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 12 March 1981; 2) The applicant served in Saudi Arabia from 3 August 1994 to 2 August 1995; 3) On 12 September 2001, the applicant was convicted by a general court-martial of wrongfully possessing and distributing marijuana; 4) On 20 June 2007, the applicant was dishonorably discharged by reason of court-martial.

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. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service.

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 for a mental health condition.

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 mental health 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? No, there is insufficient evidence the applicant reported or was diagnosed with a mental health condition.

(2) Did the condition exist or experience occur during military service? No, there is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence the applicant experienced a mental health condition while on active service. In addition, there is no nexus between the applicant's potential mental health condition and his misconduct of possession and distribution of marijuana in that: 1) these types of misconduct are not a part of the natural history or sequelae of the applicant's potential mental health condition; 2) the applicant's potential mental health condition does not affect one's ability to distinguish right from wrong and act in accordance with the right.

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 for attempting to wrongfully distribute approximately one pound of marijuana; one specification of wrongful distribution of marijuana; one specification of possessing approximately 10 pounds of marijuana with intent to distribute; and one specification of wrongfully distributing some amount of marijuana. The Board found no error or injustice in the separation proceedings. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, there is insufficient evidence the applicant reported or was diagnosed with a mental health condition.

(2) Did the condition exist or experience occur during military service? No, there is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence the applicant experienced a mental health condition while on active service. In addition, there is no nexus between the applicant's potential mental health condition and his misconduct of possession and distribution of marijuana in that:

1) these types of misconduct are not a part of the natural history or sequelae of the applicant's potential mental health condition; 2) the applicant's potential mental health condition does not affect one's ability to distinguish right from wrong and act in accordance with the right.

The Board concluded there was insufficient evidence to support the applicant had a mental health condition or experience that mitigates his misconduct.

2. The applicant was given a dishonorable 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.

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 Numbers AR20080007383 and AR20150015685 on 31 July 2008 and 7 March 2017, respectively.

4/8/2025



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 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.
3. Army Regulation 635-200 (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 dishonorable pursuant only to an approved sentence of a general court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed.
4. 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.

5. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, 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.

6. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the mental health condition was not diagnosed until years later. 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.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 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//