

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 December 2024

DOCKET NUMBER: AR20240005218

APPLICANT REQUESTS: in effect, an upgrade of his bad conduct discharge (BCD) to an honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Veterans Advocate 5-page brief
- Support letter, E.J. Licensed Mental Health Counselor (LMHC)
- Support letter, A.H. (Spouse)
- Exhibit A: Appreciation letter
- Exhibit B: Colonel's Orderly letter
- Exhibit C: Good Conduct Medal 1st Award
- Exhibit D: Awards
- Medical documents (11 pages)
- Disciplinary/court-martial documents (43 pages)

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 personal biases discrimination towards him from two buddies who were Hispanic publicly humiliated him in front of other Soldiers as a power and control move. They used bullying and overtones of threats to him. This was causing him psychological hardship that he suppressed – now known as post-traumatic stress disorder (PTSD), linked to military service.

a. During his time in the military, he did not get an opportunity to be psychologically examined for being under supervisors' duress and abuse of their power. As hard as he tried it was never good enough per two superiors.

b. After the bad conduct discharge, he was unable to get assistance for counseling to go forward. Since then, he has seen a therapist for what he deemed PTSD. He is an expert in his field letter attached to documents dated 24 January 2023. Please read the typed explanation pages for an independent Veterans Advocate with a timeline of events during his military service.

3. Veteran Advocate states on the applicant's behalf:

a. Background for his BCD was due to the extensive psychological trauma he suffered during his time on active duty, he received a BCD, however prior to his BCD, all his military write-ups were excellent, and his job performance was impeccable. Added to this brief are certificates as Exhibits to showcase his positive ratings while under different supervisors and Army units. Also included with this brief are statements from parties both directly and indirectly involved with the BCD. Most of the statements made by the applicant's supervisors that ultimately led to the BCD were false and completely unfounded. These false statements demonstrate extreme bullying and racial discrimination towards him by these supervisors. A grave injustice was suffered by the applicant as a result of the BCD due to lack of representation during the BCD process and an unwillingness on the part of the Army to consider his appeal. Furthermore, he did not sign his BCD which demonstrates his lack of agreeance to the validity of the decision made.

b. Since his BCD discharge, he has not been able to seek psychological counseling from the Department of Veteran Affairs and we are hoping ample consideration will be made with the proper review of all this data to change his BCD to nothing less than honorable so he can get necessary medical and psychological treatment for his condition to make him whole again.

c. It is her belief after review of the records presented to her that although the applicant was allowed a brief and informal opportunity to explain the circumstances leading up to the false statement and BCD decision, he felt abandoned by the Army, ill-equipped to handle the impending legal situation and fearful of the overall appeals process due to suffering from what is now known and recognized as, PTSD linked to his military service. His emotional state of mind was not noted at the time of this "alleged offense", and if it was, there were no such reports from any psychological doctor(s). The two sergeants that wrote the false statements against the applicant were buddies who simply did not like him or anything he could do in his military occupational specialty. It was always clear to the applicant that he was their target.

d. After the applicant's injury from a field exercise at Fort Bliss, he was diagnosed with a neck and back injury and told to go home by the treating doctor. He was sedated with heavy medication for his pain. Due to the sedation, he had his wife drive him home, but on the ride home, Sergeant O. called the applicant and stated, "Get Your Ass to the

base now!" After arriving at the base, Sergeant O. proceeded to belittle the applicant and embarrassed him in front of his wife. Sergeant O. ordered the applicant to get into Sergeant O.'s military vehicle. While in the vehicle together, Sergeant O. threatened the applicant (in a sedated state) by comparing him to his friend Mr. B. (Article included) in a negative way, with no regard as to his physical or mental wellbeing Sergeant O. began to bully the applicant, he stated to Sergeant O. that they (Sergeant O. and Chief D.) just need to leave him the fuck alone, Sergeant O. asked "what are you going to do?" "Are you going to be like your buddy B., and shoot us with your (45 caliber pistol)?"

e. The advocate continues to discuss the applicant's friendship with Mr. B, the facts that he continued to follow order, that he did not own a .45 pistol. Also stated were other areas including his injury service in Saudi Arabia, and other trainings completed throughout his service.

f. He is emotional when speaking about this subject and he is currently in mental health counseling so he can try to achieve the proud spirit of military service as a combat veteran that was wrongfully taken from him. It is advocate's belief that the compounding events of emotional trauma that the applicant suffered during his combat service in (Desert Shield/Storm) coupled with the continued negative treatment by Sergeant O. and Chief D. ultimately led to his making the punching treat about Chief D. to Sergeant O. Currently, the applicant does have Veterans health care, however not 100% of the bills are being covered by Veterans health care and they should be.

g. As a matter of legal reference, it is her understanding that the Army Review Board has a fiduciary duty to fully examine all of the attached reference materials and evidence to change his BCD to honorable. As his advocate, she has personally reviewed and gathered as much supportive evidence/paperwork on his behalf enclosed herein. She believes a grave error was made on the applicant's behalf by discharging him with a BCD.

h. Furthermore, she is asking that the Army Review Board fully consider his repressed PTSD diagnosis in changing his BCD to honorable. It does not appear that the attached military awards/certificates/positive personal statements provided during his enlistment periods were presented or considered during the court martial trial. Attached is ample evidence that should support that the BCD was unjustified and based solely on here say due to continued harassment by Sergeant O. and Chief D. coupled with repressed PTSD. (The entire 5-page advocate letter is available in documents)

4. The applicant's service records are not available for review. An exhaustive search was conducted to locate the service records, but they could not be found. The only documents available were the documents provided by the applicant. These documents are sufficient for the Board to conduct a fair and impartial review of this case.

5. The applicant provides his DD Form 214 which shows he enlisted in the Regular Army on 17 July 1987. He reenlisted on 30 May 1991.

a. Disciplinary/court-martial documents including letters submitted to Court-Martial Convening Authority including:

(1) DA Form 3975 (Military Police Report) shows he was detained on 14 May 1992, for communicating a threat. He was advised of his rights in which he waived and was willing to discuss the offense under investigation.

(2) DA Form 2823 (Sworn Statement) by the applicant shows he admitted to making a threat to punch Chief D. in the mouth.

(3) DA Form 2823 by Chief D. stated he was informed by Staff Sergeant (SSG) O. that the applicant made a verbal threat against his life. He stated the applicant was upset because he was made to return to the range from 48 hours quarters which he was given by the emergency room. The applicant had to go to the medical hold billets for observation. The applicant was upset and refused to stay in billets. Chief D. called the commander and informed him of his actions, and he fully agreed. After SSG O returned from dropping the applicant off at the billets he notified Chief D. the applicant made a verbal threat against Chief D's life.

(4) DD Form 689 (Individual Sick Slip) shows on 14 May 1992, the applicant received a profile for no lifting more than 25 pounds for 3 weeks and no physical training for 14 days. He was also given quarters for 24 hours.

(5) DA Form 2823 (K.H.) stated on or about 7 May 1992, the applicant was talking about the upcoming field training exercise, and he stated he would not be in the field for the entire exercise. The applicant told K.H. that he would fall off the tanker or something. About a week later 13 or 14 May he was notified by a member of his platoon that the applicant had fallen off the tanker and was taken to the rear for evaluation.

(6) Page 2 of DD Form 458 (Charge Sheet) shows on 8 July 1992, he was informed of the charges against him. His chain of command recommended trial by Special Court-Martial (SPCM) empowered to adjudge a BCD. On 10 July 1992, SPCM charges were referred. The entire DD Form 458 is unavailable to show the charge(s) that was referred.

(7) The applicant also submitted several letters in support of his court-martial at the time.

b. Support letter, E.J. LMHC, states he has been working with the applicant since 20 December 2023. After meeting with the applicant and reviewing his case, he

determined that the applicant meets the criteria for PTSD, chronic (F43.12), stemming from his military service. (The complete letter is available in documents for the board's review).

c. Support letter, A.H. (Spouse) discussed when they met and the timeline they moved in together. She describes how he went back to school to attain a Certificate in Construction Management. During her time of knowing him he has always had control over his emotions. She speaks to his good character and friendships. (The complete letter is available in documents for the board's review).

d. Documents from his positive service including:

- Letter of Appreciation sincere appreciation for hard work during squad command compliance by Lieutenant Colonel C.S.
- Colonel's Orderly letter for excellence in field exercise
- Good Conduct Medal 1st Award
- Other military Certificates of Training, Appreciation, and Achievement in support of his character and service

e. Medical documents in support of his claim. (11 pages).

6. He was discharged on 22 November 1993, with a BCD. His DD Form 214 shows he completed 6 years, 4 months, and 6 days net active service this period. His narrative reason for separation was court-martial, other. His DD Form 214 also shows he was awarded or authorized:

- Army Service Ribbon
- Divers and Mechanics Badge with Wheel Component
- Mechanics Badge
- Overseas Service Ribbon
- Army Good Conduct Medal
- National Defense Service Medal
- Southwest Asia Service Medal (2bss)
- Valorous Unit Award
- Kuwait Liberation Medal
- Expert Marksmanship Qualification Badge (Rifle)

7. He did not qualify to have his case considered by the Army Discharge Review Board because his conviction was by a special court-martial.

8. 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.

9. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, United States Code, section 1552, the authority under which this Board acts, the Army Board for Correction of Military Records 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.

10. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his bad conduct discharge (BCD). He contends he experienced PTSD that mitigates his misconduct. 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 17 July 1987; 2) The applicant deployed to Desert Storm in 1991; 3) The applicant was detained on 14 May 1992, for communicating a threat; 4) on 8 July 1992, the applicant was informed of the charges against him. His chain of command recommended trial by Special Court-Martial (SPCM) empowered to adjudge a BCD. On 10 July 1992, SPCM charges were referred. The entire DD Form 458 is unavailable to show the charge(s) that was referred; 5) The applicant was discharged on 22 November 1993, with a BCD. His DD Form 214 shows he completed 6 years, 4 months, and 6 days net active service this period. His narrative reason for separation was court-martial, other.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service and medical records. The VA's Joint Legacy Viewer (JLV) and hardcopy medical documentation provided by the applicant were also reviewed.

c. The applicant asserts he experienced PTSD that mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service.

d. A review of JLV provided sufficient evidence the applicant was diagnosed with service-connected PTSD (70%SC) in 2023 by the VA. The applicant also provided civilian medical documentation from a mental health counselor stating the applicant started in treatment in 2023, and he has been diagnosed by this provider with PTSD.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence beyond self-report the applicant has been diagnosed with service-connected PTSD. However, there is no nexus between the applicant's PTSD and his misconduct of threatening to harm another service-member in that: 1) this type of misconduct is not a part of the natural history or sequelae of PTSD; 2) PTSD

does not affect one's ability to distinguish right from wrong and act in accordance with the right. In addition, there is insufficient evidence surrounding the charges which resulted in the applicant's BCD to provide an appropriate opine on possible mitigation as the result of his mental health condition or experience.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No. There is sufficient evidence beyond self-report the applicant has been diagnosed with service-connected PTSD. However, there is no nexus between the applicant's PTSD and his misconduct of threatening to harm another service-member in that: 1) this type of misconduct is not a part of the natural history or sequelae of PTSD; 2) PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right. In addition, there is insufficient evidence surrounding the charges which resulted in the applicant's BCD to provide an appropriate opine on possible mitigation as the result of his mental health condition or experience. Yet, the applicant contends he experienced mental health condition while on active service, which mitigates his misconduct. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

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 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 records and the medical review, the Board concurred with the advising official finding sufficient evidence beyond self-report the applicant has been diagnosed with service-connected PTSD. The opine found no nexus between the applicant's PTSD and his misconduct of threatening to harm another service-member.

2. The ABCMR 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. The Board found the applicant's characterization of service has harsh based on the

misconduct and agreed there is sufficient evidence to support upgrading the applicant's discharge to under honorable conditions (general). The Board considered the applicant's character letters of support attesting to his character and his self-improvement since being discharged. The Board agreed under liberal consideration, partial relief is warranted and upgraded the applicant's characterization of service to general, under honorable conditions.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. In addition to the administrative notes annotated by the Analyst of Record (below the signature), the Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by re-issuing the applicant's DD Form 214 for the period ending 22 November 1993, to show a characterization of general under honorable conditions.

2. The Board further determined 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 an upgrade of the applicant's bad conduct discharge (BCD) to an honorable.

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows his DD Form 214 omitted administrative entries in the Remarks block. As a result, amend the applicant's DD Form 214 by adding in item 18 the entry "Continuous Honorable Service from 19870717 to 19910529."

Also

- Delete: Kuwait Liberation Medal
- Add: Kuwait Liberation Medal (Kingdom of Saudi Arabia) KLM-SA and Kuwait Liberation Medal (Government of Kuwait) KLM-K

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) sets forth the basic authority for separation of enlisted personnel.

a. Chapter 3 states a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or a special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

b. Paragraph 3-7 states 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.

c. Paragraph 3-7b provides that 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.

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. AR 635-8 (Separations Processing and Documents), currently in effect, provides for the preparation and distribution of the DD Form 214. It states for item 18 (Remarks) to Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable", enter "Continuous Honorable Active Service from" (first day of service for which DD Form 214 was not issued) until (date before commencement of current enlistment).

5. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit

of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

6. The Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta Memorandum]. 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 (TBI), 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 sexual assault or sexual harassment was unreported, or 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. 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.

a. Guidance documents are not limited to under other than honorable conditions discharge characterizations but rather apply to any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from general to honorable characterizations.

b. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.

c. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

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 (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//