

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 December 2024

DOCKET NUMBER: AR20240005401

APPLICANT REQUESTS: upgrade of his bad conduct discharge to under honorable conditions (general), and an appearance before the board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record), 20 February 2024
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 12 March 1991
- City Certificate of Appreciation, 25 October 2015
- Hall of Fame, Coach of the Year Certificate, 2016
- Letter of support, M.W.W____, 13 February 2024
- Letter of support, K.G.D____, 14 February 2024

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 many situations transpired during his enlistment, and he was not mature enough to handle them. He lacked the ability to understand or accept his daily challenges. As an adult he can clearly see how his conduct demonstrated signs of post-traumatic stress disorder (PTSD) and mental health issues, which were a result of serving under certain conditions. His DD Form 214 reflects that he had a period of honorable service from 1983 to 1987 and that he reenlisted in 1987. If his discharge is upgraded to general, under honorable conditions, it will also reflect his honorable service.

3. The applicant provides:

- a. His DD Form 214, showing a prior period of honorable service.

b. A City Certificate of Appreciation, dated 2014, showing he was recognized for 22 years of volunteer service to the city youth football and spirit federation.

c. A National Championship Certificate, dated 2015, showing he was selected to the National Coach Hall of Fame for working with youth for 25 years or more.

d. A letter of support from M.W.W____, dated 13 February 2024, a colleague of his who has known him for over 30 years and has worked with him in the community with youth sports teams. He has been recognized locally and nationally and has helped the city youth with quality events.

e. A letter from K.G.D____, dated 14 February 2024, a retired Army Sergeant First Class who supports his efforts to upgrade his discharge. He transitioned from Soldier to citizen and never repeated the mistakes he made in service. He mentored over 5000 children, staff, and parents for more than 30 years. He recently retired after working for over 30 years with a State University. His leadership roles were coach, position coach, operation coach, head coach, and president, and he was inducted into two halls of fame.

4. A review of the applicant's service records show:

a. On 14 April 1983, he enlisted in the Regular Army for a period of 4 years. He completed Basic Combat Training and Advanced Individual Training, and he was awarded military occupational specialty 72E (Tactical Telecommunications Center Operator).

b. On 7 December 1984, he was promoted to specialist 4 (SP4)/E-4.

c. On 30 January 1987, he reenlisted in the Regular Army for a period of 3 years beginning at rank/pay grade SP4/E-4.

d. A DD Form 458 (Charge Sheet) listing the charges and specifications, leading to a special court-martial, a DA Form 1574 (Report of Proceedings by Investigating Officer/Board of Officers), and a Criminal Investigation Division Report showing the findings of an investigating officer are not contained in the available records.

e. Special Court-Martial Order (SCMO) Number 6, issued by U.S. Army Garrison, Fort Huachuca, Fort Huachuca, dated 7 April 1989, reflects he was arraigned, tried, found guilty, and sentenced to be reduced to private/E-1, and to be discharged from the service with a bad conduct discharge; of the charge and specifications:

(1) Charge: violation of Article 112a, specification 1: distribution of cocaine on 2 May 1989 (sic);

(2) Charge: violation of Article 112a, specification 2: possession of cocaine with intent to distribute on 11 May 1989 (sic); and

(3) The sentence was adjudged on 7 March 1989. (Analyst note: the dates of the charges listed in SCMO Number 6 were recorded as a future date as to the order and are therefore in error; the correct dates could not be verified in the available records).

f. On 16 May 1990, The U.S. Army Court of Criminal Appeals considered the entire record, including consideration of the issues personally raised by the appellant, and held the findings of guilty and sentence as approved by the convening authority correct in law and fact; and the Court affirmed the sentence.

g. Special Court-Martial Order Number 1, issued by U.S. Army Intelligence Center and Fort Huachuca, dated 22 February 1991, affirmed the findings in the special court-martial case as promulgated in SCMO Number 6, dated 7 April 1989. Article 71(c) having been complied with the bad conduct discharge would be duly executed.

h. On 25 March 1991, he was discharged. His DD Form 214 shows he completed 7 years, 11 months, and 12 days of net active service this period with no time lost. It further shows in:

- block 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized): Army Achievement Medal (Second Award). Army Service Ribbon, Overseas Service Ribbon, Marksman Marksmanship Qualification Badge with Rifle Bar (M-16), Expert Marksmanship Qualification Badge with Hand Grenade Bar, and NCO Professional Development Ribbon
- block 18 (Remarks) – Continuous Honorable Active Service from 14 April 1983—29 January 1987
- block 23 (Type of Separation) -- Discharge
- block 24 (Character of Service) – bad conduct discharge
- block 25 (Separation Authority) – Army Regulation 635-200, Chapter 3, Section IV
- block 26 (Separation Code) – JJD
- block 27 (Reentry Code) – 4
- block 28 (Narrative Reason for Separation) – as a result of court-martial, other

5. 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.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his bad conduct discharge (BCD) to under honorable conditions (general). On his application, the applicant indicated, in effect, that PTSD and Other Mental Health Issues are related to his request. 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 (RA) on 14 April 1983, 2) a Special Court-Martial Order dated 07 April 1989 shows the applicant was found guilty of distribution and possession of cocaine with intent to distribute, 3) the applicant was discharged on 25 March 1991 under the provisions of AR 635-200, Chapter 3, Section IV, with a BCD, a separation code of JJD, and reentry code of '4.'

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. There were no medical records available for review.

d. A review of JLV was void of medical information. The applicant is not service-connected through the VA for any conditions. It is of note that his BCD renders him ineligible for VA services.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends that his misconduct was related to PTSD and Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to PTSD and Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his

assertion of PTSD or Other Mental Health Issues. In absence of documentation supporting his assertion there is insufficient evidence to establish his misconduct was related to or mitigated by PTSD or Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his misconduct was related to PTSD and Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

BOARD DISCUSSION:

1. The Board determined 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.

2. 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.

a. The applicant's trial by a court-martial was warranted by the gravity of the offense charged (distribution of illegal drugs). 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 or experience that mitigates his misconduct.

b. The Board considered the character reference letters provided by the applicant in support of a clemency determination. He provides a National Championship Certificate, dated 2015, showing he was selected to the National Coach Hall of Fame for working with youth for 25 years or more. He also provides two letters from individuals who speak of his work in the community with youth sports teams and his recognition locally and nationally and his help to the city youth with quality events. Also, another author speak of the applicant's transition from Soldier to citizen and his service for 30 years with a State University, taking on the roles of coach, position coach, operation coach, head coach, and president. The Board found these letters persuasive in support of a clemency determination. Therefore, the Board determined that the applicant's service

did not rise to the level required for an honorable discharge; however, a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board also determined that such upgrade did not change the underlying reason for separation and thus the narrative reason for separation and corresponding codes should not change.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant a DD Form 214 for the period ending 25 March 1991 as follows:

- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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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 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity.

a. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. By law, Title 10 U.S. Code Section 1552, court-martial convictions stand as adjudged or modified by appeal through the judicial process. This Board 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. The ABCMR does not have authority to set aside a conviction by a court-martial.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), then in effect, set 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.

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. A discharge under other than honorable conditions is an administrative separation for the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or for the good of service.

d. 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.

5. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator "JJD" corresponded to "As A Result of Court-Martial, Other," and the authority, Army Regulation 635-200, Chapter 3.

6. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised 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.

7. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

8. 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. 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.

9. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.

//NOTHING FOLLOWS//