

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 December 2024

DOCKET NUMBER: AR20240005403

APPLICANT REQUESTS: an upgrade of his bad conduct discharge (BCD) and correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 5 August 2011, to show a different separation code and reentry eligibility (RE) code; additionally a personal appearance before the Board.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 149 (Application for Correction of Military Record)
- self-authored statement
- DD Form 214, for the period ending 30 August 2002
- DD 2807-1 (Report of Medical History) and DA Form 2697 (Report of Medical Assessment), dated 17 April 2009
- Coaching Certification, National Federation of State High School Associations (NFHS) Learning Center, dated 17 November 2018
- Bachelor of Arts, University of Arizona Global Campus, dated 10 October 2022
- letter, American Public University (APU), undated
- Volunteer Activity Report, Colorado Springs Parks and Recreation, dated 22 January 2024
- Facsimile correspondence, dated 28 August 2024
- Transcripts and Academic Plan, APU, dated 19 January 2023 to 25 August 2024
- letters (3), Recommendations for Employment, dated 19 August to 26 August 2024

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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:

a. He is committed to demonstrating his past does not define his future. He fully understands the gravity of his actions. He was reprimanded and spent six months in confinement. He has spent 12 years reflecting on his actions and their impact. Since his release, he has had no negative interactions with law enforcement. He has dedicated himself to coaching and mentoring kids. He obtained his bachelor's degree in sports and recreation management and is currently enrolled in a master's program.

b. He is committed to self-reliance. He aims to use his degree to apply for positions as an assistant athletic director and physical education teacher/head coach within the public school system. He must pass a background check to obtain a teacher's license for these positions. He is not seeking to file for medical disability. His goal is to secure gainful employment. The applicant notes post-traumatic stress disorder (PTSD) and other mental health as conditions related to his request.

3. The applicant enlisted in the Army National Guard of the United States (ARNGUS) on 25 October 2000 and was subsequently ordered to active duty for training (ADT). He was honorably released from ADT on 30 August 2002, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 4, by reason of completion of required active service. He completed 2 months and 14 days of net active service this period. He was awarded military occupational specialty (MOS) 13B (Cannon Crewmember).

4. He was discharged from the Pennsylvania Army National Guard on 14 July 2004, under the provisions of National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 8-27f, by reason of acts or patterns of misconduct. His character of service was under honorable conditions (general), with reentry code RE-3. He completed 2 years, 4 months, and 8 days of net service and was awarded the Army Service Ribbon.

5. The applicant enlisted in the Regular Army on 14 February 2008, for 4 years. After the completion of training, he was awarded military occupational specialty 88N (Traffic Management Coordinator). The highest rank he attained was private/E-2.

6. A DD Form 2807-1 and a corresponding DA Form 2697, show the applicant underwent a medical assessment on 17 April 2009. He reported arthralgias in fingers, hands, and bilateral knees since July 2008; PTSD and depression since December 2008; and substance abuse in 2009.

7. A DD Form 616 (Report of Return of Absentee) shows the applicant was reported absent without leave (AWOL) on 26 July 2009 and was dropped from the rolls on 28 August 2009. He was apprehended by civil authorities on 11 January 2010 and returned to military control on that same date.

8. Before a general court-martial, at Fort Carson, CO on 12 July 2010 and 23 August 2010, the applicant was found guilty of wrongfully distributing some amount of marijuana, on or about 18 September 2009; and for being AWOL, from on or about 26 July 2009 until on or about 11 January 2010. He was sentenced to confinement at hard labor for 10 months and to be discharged from the Army with a BCD. The sentence was approved on 14 October 2010.

9. On 7 February 2011, the U.S. Army Court of Criminal Appeals made a correction to General Court-Martial Order Number 36, issued by Headquarters, Fort Carson, CO. However, the correction is not available for review, nor is the appellate review.

10. General Court-Martial Order Number 107, issued by Headquarters, U.S. Army Fire Center of Excellence, Fort Sill, OK on 31 May 2011, noted the applicant's sentence was finally affirmed and ordered the BCD to be duly executed.

11. The applicant was discharged on 5 August 2011, under the provisions of Army Regulation 635-200, Chapter 3, by reason of court-martial. His DD Form 214 shows his service was characterized as Bad Conduct, with separation code JJD and reentry code RE-4. He completed 2 years, 4 months, and 2 days of net active service, with lost time from 26 July 2009 to 11 January 2010 and 23 August 2010 to 26 May 2011. He was awarded or authorized the:

- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon

12. The applicant provides:

a. A Certificate of Completion, dated 17 November 2018, shows the applicant completed the Level 1 requirements of the NFHS Coach Certification Program, on 17 November 2018.

b. He obtained his Bachelor of Arts in Sports and Recreation Management from the University of Arizona Global Campus, on 10 October 2022.

c. A letter from APU, shows that due to his academic achievements, he was placed on the President's List for the third quarter of 2023.

d. A Volunteer Activity Report, Colorado Springs Parks and Recreation, dated 22 January 2024, shows he volunteered 620 service hours as a football coach from Fall 2015 to Spring 2020.

e. Facsimile correspondence, dated 28 August 2024, show the applicant requested and received his Transcripts and Academic Plan, from APU, dated 19 January 2023 to 25 August 2024, which shows he had a 4.0 grade point average as of 19 January 2023 in his Master of Science program.

f. In three letters recommending the applicant for employment, dated 19 August to 26 August 2024, the authors attest to the applicant's competence, leadership qualities, and commitment to athletic excellence and student development. His ability to lead inspires both staff and students. He is an exceptional advocate for students, who focuses on what is best for the "whole student," and he works to create an environment in which they can flourish. He is an adult that students can trust and rely upon and a strong team member who teachers look to for guidance.

13. His records include correspondence from the applicant, the Office of Congressman Joe Wilson, and the Army Review Boards Agency (ARBA), dated 21 March 2024 to 22 May 2024, regarding the status of the applicant's request.

14. In the processing of this case, ARBA sent a letter to the applicant on 21 August 2024, requesting medical documentation to support his issue of PTSD. The applicant provided a response, stating he requested his medical documentation from the Department of Veterans Affairs on 28 August 2024. However, he did not believe the records would be provided in time for his case review. To date, no additional medical documentation has been received.

15. 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.

16. Regulatory guidance provides when an individual is discharged under the provisions of Army Regulation 635-200, Chapter 3, the applicable narrative reason is "court-martial - other," with separation code "JJD".

17. 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 for the period ending 5 August 2011. 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 Army National Guard on 25 October 2000 and was subsequently ordered to active duty for training (ADT) in June 2002. He was honorably released from ADT on 30 August 2002 with 2 months and 14 days of net active service. He was discharged from the Pennsylvania ARNG on 14 July 2004, under the provisions of National Guard Regulation 600-200, paragraph 8-27f, by reason of acts or patterns of misconduct. His character of service was under honorable conditions (general), with reentry code RE-3. He completed 2 years, 4 months, and 8 days of net service.
- The applicant enlisted in the Regular Army on 14 February 2008.
- Before a general court-martial, at Fort Carson, CO on 12 July 2010 and 23 August 2010, the applicant was found guilty of wrongfully distributing some amount of marijuana, on 18 September 2009 and for being AWOL from 26 July 2009 until 11 January 2010.
- The applicant was discharged on 5 August 2011 and completed 2 years, 4 months, and 2 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he is requesting an upgrade so that he can pursue becoming a certified teacher, and he indicated PTSD and "other mental health" as mitigating factors in his misconduct. A Report of Medical History dated 17 April 2009 showed that the applicant reported a history of PTSD and depression in 2008 and substance abuse in 2009, and a Report of Medical Assessment dated 16 April 2009 noted PTSD and sleep deprivation. 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 an initial contact with DoD behavioral health on 10 June 2008 when the applicant was in-processing from AIT. He reported sleep difficulty secondary to worries about his girlfriend and baby, who he had not heard from in several weeks, grief/loss related to the death of his grandmother, depressed mood, irritability, anxiety, and substance abuse concerns. The applicant reported he had been involved in the Army's Substance Abuse Program (ASAP) while in AIT due to a positive drug screen for marijuana, and he was provided with information and an appointment to reenroll. On 12 June 2008 he was seen as a walk-in to behavioral health where he discussed his distress related to his girlfriend, his history of growing up in foster care, and his parents' deaths by drug overdose, and he was evaluated by ASAP resulting in another positive drug test for marijuana. Documentation indicated he was referred off-post for treatment. His next encounter with ASAP was on 3 November 2008 and noted a diagnosis of Cannabis Abuse. He was seen by mental health on 21

November 2008 as referred by his off-post BH provider (records not available), who had requested a second opinion related to possible Bipolar Disorder. He was diagnosed with Adjustment Disorder with a treatment plan to continue with therapy by the off-post provider. A chapter 14 evaluation was conducted on 12 February 2009, and it was noted that the applicant reported a diagnosis of PTSD by his off-post provider as well as indication for a medical evaluation board. However, he was psychologically cleared for administrative separation. Documentation shows he had three 'no show' appointments to his off-post provider in March 2009. An encounter on 22 April 2009 indicated the applicant was in the MEB process due to his pain condition, and there was an update to his profile noted on 1 May 2009. During a primary care visit on 23 July 2009, the applicant endorsed significant symptoms of depression and PTSD on screeners, and he was started on an antidepressant medication. Documentation discussed his mood symptoms as being related to his pain condition, which continued to be undiagnosed but was indicative of possible rheumatoid arthritis. A record review was conducted on 31 July 2009 and noted that the applicant had been discharged from his off-post BH treatment on 3 June 2009, and his ASAP treatment had been concluded. However, these records were not available for review. A Medical Evaluation Board Consultation document dated 7 August 2009 provided a comprehensive evaluation of the applicant's history, which included his childhood experiences and his report of military history. Notably, it is documented that while serving in the Pennsylvania ARNG, he deployed to "Iraq for approximately 12 months" and "was stationed in Kandahar" (*sic*). He denied experiencing any significant trauma but did indicate exposure to "some mortar attacks." Documentation showed he was referred off-post for BH treatment and engaged in psychotherapy weekly for about two months with his last appointment on 23 January 2009, and it was also noted that he attended 22 twice weekly ASAP sessions, completing this program. His diagnosis was Marijuana Abuse, and his "marginal psychiatric symptoms" were attributed to a possible personality disorder with a chronic maladaptive style. He was deemed to not require a profile for any psychiatric disorder. He reengaged with BH in May 2010 with complaints of sleep difficulty and irritability, and in subsequent sessions he reported difficulty getting along with his unit while awaiting disposition of an MEB. A VA Compensation and Pension (C&P) evaluation was conducted on 8 June 2010, and the applicant reported sleep difficulty (with medication), nightmares "about Afghanistan," daytime fatigue, irritability, and low mood. He discussed stress associated with getting along with his unit and chain of command, anger outbursts, and a desire to be out of the Army. He reported a deployment to Afghanistan from 2004 to 2005, but he denied significant traumatic events. He was diagnosed with Adjustment Disorder with depressed mood and Alcohol Abuse, and it was noted that he did not appear to meet criteria for a personality disorder or PTSD despite his childhood history of trauma exposure and maladaptive relational patterns. Documentation from therapy and medication management visits through August 2010 focused on functioning within his unit while awaiting MEB results, hernia surgery, managing chronic pain, and legal problems, and the applicant was diagnosed with Major Depressive Disorder. It was noted that he did not meet retention standards. A

Command Consultation note on 23 August 2010 showed that the applicant was going through a court martial related to drug distribution, and documentation of his mental health history was provided. A New Inmate BH evaluation dated 14 September 2010 showed the applicant was taking an antidepressant and a medication for sleep, and this was the final BH encounter.

e. A thorough review of the applicant's iPERMS record showed no history of deployment. Records contained in the applicant's case file were noted. Additionally, a Report to Suspend Favorable Action (FLAG) showed the initiation of a FLAG on 30 November 2003 due to Misconduct, Unsatisfactory Participation, and it was signed on 18 May 2004.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support that the applicant had a mental health condition, but his condition does not mitigate his misconduct.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had a mental health condition, including PTSD, at the time of the misconduct. DoD documentation showed he was initially seen for mental health and substance abuse treatment in June 2008 when he arrived at his first duty station after AIT. Documentation from 2008 through 2010 showed he was diagnosed with Adjustment Disorder, Marijuana Abuse, Alcohol Abuse, and Major Depressive Disorder. He was evaluated through an MEB but was determined to meet retention standards. However, subsequent documentation indicated he did not meet retention standards.

(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 documentation shows a history of diagnoses and treatment.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Military medical and mental health records showed a history of diagnosis and treatment for mental health and substance abuse while on active service. Additionally, the applicant went through the MEB process due to a chronic pain condition, which was noted to exacerbate his symptoms of depression and sleep difficulty. Documentation shows a significant history of childhood related trauma, and the applicant reported to two BH providers a deployment history with some trauma exposure. However, there is no record of a deployment, and the applicant was not diagnosed with PTSD. Substance abuse can be a common self-medicating strategy for avoiding uncomfortable emotions and memories related to trauma exposure, but there is no nexus between the applicant's mental health condition and his misconduct related to wrongful distribution of

marijuana. This type of misconduct is not part of the natural history or sequela of a mental health condition, and his mental health conditions do not affect one's ability to distinguish right from wrong and act in accordance with the right. Avoidant behavior, such as going AWOL, can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events, but there is no record of military-related trauma exposure.

g. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct leading to the applicant's separation and the post-service character evidence provided by the applicant, the Board concluded that granting clemency by upgrading the characterization of service to General, Under Honorable Conditions, changing the reentry code to RE3 and changing the narrative reason for separation to misconduct was appropriate.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█ █ █ GRANT FULL RELIEF

: : : 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 reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Under Honorable Conditions (General)
- Separation Authority: AR 635-200
- Separation Code: BKM
- Reentry Code: 3
- Narrative Reason for Separation: Misconduct

[REDACTED]

[REDACTED]

[REDACTED]

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 (USC), 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 Army Board for Correction of Military Records (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. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and 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, and reviews to ABCMR applicants prior to adjudication.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides:

a. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body.

b. 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.

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 reentry (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

5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), narrative reasons for separating Soldiers from active duty, and the corresponding separation codes to be entered on the DD Form 214. It states that SPD Code "JJD" is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 3, with the narrative reason for separation "court-martial – other."

6. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. The regulation provides:

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 bad conduct discharge pursuant only to an approved sentence of a general or special court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed.

7. National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), in effect at the time, established the standards, policies, and procedures for the management of Army National Guard Enlisted Soldiers. Chapter 8, in pertinent part, covers reasons for the discharge and separation of enlisted personnel.

8. 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.

9. 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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; 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 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.

10. 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, 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.

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//