

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 December 2024

DOCKET NUMBER: AR20240005629

APPLICANT REQUESTS: an upgrade of his characterization of service from Under Other than Honorable Conditions (UOTHC).

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Security clearance verification memorandum
- DA Forms 2166-8 (Noncommissioned Officer Evaluation Report (NCOER)) (3)
- Enlisted Record Brief
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Character reference letter
- Civilian education certificates (4)

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 his achievements since his departure from the military demonstrate that he was not given a fair and equitable opportunity to redeem himself as a stellar NCO. His achievements are demonstrated by his awards, NCOERS, and the approval of his Top Secret/Sensitive Compartmented Information security clearance following a background investigation. His intellectual ability, commitment, and determination to excel as a productive human being among our society is demonstrated by his receipt of a master's degree. He is a great father who is very protective, affectionate, and provides a strong support system for his five children. The applicant indicates on his DD Form 293, that Post-Traumatic Stress Disorder (PTSD) and other mental health conditions are related to his request.

3. On 28 May 2008, the applicant enlisted in the Regular Army for a period of 5 years and 34 weeks in the rank/pay grade of private first class (PFC)/E-3. Upon completion of

initial entry training, he was assigned to a unit at Fort Bragg, NC. He was subsequently reassigned to a unit at Eglin Air Force Base, FL.

4. The applicant served in the designated Imminent Danger Pay area of Afghanistan from 14 July 2009 to 9 January 2010, from 19 July 2010 to 10 January 2011, and from 28 February 2012 to 25 August 2012.

5. He reenlisted for a period of 3 years on 27 November 2012. He was promoted to staff sergeant (SSG)/E-6 on 1 May 2013, which was the highest rank he held.

6. The applicant served in the designated Imminent Danger Pay area of Afghanistan from 14 November 2013 to 15 March 2014.

7. He reenlisted for a period of 2 years on 23 October 2014. On 9 December 2014, he extended his term of enlistment for an additional 17 months in order to meet the service remaining requirement for an accompanied tour to Germany. He was reassigned to a unit in Germany with a reporting date of 10 March 2015.

8. A DD Form 2707-1 (Department of Defense Report of Result of Trial) shows the applicant was arraigned by Special Court-Martial Number 11 issued by Headquarters, 21st Theater Sustainment Command on 1 June 2016 at a Special Court-Martial convened by Commander, 21st Sustainment Command.

a. He pled guilty and was found guilty of the following charges and specifications in violation of the Uniform Code of Military Justice (UCMJ).

(1) Charge I, Article 121, UCMJ: The Specification: In that he did, at or near Stuttgart, Germany, on or about 12 December 2015, steal merchandise of a value of about \$1,151.92, the property of the Army and Air Force Exchange Service.

(2) Charge II, Article 80, UCMJ: The Specification: In that he did, at or near Friedberg, Germany, on or about 12 December 2015, attempt to commit larceny by stealing money, of a value of at least \$20.00 from a Navy Federal Credit Union account at an automatic teller machine.

b. The applicant's sentence consisted of reduction from SSG/E6 to private/E-1, forfeiture of \$1,000.00 pay per month for 6 months, to be confined for 6 months, and a bad conduct discharge (BCD). The sentence was adjudged on 1 June 2016 and subsequently approved. The portion of the sentence in excess of confinement in excess of 5 months was disapproved based upon a pre-trial agreement.

9. The applicant was assigned to Personnel Control Facility Fort Sill, OK with confinement at the U.S. Army Regional Correctional Facility Europe with a reporting date of 1 June 2016. The applicant was confined from 1 June 2016 to 30 September 2016.

10. Special Court-Martial Order Number 10 issued by Headquarters, U.S. Army Fires Center of Excellence and Fort Sill, OK on 18 May 2017 shows only so much of the sentence adjudged on 1 June 2016, as promulgated by Special Court-Martial Order Number 2, dated 27 July 2016, as provided for reduction to E-1, forfeiture of \$1,000.00 pay per month for 6 months, confinement for 140 days, and a BCD, was finally affirmed. The automatic forfeiture of pay was deferred effective 13 June 2016, and deferment terminated on 27 July 2016. The automatic forfeiture of pay was waived effective 27 July 2016 for a period of 6 months with direction that those funds be paid to S.T.H. The applicant was credited with 1 day of confinement against the sentence to confinement. That portion of the sentence extending to confinement had been served and the BCD was ordered to be executed.

11. Orders and the applicant's DD Form 214 show he was discharged in the grade of E-1 on 9 June 2017, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 3, as a result of "Court-Martial (Other)." He was assigned separation code "JJD" and reentry code "4." His service was characterized as "Bad Conduct." He was credited with completion of 8 years, 8 months, and 13 days of net active service. He had lost time due to confinement from 1 June 2016 until 29 September 2016. He did complete his first full term of service. He was credited with continuous honorable service from 28 May 2008 to 22 October 2014. He was awarded or authorized the:

- Afghanistan Campaign Medal with 2 Campaign Stars
- Joint Service commendation Medal
- Army Commendation Medal (2nd Award)
- Joint Service Achievement Medal (2nd Award)
- Army Achievement Medal
- Army Superior Unit Award (2nd Award)
- Army Good Conduct Medal (2nd Award)
- National Defense Service Medal
- Global War on Terrorism Service Medal
- NCO Professional Development Ribbon (2nd Award)
- Army Service Ribbon
- Overseas Service Ribbon (4th Award)
- North Atlantic Treaty Organization Medal
- Parachutist Badge
- Driver and Mechanic Badge with Mechanic Bar
- Certificate of Achievement (2nd Award)

12. The applicant petitioned the Army Discharge Review Board (ADRB) for relief. The ADRB reviewed his case and voted to grant him relief in the form of upgrading the characterization of his service from BCD to a discharge UOTHC. The ADRB further determined his narrative reason for separation, Separation code, and Reentry code were appropriate and would remain unchanged. The applicant's original DD form 214 was revoked and he was issued a revised DD Form 214 which shows his service characterization as UOTHC.

13. The applicant provides the following documents:

a. A memorandum dated 16 August 2013, which shows he was granted a Top Secret/Sensitive Compartmented Information security clearance following a background investigation.

b. Three DA Forms 2166-8 rendered for the period from 1 December 2011 through 30 November 2014 which show his raters and senior raters gave him favorable comments and ratings regarding his performance and potential.

c. His Enlisted Record Brief provides a synopsis of his personal information, civilian and military education, military qualifications, awards and decorations, and assignment history.

d. A Character reference letter rendered by a retired Command Sergeant Major who makes very favorable comments about the applicant and states it is very difficult for him to believe a person with the applicant's attributes was discharged from the military by Special Court-Martial with a BCD.

e. Four certificates show the applicant's civilian education achievements, to include Bachelor of Science and Master of Information Systems degrees.

14. 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.

15. Army Regulation 635-200 provides that a Soldier would be given a BCD pursuant only to an approved sentence of a general or special court-martial and that the appellate review must be completed, and the affirmed sentence ordered duly executed.

16. 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.

17. MEDICAL REVIEW:

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

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted into the Regular Army on 28 May 2008 and reenlisted on 23 October 2014.
- The applicant served in Afghanistan from 14 July 2009 to 9 January 2010, from 19 July 2010 to 10 January 2011, and from 28 February 2012 to 25 August 2012.
- On 1 June 2016, the applicant was found guilty by a special court-martial of stealing merchandise from the Army and Air Force Exchange Service in Germany and committing larceny by stealing money from a Navy Federal Credit Union ATM.
- The applicant was discharged on 9 June 2017 with a bad conduct discharge and was credited with completion of 8 years, 8 months, and 13 days of net active service. His characterization of service was upgraded to UOTHC by the ADRB.

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 mental health, including PTSD, as mitigating factors in his misconduct and discharge. The application was void of any medical or mental health records. 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 the applicant was referred to Family Advocacy (FAP) on 4 May 2009 due to a physical altercation between him and his wife, and he completed an anger management group. In January 2010, he was again referred to FAP following a domestic violence incident related to physical abuse toward his wife, and he completed another anger management group. On 4 September 2014 he completed an evaluation to become a recruiter and was cleared, and there is documentation of a Mental Status Evaluation on 17 May 2016, which showed that the applicant had no significant behavioral health history and was "cleared for any punitive action as determined by Command and/or the Special Court Martial." It was noted that

the applicant denied any mental health symptoms and reported his deployment history as “they were great.” An intake for in-processing to confinement was conducted on 19 July 2016, and the applicant denied any mental health concerns. Documentation showed he attended three anger management group sessions.

e. The applicant initially engaged mental health treatment through the VA on 11 January 2023 and reported sleep difficulty and problems with memories from his deployments. His next encounter was on 15 November 2024 where he reported symptoms of anxiety, sleep difficulty, and relationship problems associated with his mental health concerns. It was noted that he was prescribed two antidepressant medications and an anxiolytic, but he is receiving primary care through a community provider so records are not viewable.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct.

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 an undiagnosed mental health condition, including PTSD, at the time of the misconduct. His DoD mental health records showed that he received anger management group therapy while on active service, and he has engaged the VA for mental health treatment related to anxiety and sleep difficulty.

(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.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. Documentation showed that he denied mental health symptoms when evaluated to stand trial and upon entry to confinement. Additionally, there is no nexus between his asserted mental health condition, including PTSD, and his misconduct related to theft and larceny: 1) these types of misconduct are not part of the natural history or sequelae of a mental health condition; 2) his asserted mental health conditions do not affect one’s ability to distinguish right from wrong and act in accordance with the right.

h. 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:

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 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 request and available military records and medical review, the Board concurred with the advising official finding insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. The opine noted there is no nexus between his asserted mental health condition, including PTSD, and his misconduct related to theft and larceny.

2. The Board commends the applicant's post service accomplishments since his discharge. The Board noted, the applicant's character letter of support attesting to his character, integrity and him being dedicated and a hard worker. 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. Under liberal consideration, the Board noted the applicant's periods of honorable service, his deployments and decorations and awards. However, the Board found the applicant's post service did not mitigate the applicant's serious misconduct. Based on the preponderance of evidence, the Board denied relief.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

■ [REDACTED]

[REDACTED] [REDACTED]

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[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, 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 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. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. Title 10, USC, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Court-martial convictions stand as adjudged or modified by appeal through the judicial process, 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. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge was separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when subsequent honest and faithful service over a greater period outweighed disqualifying entries in the Soldier's military record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. A general discharge was a separation from the Army under honorable conditions. When authorized, separation authorities could issue a general discharge to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. A discharge under other than honorable conditions (UOTHC) is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, homosexual conduct, security reasons, or in lieu of trial by court martial in the following circumstances.

(1) An under-other-than-honorable-conditions discharge will be directed only by a commander exercising general court-martial authority, a general officer in command who has a judge advocate or legal advisor available to his/her command, higher authority, or the commander exercising special court-martial convening authority over the Soldier who submitted a request for discharge in lieu of court-martial (see chapter 10) when delegated authority to approve such requests.

(2) When the reason for separation is based upon one or more acts or omissions that constitutes a significant departure from the conduct expected of Soldiers of the Army. Examples of factors that may be considered include the following:

- Use of force or violence to produce bodily injury or death
- Abuse of a position of trust
- Disregard by a superior of customary superior-subordinate relationships
- Acts or omissions that endanger the security of the United States or the health and welfare of other Soldiers of the Army
- Deliberate acts or omissions that seriously endanger the health and safety of other persons

d. A bad conduct discharge will be given to a Soldier pursuant only to an approved sentence of a general or special court-martial. The appellate review had to have been

completed and the affirmed sentence then ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing staff judge advocate.

e. A dishonorable discharge will be given to a Soldier pursuant only to an approved sentence of a general court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing staff judge advocate.

f. Chapter 5, paragraph 5-3 states separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums.

5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) implements the specific authorities and reasons for separating Soldiers from active duty. It also prescribes when to enter SPD codes on the DD Form 214.

a. Paragraph 2-1 provides that SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of Department of Defense and the Military Services to assist in the collection and analysis of separation data. This analysis may, in turn, influence changes in separation policy. SPD codes are not intended to stigmatize an individual in any manner.

b. Table 2-3 provides the SPDs and narrative reasons for separation that are applicable to enlisted personnel. It shows, in part, SPD JJD is the appropriate code to assign to an enlisted Soldier who is involuntarily separated under the provisions of Army Regulation 635-200, Chapter 3, as a result of trial by court-martial. Additionally, the SPD/RE Code Cross Reference Table established RE code "4" as the proper reentry code to assign to Soldiers separated under this authority and for this reason. JFF is the appropriate SPD to assign to enlisted Soldiers who are voluntarily discharged under Secretarial authority.

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 post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC 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. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to 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.

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.

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//