

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 March 2025

DOCKET NUMBER: AR20240006372

APPLICANT REQUESTS:

- upgrade of his bad conduct discharge (BCD) to under honorable conditions (general) or honorable
- a favorable change of his narrative reason for separation
- a favorable change of his separation and reentry eligibility (RE) codes

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

DD Form 293 (Application for the Review of Discharge)

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:
 - a. He needs upgrade to receive full Veterans Affairs (VA) benefits.
 - b. He indicates a VA Form 21-4138 (Statement in Support of Claim) as evidence; however, the form was not provided with his request.
3. On his DD Form 293, the applicant notes post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and other mental health issues are related to his request.
4. The applicant enlisted in the Regular Army on 5 May 2010, for 3 years and 19 weeks.
5. He served in Kuwait from 15 September 2011 to 29 December 2011.
6. He served in Afghanistan from 29 December 2011 to 31 March 2012.

7. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice; however, the relevant DD Form 458 (Charge Sheet) is not available for review.

8. The applicant's record is void of orders or case documents containing the specific facts and circumstances surrounding his court-martial. However, Orders: 086-013, issued by Headquarters, Joint Base Garrison, Military Personnel Division, Joint Base Lewis-McChord, WA on 27 March 2014, assigned the applicant to the Personnel Control Facility, Fort Sill, OK, with confinement at Midwest Joint Regional Correctional Facility, Fort Leavenworth, KS, effective 10 April 2014. The applicant had been sentenced to confinement for 66 months and to be discharged from the service with a BCD. He was reduced in grade from E-4 to E-1, effective 2 January 2014.

9. The applicant was discharged on 6 July 2016. He was credited with 3 years, 7 months, and 14 days of net active service this period with 931 days of lost time. His DD Form 214 (Certificate of Release or Discharge from Active Duty) contains the following entries in:

- item 24 (Character of Service) – Bad Conduct
- item 25 (Separation Authority) – AR [Army Regulation] 635-200 (Active Duty Enlisted Administrative Separations), Chapter 3
- item 26 (Separation Code) – JJD
- item 27 (Reentry Code) – 4
- item 28 (Narrative Reason for Separation) – Court-Martial

10. Additionally, his DD Form 214 shows he was awarded or authorized the Afghanistan Campaign Medal with Campaign Star, Army Commendation Medal, Army Achievement Medal, National Defense Service Medal, Global War on Terrorism Service Medal, Army Service Ribbon, Overseas Service Ribbon, North Atlantic Treaty Organization Medal, and Combat Action Badge.

11. 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.

12. 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.

13. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his bad conduct discharge (BCD) and other corresponding changes to his DD-214. He contends he experienced posttraumatic stress disorder (PTSD), other mental health concerns, and traumatic brain injury (TBI) 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 05 May 2010; 2) The applicant was deployed to Kuwait and then Afghanistan from September 2011 to March 2012; 3) The applicant's record is void of orders or case documents containing the specific facts and circumstances surrounding his court-martial; 4) The applicant was discharged on 06 July 2016, Chapter 3- Court-Martial. His character of service was BCD. He completed 3 years, 7 months, and 14 days net active service with 931 days of lost time.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical records were provided for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced PTSD, other mental health concerns, and TBI that mitigate his misconduct. There is insufficient evidence that the applicant reported or was diagnosed with a TBI or PTSD while on active service. Following the applicant's combat deployment, the applicant was command referred for substance abuse treatment starting on 25 September 2012 for cannabis and alcohol dependence. His mental health treatment while in service also included inpatient substance abuse treatment from 02 April 2013 to 30 April 2013. The most recent mental health treatment on 04 March 2014 noted the treatment diagnoses of: "cannabis dependence," "depressive disorder NOS," "insomnia," "anxiety," and "alcohol dependence." The applicant noted an increase in substance abuse following his deployment. However, there is insufficient evidence the applicant reported or was diagnosed with PTSD or TBI at this time.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service connected TBI or a mental health condition, including PTSD. The applicant participated in VA outreach to incarcerated veterans in 2024. However, there was insufficient evidence of any additional VA engagement or mental health treatment following his discharge.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is evidence that following his deployment that the applicant was experiencing alcohol and substance abuse problems along with symptoms of depression and anxiety.

However, there is insufficient evidence the applicant was diagnosed with PTSD or a TBI. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of his mental health condition or experience. However, the applicant contends he experienced mental health condition while on active service, which mitigates his misconduct and discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, the applicant asserts he experienced TBI and other mental health conditions including PTSD, which mitigate his misconduct. There is evidence that following his deployment that he was experiencing alcohol and substance abuse problems along with symptoms of depression and anxiety. However, there is insufficient evidence that the applicant was diagnosed with PTSD or a TBI. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of his mental health condition or experience. However, the applicant contends he experienced mental health condition while on active service, which mitigates his misconduct and discharge. The applicant's contention 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 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 petition, available military records and the medical review, the Board concurred with the advising opinion of the Agency Medical Advisor that there is insufficient evidence the applicant was diagnosed with PTSD or a TBI. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of his mental health condition or experience.

2. The Board noted the specific facts and circumstances of the offenses are not available for review, however, the Board determined there is insufficient evidence of in-

service mitigating factors to warrant the applicant's request. The Board found the applicant's DD Form 214 accurately reflects the adjudged sentence and includes appropriate entries for character of service, separation authority, separation code, reentry code, and narrative reason for separation. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. 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. Based on the preponderance of evidence, the Board denied relief.

3. Consideration was given to the Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, the applicant asserts he experienced TBI and other mental health conditions including PTSD, which mitigate his misconduct. There is evidence that following his deployment that he was experiencing alcohol and substance abuse problems along with symptoms of depression and anxiety. However, there is insufficient evidence that the applicant was diagnosed with PTSD or a TBI. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of his mental health condition or experience. However, the applicant contends he experienced mental health condition while on active service, which mitigates his misconduct and discharge. The applicant's contention 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 VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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.

X //SIGNED//

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, Section 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, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.
3. Army Regulation 601-210 (Regular Army and Army Reserve 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 3-6 provides a list of RE codes.

- RE code "1" applies to Soldiers completing an initial 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

4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. At the time, this regulation prescribed the separation code "JJD" as the appropriate code to assign to Soldiers separated for court-martial.

5. Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 3, Section IV provided that a member would be given a BCD 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.

6. 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.

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

8. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, 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 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.

9. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//

