

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 February 2025

DOCKET NUMBER: AR20240006564

APPLICANT REQUESTS: an upgrade of his bad conduct discharge to general under honorable conditions.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record)

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, in effect, he believes he deserves an honorable discharge due to his experiences with post-traumatic stress disorder (PTSD) and a severe traumatic brain injury (TBI) that have not been adequately addressed. His ongoing injuries can only be acknowledged through an upgrade to his discharge status, which has significantly impacted his career opportunities. He deeply regrets his discharge and wishes he could go back in time to participate in just one more formation.
3. While the applicant mentions experiencing PTSD and TBI, he has not provided any documentary evidence to support his claims.
4. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 3 August 2010.
  - b. DD Form 2718 (Prisoner Release Order), dated 2 May 2017, reflects the prisoner [the applicant] will be released from confinement on 4 May 2018.
  - c. DD Form 2707-1 (Department of Defense Report of Result of Trial), date of trial 5 December 2017, reflects the findings as follows:
    - Charge 1, Article 119, One Specification, Guilty

By culpable negligence, unlawfully kill Mr. J\_\_ O\_\_ by driving a motor vehicle in a manner that caused him to crash into a motor vehicle driven by Mr. J\_\_ O\_\_

- Charge II, Article 134. One Specification, Not Guilty
- Charge III, Article 112a. Specification 1, Guilty

between on or about 1 April 2015 and on or about 5 May 2015, wrongfully use 1-butyl-3-(1-naphthoyl)indole (JWH-018), a Schedule I controlled substance

Specification 2, Dismissed  
Specification 3, Dismissed  
Specification 4, Dismissed

d. The applicant's duty status changed as follows:

- From Present for Duty (PDY) to Confined by Military Authority (CMA), effective 8 December 2017
- From CMA to PDY, effective 4 May 18

e. While the applicant's complete court martial documents are absent from his service files on iPERMS, the General Court-Martial Order Number 8 is present.

f. Seventh Army Training Command APO AE 09114, General Court-Martial Order Number 8, dated 20 June 2018, reflects the following:

Charge I. Article 112. Plea: Not Guilty. Finding: Guilty

Charge II. Article 119. Plea: Not Guilty. Finding: Not Guilty

Charge III. Article 112a. Plea: Not Guilty. Finding: Guilty

Specification 1: Plea: Not Guilty. Finding: Guilty; prior to findings, upon motion by the defense, with concurrence of the government, the military judge granted the request to merge specification 2 with specification 1 of Charge III

Specification 2: Plea: None Entered. Finding: Dismissed.

Specification 3: Plea: Not Guilty. Finding: Dismissed.; upon motion of the government after arraignment, but before findings

Specification 4: Plea: Not Guilty. Finding: Dismissed; upon motion of the government after arraignment, but before findings

Sentence: Sentence was adjudged on 8 December 2017: To be reduced to the grade of E-1; to be confined for six months; and to be discharged with a Bad-Conduct discharge.

Action: The sentence is approved and, except for that part of the sentence extending to a bad-conduct discharge, will be executed

g. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 30 June 2020, under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 3, court-martial (other), with a character of service of bad conduct. He completed 9 years, 5 months, and 28 days of net active service this period. It also shows the following:

- Item 4a (Grade, Rate or Rank): PV1
- Item 12f (Record of Service, Foreign Service): 0006 09 28
- Item 12h (Effective Date of Pay Grade): 2017 12 22
- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Certificate of Achievement (5th Award), Army Achievement Medal (4th Award), Army Good Conduct Medal, National Defense Service Medal, Global War on Terrorism Expeditionary Service Medal, Global War on Terrorism Service Medal, Korea Defense Service Medal, Driver and Mechanic Badge w/Mechanic Clasp
- Item 18 (Remarks): Service in a designated imminent danger pay area, in Kuwait from 25 March 2014 thru 24 December 2014
- Item 29 (Dates of Time Lost During this Period): Under 10 USC 972: 8 December 2017 to 3 May 2018

5. AR 635-200 states, a member 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.

6. 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.

#### 7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his bad conduct discharge. He contends PTSD and a traumatic brain injury (TBI) are related to his request for an upgrade. 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 3 August 2010; 2) The

applicant was deployed to Kuwait from March-December 2014; 3) The applicant was found guilty of using illegal drugs (synthetic cannabis) in April 2015 and manslaughter by motor vehicle accident on 08 September 2015; 4) The applicant was discharged on 30 June 2020, Chapter 3, court-martial (other). His character of service was labeled as bad conduct.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. The applicant contends TBI and PTSD are related to his request for an upgrade. Following the applicant's positive urinalysis for illegal drugs, he was referred to substance abuse treatment for cannabis abuse. He underwent a mental status evaluation as part of his administrative separation proceedings on 27 July 2015. He denied exposure to trauma or TBI at that time. He was not diagnosed with a mental health condition, and he was cleared from a psychiatric perspective to participate in any administrative action deemed appropriate by Command. He continued in substance abuse treatment for cannabis abuse till after his motor vehicle accident. Afterwards, he was referred to behavioral health treatment for increased mental health symptoms such as anxiety, depression, and difficulty with stress management. He was diagnosed with an Adjustment Disorder and legal problems. The applicant was reported to have experienced a minor TBI as result of the car accident, and he was referred to additional treatment. The applicant continued in treatment for these symptoms till he was imprisoned. He also reported some PTSD symptoms related the motor vehicle accident.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed or treated for a service-connected TBI or mental health condition including PTSD. The applicant does not receive any service-connected disability for a TBI or mental health condition at this time.

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

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he was experiencing a TBI and PTSD, which mitigates his misconduct. He was diagnosed after his misconduct with a minor TBI and mental health symptoms associated with PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a TBI and PTSD, which mitigates his misconduct. He was diagnosed, after his misconduct, with a minor TBI and mental health symptoms associated with PTSD, while on active service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is sufficient evidence the applicant was experiencing PTSD or a TBI prior to his misconduct. After the applicant was involved in a major car accident that resulted in the death of a civilian, the applicant was reported to have experienced a minor TBI and mental health symptoms. However, there is no nexus between the applicant's TBI and reported PTSD and his misconduct of his previous illegal drug use and manslaughter in that: 1) these types of misconduct are not a part of the natural history or sequelae of the applicant's PTSD and minor TBI; 2) PTSD and a minor TBI do not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated 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 not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the serious and criminal nature of the misconduct leading to the applicant's separation and the following findings outlined in the medical review:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes

(2) Did the condition exist or experience occur during military service? Yes

(3) Does the condition or experience actually excuse or mitigate the misconduct? No,

the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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:

1. 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.
2. Prior to closing the case, the Board did note the administrative note below from the analyst of record and recommended that change be completed to more accurately reflect the military service of the applicant.

//SIGNED//  
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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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214, for the period ending on 30 June 2020, should be amended as follows:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): (add) Army Service Ribbon

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 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel, as a result of court-martial.
  - a. Paragraph 3-7a provides that 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. Paragraph 3-7b provides that a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
  - c. Paragraph 3-10 states that a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general court-martial. The appellate review must be completed and the affirmed sentence ordered duly executed.
3. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) 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.
4. 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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief based on equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

6. Section 1556 of Title 10, United States 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//