

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 March 2025

DOCKET NUMBER: AR20240007434

APPLICANT REQUESTS:

- in effect, an upgrade of his bad conduct discharge
- 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)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) covering the period ending 9 March 2009
- Psychological Evaluation, 24 January 2020
- Neuropsychological Evaluation Addendum, 18 August 2021

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 was traumatized and had a traumatic brain injury (TBI) prior to the completion of his first 4-year term of service. He spent 24 hours honorably discharged prior to his automatic mid-term reenlistment.

b. His subsequent term of service was influenced by his post-traumatic stress disorder (PTSD) and TBI conditions, leading to his alcohol abuse and impulse control incident. He has two discharges, one of which was honorable from 27 January 2004 – 16 September 2005. His bad conduct time started on 17 September 2005. He wishes for his honorable period of service to be considered for his prior term, before his reenlistment.

c. His neuropsychological condition following his first term of service was not taken into account during his court-martial hearing. He was impaired, both neurologically and psychologically, during his second term of service, which had not been adequately identified and addressed during that period of service. His psychological condition impaired his judgment and he was excessively impulsive during that time period, leading to the charges.

d. Because he was not being helped by the Department of Veterans Affairs (VA), he has had several mental health disorders that cause him not to understand things like others do. His county's Veterans Service Officer (VSO) told him he was on his own, so he did not know how to go about solving the injustice.

e. He has a period of good service, as stated on his DD Form 214 and his Honorable Discharge Certificate. It can be seen in his service records, that the VA are not providing him, that he started to go downhill mentally in 2005, shortly after the 13 July 2005, operation traffic stop incident. The military court did not take his mental health into account, including his PTSD and signs of TBI. He is only asking for his enlistment before his reenlistment to be honored as honorable.

3. A DD Form 4 (Enlistment/Reenlistment Document) shows that, after a period in the Delayed Entry Program, the applicant enlisted in the Regular Army for a period of 3 years, on 27 January 2004.

4. The applicant was awarded the Military Occupational Specialty (MOS) 11B (Infantryman) and deployed to Iraq from 21 January 2005 through 10 January 2006.

5. While deployed and after having served 1 year, 7 months, and 20 days on his initial enlistment, a second DD Form 4 shows the applicant agreed to an immediate reenlistment period of 5 years, authorizing station of choice and a lump sum bonus on 17 September 2005.

6. The applicant deployed to Iraq for a second time from 12 October 2006 through 30 May 2007.

7. The complete facts and circumstances surrounding the applicant's court-martial are not in his available records for review. His available service records do not contain a DA Form 2627 (Record of Proceedings under Article 15 of the Uniform Code of Military Justice (UCMJ)), DD Form 458 (Charge Sheet), or the initial court-martial orders.

8. Headquarters, U.S. Army Field Artillery Center and Fort Sill General Court-Martial Order Number 308, 30 October 2008, shows in the general court-martial case of the applicant, the sentence to reduction to the rank/grade of Private (PVT)/E-1, forfeiture of all pay and allowances, confinement for 24 months, and a bad conduct discharge,

adjudged on 18 September 2007, as promulgated in General Court-Martial Order Number 1, Headquarters, Fort Carson, dated 14 January 2008, has been finally affirmed. Article 71(c) having been complied with, the bad conduct discharge will be executed.

9. The applicant's DD Form 214 shows:

a. He was given a bad conduct discharge on 9 March 2009, due to court-martial.

b. Among his decorations and awards he was awarded or authorized are the Combat Infantryman Badge, Army Commendation Medal (2nd Award), Army Good Conduct Medal, and the Global War on Terrorism Service Medal. It does not reflect award of the Iraq Campaign Medal despite two deployments.

c. Item 18 (Remarks) includes the remarks:

- Immediate Reenlistments this period – 20040127 -20050916; 20050917 - 20090309
- Member has completed first full term of service

d. He was credited with 3 years, 7 months, and 22 days of net active service, with lost time from 19 September 2007 through 9 March 2009.

10. The applicant provided a Psychological Evaluation, 24 January 2020, which has been provided in full to the Board for review, and in pertinent part shows his military history, substance abuse history, legal history' and medical history. It shows his diagnosis of:

- PTSD
- persistent depressive disorder
- alcohol use disorder, in sustained full remission
- tinnitus
- TBI
- problems related to occupational, primary support group, social environment, and psychosocial problems

11. A provided Neuropsychological Evaluation Addendum, 18 August 2021, has also been provided in full to the Board for review, and expounds upon the prior Psychological Evaluation.

12. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his Bad Conduct Discharge (BCD). On his DD Form 293, the applicant indicated Posttraumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), and Other Mental Health Issues are related to his request. More specifically, he said that his PTSD and TBI conditions led to "alcohol abuse and impulsive control incident." 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 27 January 2004, 2) he deployed to Iraq twice: 21 January 2003 through 10 January 2006; 12 October 2006 through 30 May 2007, 3) The complete facts and circumstances surrounding the applicant's court-martial are not in his available records for review. Court-Martial Order Number 308 dated 30 October 2008 shows in the general court-martial case of the applicant, the sentence to reduction to the rank/grade of Private (PVT)/E-1, forfeiture of all pay and allowances, confinement for 24 months, and a bad conduct discharge, 4) the applicant's DD Form 214 shows he was discharged on 09 March 2009 due to court-martial.

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. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. In-service medical records were available for review in JLV from 24 January 2006 through 05 March 2009. A psychology note dated 15 June 2006 shows the applicant presented to BH for an intake at the encouragement of his First Sergeant (1SG) due to a moderate tremor of both hands (noted as first diagnosed at age 16 with unknown etiology), and due to numerous combat-related incidents that he witnessed or was involved in while deployed to Iraq. The applicant endorsed experiencing PTSD-related symptoms and described one particular event that occurred wherein there were numerous civilian casualties who were killed by an IED that was directed at his vehicle. The provider diagnosed the applicant with Acute Stress Disorder and Bereavement Without Complications. On 28 June 2006, the applicant was diagnosed with Chronic PTSD. He was seen by BH for PTSD on three more occasions until 10 August 2006. A case management note dated 29 May 2007 shows the applicant was escorted to BH by his NCOIC and returned from Iraq due to a non-battle injury (NBI), noting he had an exacerbation of his tremors. It was documented that he had some BH concerns regarding PTSD and legal issues which were not discussed. A note dated 30 May 2007 shows the applicant screened negative for TBI. He started the Mental Health Service Redeployment Group on 06 June 2007 with his diagnosis documented as PTSD and continued in group therapy until 15 August 2007. On 08 August 2007, it was documented that he was interested in individual therapy. Review of his in-service prescription history shows he was prescribed several antidepressant medications (indication not specified), to include Citalopram (15 January 2009) and Paroxetine (20

December 2007). He was also prescribed a sleep medication, Eszopiclone (17 January 2009).

d. A review of JLV shows the applicant is not service-connected through the VA for any conditions and there were no VA medical records available for review. It is of note that the applicant's BCD renders him ineligible for VA clinical services.

e. The applicant included a psychological evaluation from the Veterans Counseling Clinic dated 24 January 2020 as part of his application. The evaluating provider documented the applicant's military history, which detailed several stressful events that occurred while he was deployed to Iraq to include the death(s) of a member of his squad, a bomb exploding near his vehicle and the resulting blast knocking him against the inside of the armored vehicle, attempting to save a child who had been struck by a bomb, and being denied support when asking for help dealing with grief. The evaluating provider diagnosed the applicant with PTSD, Persistent Depressive Disorder (PDD), Alcohol Use Disorder (AUD), In Sustained Full Remission, Tinnitus, and TBI. The provider noted that this diagnoses of PTSD and depression were secondary to his deployment to Iraq. The applicant underwent a neuropsychological evaluation, recommended by his neurologist, through the Veterans Counseling Clinic on 18 August 2021, noting he had been told he had a TBI when he had an accident in 2006 and said he was diagnosed in 2009. The evaluating provider diagnosed him with PTSD, Unspecified Attention Deficit/Hyperactivity Disorder (ADHD), and Mild Neurocognitive Disorder due to a TBI. It was noted that he had significant memory impairments and that his current symptoms appeared to be related to head injuries he sustained in the military. It was also noted that he had other co-morbid conditions that could be impacting his general memory, short-term memory, and retrieval/recall of information.

f. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant was diagnosed with several potentially mitigating BH conditions related to his military service to include PTSD, PDD, and TBI. The applicant was also diagnosed with AUD and ADHD by a civilian/non-VA BH provider since being discharged from the military; however, these diagnoses do not constitute mitigating conditions. However, as the specific circumstances that led to his discharge are unavailable for review, a nexus cannot be established between his diagnoses of PTSD, PDD, and/or TBI and the misconduct that led to his discharge. Thus, BH mitigation is unclear.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with PTSD in-service. Post-discharge, he has been diagnosed by a civilian/non-VA provider with PDD and TBI, which the evaluating provider attributed to his military service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with PTSD in-service. Post-discharge, he has been diagnosed by a civilian/non-VA provider with PDD and TBI, which the evaluating provider attributed to his military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unclear. Review of the applicant's in-service medical records show that he was diagnosed with PTSD secondary to incidents that occurred while he was deployed to Iraq. Since being discharged from the military, a civilian/non-VA BH provider reaffirmed his diagnosis of PTSD, in addition to diagnosing him with PDD and TBI, which the provider attributed to his military service. He is not service-connected through the VA for any conditions. Although the applicant's medical records show he has been diagnosed with several potentially mitigating BH conditions, as the specific circumstances that led to his discharge are unavailable for review, a nexus cannot be established between his diagnoses of PTSD, PDD, or TBI and the misconduct that led to his discharge. Thus, BH mitigation is unclear.

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The Board found no error or injustice in the separation proceedings. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration, the Board determined relief was not warranted.

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with PTSD in-service. Post-discharge, he has been diagnosed by a civilian/non-VA provider with PDD and TBI, which the evaluating provider attributed to his military service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with PTSD in-service. Post-discharge, he has been diagnosed by a civilian/non-VA provider with PDD and TBI, which the evaluating provider attributed to his military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unclear. Review of the applicant's in-service medical records show that he was diagnosed with PTSD secondary to incidents that occurred while he was deployed to Iraq. Since being discharged from the military, a civilian/non-VA BH provider reaffirmed his diagnosis of PTSD, in addition to diagnosing him with PDD and TBI, which the provider attributed to his military service. He is not service-connected through the VA for any conditions. Although the applicant's medical records show he has been diagnosed with several potentially mitigating BH conditions, as the specific circumstances that led to his discharge are unavailable for review, a nexus cannot be established between his diagnoses of PTSD, PDD, or TBI and the misconduct that led to his discharge. Thus, BH mitigation is unclear.

3. The applicant 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.

4. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

5. Prior to closing the discussion, the Board reviewed and concurred with the administrative notes below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XX	:XX	:XX	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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records reveals his DD Form 214 covering the period ending 9 March 2009, requires administrative correction by amending the following items:

- a. Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) to add the Iraq Campaign Medal with two bronze service stars
- b. Item 18 (Remarks) to add the remark: "Continuous Honorable Active Service From 27 January 2004 Until 16 September 2005."

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. 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs 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. 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.
3. Title 10, U.S. Code, section 1552, provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the Uniform Code of Military Justice, action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the Uniform Code of Military Justice or action on the sentence of a court-martial for purposes of clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.
4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

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, provides that an enlisted person will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review is required to be completed and the affirmed sentence ordered duly executed.

5. Army Regulation 635-5 (Separation Documents), in effect at the time, prescribes policies and procedures regarding separation documents, including the standardized preparation of the DD Form 214 (Certificate of Release or Discharge from Active Duty). The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty.

a. The instructions for preparation of item 18 (Remarks) show to use this block for Headquarters Department of the Army (HQDA) mandatory requirements when a separate block is not available, and as a continuation for entries in blocks 11, 13, and 14.

b. Mandatory entry: "DATA HEREIN SUBJECT TO COMPUTER MATCHING WITHIN DOD OR WITH OTHER AGENCIES FOR VERIFICATION PURPOSES AND DETERMINING ELIGIBILITY OR COMPLIANCE FOR FEDERAL BENEFITS."

c. Mandatory entry: "SOLDIER (HAS) (HAS NOT) COMPLETED FIRST FULL TERM OF SERVICE." This information assists the State in determining eligibility for unemployment compensation entitlement. The following guidance will help determine which entry to use:

(1) Routinely, a Soldier should not be considered to have completed the first full term of active service if separation occurs before the end of the initial contracted period of service. However, if a Soldier reenlists before the completion of that period of service, the first term of service is effectively redefined by virtue of the reenlistment contract.

(2) To determine if an enlisted Soldier has completed the first full term of enlistment, refer to the enlistment/ reenlistment documents and compare the term(s) of enlistment to the net service in block 12c of the DD Form 214. If Soldier has completed

or exceeded the initial enlistment, enter "has." If item 12c of the DD Form 214 is less than the Soldier's initial enlistment, enter "has not."

d. For enlisted soldiers with more than one enlistment period during the time covered by this DD Form 214, enter "IMMEDIATE REENLISTMENTS THIS PERIOD" (specify dates). However, for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable," enter "Continuous Honorable Active Service From" (first day of service which DD Form 214 was not issued) Until (date before commencement of current enlistment). Then, enter the specific periods of reenlistments as prescribed above.

6. Army Regulation 600-8-22 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards.

a. The Iraq Campaign Medal is awarded to members who have served in direct support of Operation Iraqi Freedom (OIF). The area of eligibility encompasses all the land area of the country of Iraq, the contiguous water area out to 12 nautical miles, and all air spaces above the land area of Iraq and above the contiguous water area out to 12 nautical miles. The Iraq Campaign Medal period of eligibility is on or after 19 March 2003 to 31 December 2011.

b. A bronze service star is authorized with the Iraq Campaign Medal for participation in each credited campaign.

c. The designated campaigns for Iraq include:

- National Resolution, 16 December 2005 – 9 January 2007
- Iraqi Surge, 10 January 2007 – 31 December 2008

7. Title 10, U.S. Code, section 1556 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.

8. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR.

a. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

b. 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.

//NOTHING FOLLOWS//