

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 January 2025

DOCKET NUMBER: AR20240007467

APPLICANT REQUESTS: an upgrade of his Bad Conduct Discharge (BCD) in order to become eligible for Veterans benefits for himself and his children.

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

- DD Form 293 (Application for Review of Discharge from the Armed Forces of the United States)
- Self-authored statement
- Letter from a doctor
- Treatment Progress Report
- Letter from the applicant's mother
- Letter from former unit member
- Letter from the applicant's fiancée

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 provides a three-page statement wherein he provides a synopsis of his time in the Army and the very close relationship he had with a fellow Soldier who was his roommate. His friend had his own music record label and signed the applicant as his first artist.
 - a. On 1 October 2003, while their unit was deployed to Iraq, the applicant's friend was killed, and another Soldier was wounded. This had a devastating impact upon him and changed him for life. He became rebellious because of the anger he had inside. On top of that, he had to pack up his friend's belongings and look at all of the pictures of his friend on the wall of their room. After experiencing several rebellious incidents in Iraq following his friend's death, the unit returned to the U.S. in March of 2004.

b. The applicant had completed his enlistment and was supposed to be honorably discharged. However, as a result of the war, there was a "stop loss" in effect that forced him to remain in the Army. He was frightened of having to possibly redeploy and began self-medicating with marijuana to soothe the pain caused by all of the thoughts racing through his head at the time.

c. He was so afraid that he went absent without leave (AWOL) because of the fear of going back getting killed. He was so depressed that he could not eat or sleep, but no one cared. Instead of offering to have him checked for post-traumatic stress disorder (PTSD), they went straight into the punishment stage for going AWOL during war and charged him with desertion and for failing urinalysis tests by testing positive for marijuana. He was convicted and sentenced to 18 months incarceration. He was incarcerated at the time of his son's birth. The applicant believes if he had been evaluated for PTSD instead of punishing him, he would have overcome his depression, anxiety, and suicidal ideations.

d. After being released in 2005, his life went downhill. From 2005 to 2018 he was in and out of jail. He was breaking into houses, selling drugs, using cocaine and marijuana, and drinking alcohol daily. He had given up on himself because the Army had treated him so poorly and never offered him any help. In 2018, he was homeless and sleeping in his car with his wife and two sons for about two months.

e. The applicant sought assistance from the Department of Veterans Affairs (VA) and was advised that his DD Form 214 (Certificate of Release or Discharge from Active Duty) did not reflect his deployment so they could not help him either. He attempted suicide that day and his wife saved him off of the bathroom floor. He was so ashamed of being unable to provide for his family that he could not look them in their eyes.

f. Since being released from his most recent incarceration in October 2018, he has turned his life around, beginning with getting his DD Form 214 to reflect his combat deployment and the medals he earned. He also earned a degree in Audio Production.

g. He was recently diagnosed with PTSD, Depression, and Anxiety. He has been in therapy for a year, and it has helped him build a better relationship with himself, his wife, and their children. They all love the new him because he no longer goes on angry rants or punches holes in the walls. He has been employed for a year, joined a church, become a community leader, and also writes, produces, and records music with a positive message for the youth.

h. Being granted an upgraded discharge would enable him to continue to grow, help his children with their educations, and improve his community.

3. On 2 August 2001, the applicant enlisted in the Regular Army in the rank/grade of PV1/E-1 for a period of 3 years. Upon completion of training, he was awarded MOS 19K (M1 Armor Crewman) and assigned to a unit at Fort Riley, KS. He was promoted to specialist (SPC)/E-4 on 1 November 2003, the highest rank he held.
4. A DA Form 4465 (Patient Intake/Screening Record) shows the applicant was enrolled in the Army Substance Abuse Program on 9 June 2004 after testing positive for a controlled substance following a unit urinalysis test.
5. A DA Form 4466 (Patient Progress Report) shows the applicant was released from ASAP on 12 July 2004 as a result of failing the program. The specific reason for release from the program was "Separation/Termination, Misconduct - Abuse of Illegal Drugs."
6. General Court-Martial Order (GCMO) Number 39 issued by Headquarters, 24th Infantry Division (Mechanized) and Fort Riley, Fort Riley, KS on 7 December 2005 shows the applicant was arraigned before a GCM.
 - 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 86 (Absence from unit terminated by apprehension), UCMJ:
 - Specification I: from on or about 24 June 2004 until on or about 28 September 2004
 - Specification II: from on or about 29 September 2004 until on or about 10 March 2005
 - Specification III: from on or about 11 March 2005 until on or about 20 May 2005
 - (2) Charge III, Article 112a (Wrongfully using marijuana), UCMJ:
 - Specification I: between on or about 2 March 2003 and on or about 2 April 2003
 - Specification II: between on or about 11 April 2004 and on or about 11 May 2004
 - Specification III: between on or about 20 April 2005 and on or about 20 May 2005
 - b. The applicant's sentence consisted of reduction from SPC/E-4 to PV1/E-1; forfeiture of all pay and allowances; confinement for 7 months; and a BCD. The

sentence was adjudged on 10 August 2005 and subsequently approved. The sentence was affirmed on 8 March 2006.

7. GCMO Number 178 issued by Headquarters, U.S. Army Armor Center and Fort Knox, Fort Knox, KY on 31 August 2006 shows the sentence as promulgated in the corrected copy of GCMO Number 39 issued by Headquarters, 24th Infantry Division (Mechanized) and Fort Riley, Fort Riley, KS on 7 December 2005, was finally affirmed, the portion of the sentence pertaining to confinement had been served, and the BCD was ordered to be executed.

8. Headquarters, U.S. Army Personnel Control Facility, U.S. Army Armor Center and Fort Know, Fort Knox, KY Memorandum for Record, Subject: Missing Documents, dated 8 December 2006, shows their office was unable to obtain the documents reporting the following changes to the applicant's duty status:

- From Present for Duty (PDY) to AWOL effective 24 June 2004
- From AWOL to PDY effective 28 September 2004
- From PDY to AWOL effective 29 September 2004
- From AWOL to PDY effective 10 March 2005
- From PDY to AWOL effective 11 March 2005
- From AWOL to PDY effective 20 May 2005

9. Orders and his DD Form 214 show the applicant was discharged in the rank/pay grade of PV1/E-1 on 8 December 2006 under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 3, as a result of "Court-Martial (Other)." His service was characterized as "Bad Conduct." He was credited with completion of 3 years, 11 months, and 23 days of net active service. He had lost time due to AWOL and confinement. He did complete his first full term of service. Item 18 (Remarks) shows the applicant was retained in service 359 days for the convenience of the government.

10. The applicant provides the following documents which are available in their entirety for the Board's consideration.

a. A letter rendered by a Medical Doctor on 26 February 2024, shows, in part, he had reviewed the applicant's military medical history, past medical history, service treatment records, and other documents detailing his history of PTSD and bilateral knee pain, both of which started during his military service.

b. A Treatment Progress Report rendered on 15 January 2024 shows the applicant's current diagnose as: PTSD; Major depressive disorder, Single episode, With psychotic feature; and Generalized Anxiety Disorder.

c. A letter rendered by the applicant's mother and addressed to the VA on 11 August 2019 wherein she described the significant impact that the death of the applicant's friend had upon him.

d. A letter rendered by a former fellow unit member of the applicant shows they served and to deployed together to Kuwait and Iraq.

e. A letter rendered by the applicant's fiancée shows they have been together for over six years and she provides a synopsis of the applicant's numerous PTSD symptoms that she has witnessed.

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

13. 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.

14. 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 something more favorable. 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 2 August 2001. A corrected DD214 showed that he deployed to Kuwait from 1 May 2002 until 31 October 2002 and again to Kuwait/Iraq from 1 March 2003 until 31 March 2004.
- The applicant pled guilty and was found guilty of the following charges and specifications in violation of the UCMJ: being AWOL on three occasions (24 June to 28 September 2004; 29 September 2004 to 10 March 2005; 11 March to 20 May 2005); three specifications of wrongfully using marijuana (between 2 March and 2 April 2003; 11 April to 11 May 2004; 20 April to 20 May 2005).
- The applicant was discharged on 8 December 2006 and was credited with completion of 3 years, 11 months, and 23 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. In a three-page personal statement, the applicant asserts, in summary, he experienced deployment related trauma, which mitigates his misconduct, and he indicated PTSD and Other Mental Health as factors. A Treatment Progress Report from a mental health provider at Pawnee Mental Health Services showed the applicant initiated services on 28 December 2023 and was diagnosed with PTSD, Major Depressive Disorder, single episode, with psychotic features, and Generalized Anxiety Disorder. A Patient Intake/Screening Record dated 9 June 2004 showed enrollment in "Community Counseling Center," and a second Progress Note dated 12 July 2004 indicated he was unsatisfactorily terminated from treatment due to "separation/termination, misconduct-abuse of illegal drugs." 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 a call to the Veterans Crisis Line on 8 May 2023 where the applicant mental health services for substance abuse, anxiety, and suicidal ideations without intent or a plan. He discussed frustrations with inability to get help because of his BCD. He was provided with information about supportive services, and at a follow phone call the next day, he reported plans to engage with the Vet Center.

e. 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 mental health condition while on active service. There is evidence of a history of substance abuse dating back to his time in service and mental health treatment since 2023, but the number of years between his misconduct and documented treatment makes it difficult to fully support a nexus. It is this Advisor's opinion that the reported trauma exposure while on active duty partially mitigates his misconduct of being AWOL and wrongfully using marijuana.

f. 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. The applicant provided a mental health record showing a diagnosis of PTSD, Major Depressive Disorder, and Generalized Anxiety Disorder, but there was not accompanying documentation to support these diagnoses. Records from his time in service that showed what appeared to be a command directed referral for a drug test and treatment, and there is indication of termination from treatment due to misconduct. In a 2023 call to the Veterans Crisis Line, the applicant reported symptoms of anxiety, suicidal ideation, and a history of substance abuse.

(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. The applicant presents a compelling account of deployment related trauma exposure, and his corrected DD214 showed deployments to Kuwait and Iraq.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. However, the applicant offered a lengthy explanation of his history and provided documentation from a mental health provider indicating mental health diagnoses, including PTSD. Avoidant behavior, such as going AWOL, can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Additionally, substance use is a common self-medicating strategy for avoiding uncomfortable emotions and memories related to trauma exposure, and substance use can also be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Yet, the presence of misconduct alone is not sufficient evidence of a mitigating mental health condition during active service. However, the applicant contends he was experiencing a mental health condition 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 petition, available military record and medical review, the Board concurred with the medical opinion finding insufficient evidence to support that the

applicant had a mental health condition while on active service. The opine did note, that the reported trauma exposure while on active duty partially mitigates his misconduct of being AWOL and wrongfully using marijuana.

2. The Board applauds the applicant's post service achievements and found his character letters of support noteworthy, attesting to his character, his life's challenges and how he has overcome those demons. However, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of being apprehended for being AWOL and repeated drug use. Careful consideration was given the medical opine's partial mitigation for being AWOL. The Board found the mitigation did not outweigh the applicant's pattern of misconduct. Therefore, 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.


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, 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, U.S. Code, Section 1552(b), provides, with respect to courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of the Secretary's Department may extend only to actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. The Secretary of the Army shall make such corrections by acting through boards of civilians within the executive part of the Army.
4. Title 10, U.S. Code, 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.
5. 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. prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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.
6. 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.

7. On 3 September 2014, the Secretary of Defense directed the Service DRBs and Service 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 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.

8. 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; 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.

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, 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//