

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 March 2025

DOCKET NUMBER: AR20240007547

APPLICANT REQUESTS: an upgrade of his bad conduct discharge (BCD) 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 he was given a court martial after he came back from Iraq. He served in the 82nd Airborne Division. He has Post-Traumatic Stress Disorder (PTSD) and hears voices. He kept having flash backs of his friend dying in Iraq. He never got in trouble until returning from Iraq. Now he has mental health problems because of his deployment. He notes he served his country the whole four years until he began out processing. Now the Veteran Administration (VA) classes are helping him deal with his mental issues. However, he needs more help to deal with his health and mental issues from Iraq.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 31 July 2001.
 - b. The available service record is void of the details of his deployment.
 - c. On 5 May 2005, the applicant was confined in Marine Brigade Camp LeJeune, North Carolina (NC) for per-trial confinement.
 - d. On 6 September 2005, the applicant was released from confinement upon completion of his sentence.

e. On 12 January 2006, at Fort Bragg, NC, the applicant was convicted/or found guilty by a general court-martial (GCM) of:

- Charge I wrongfully possessing drug paraphernalia
- Charge II wrongful use of marijuana
- The court sentenced him to reduction to the lowest enlisted grade of private/E-1, confinement for 5 months, and to be discharged from the service with a BCD

f. On 26 August 2006, the convening authority approved only so much of the sentence as provides for 5 months of confinement, reduction to private/E-1, and a BCD, and except for the BCD, ordered the sentence executed. The accused was credited with 114 days of confinement against the sentence to confinement.

g. The Record of Trial was forwarded to The Judge Advocate General of the Army for appellate review.

h. On 23 October 2006, U.S. Army Court of Criminal Appeals rendered a correction to reflect the true proceedings at the trial; GCM Order Number 1, issued 12 January 2006, was corrected as follows: BY deleting in line two of the action paragraph figure "114" and substituting therefore the figure "116."

i. GCM Order Number 6, issued on 12 April 2007, shows the appellate review had been finally affirmed; Article 71(c) having been complied with; the BCD will be executed.

j. Accordingly, the applicant was discharged with a BCD on 17 August 2007. His DD Form 214 shows he was discharged in the rank/grade of private/E-1 because of court-martial conviction in accordance with Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 3.

k. It also shows he completed 4 years, 8 months, and 17 days of active service; His DD Form 214 also shows in:

- Item 26 (Separation Code): JJD
- Item 27 (Reentry Code): 4
- Item 29 (Dates of Time Lost During this Period): 20050505-20060905

4. 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.

MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his Bad Conduct Discharge (BCD) to under honorable conditions (general). On his application, the applicant indicated Posttraumatic Stress Disorder (PTSD), and Other Mental Health Issues are related to his request. More specifically, he asserted that after he came back from Iraq he was "having PTSD and hearing voice[s]." He further indicated that he kept having flashbacks of his best friend dying in Iraq. 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 31 July 2001, 2) the available service record is void of the details of his deployment, 3) the applicant was confined on 05 May 2005 for pre-trial confinement and was released on 06 September 2005 upon completion of his sentence, 3) on 12 January 2006, the applicant was convicted and found guilty by a general court-martial of wrongful possession of drug paraphernalia and wrongful use of marijuana, 4) the applicant was discharged with a BCD on 17 August 2007 under the provisions of AR 635-200, Chapter 3, with a separation code of JJD and reentry code of '4.'

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 via JLV from 27 June 2002 through 23 August 2005. There was no documentation showing a history of a BH diagnosis or treatment history.

d. A review of JLV did not show any documentation that the applicant is service-connected through the VA for any conditions; however, it is of note that his BCD renders him ineligible for VA clinical services.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends that his misconduct was related to PTSD and Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to PTSD and Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of PTSD or Other Mental Health Issues. In absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by PTSD or Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his misconduct was related to PTSD or Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant 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 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. One potential outcome was to deny relief based on the applicant's misconduct of drug use. However, upon further review of the applicant's request, available military record and medical review, the Board majority considered the advising official finding insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. The Board noted the applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination.

2. The Board however, found the punishment harsh based on the applicant's service record had no prior infractions and he deployed to Iraq and upon his return with the death of his best friend the applicant had a downturn in his performance. The Board noted there was no evidence in the applicant's record of misconduct and this misconduct showed to be his first offense with drug use. ABCMR 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. The Board found clemency was warranted under liberal consideration with an upgrade of his characterization of service to under honorable (general) conditions. Therefore, the Board granted relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by re-issuing his DD Form 214 for the period ending 17 August 2007 to show a characterization of general under honorable conditions.

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. Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for separation of enlisted personnel.

a. Chapter 3 states a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or a special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the soldier'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.

c. 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.

d. A Soldier 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.

3. 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.

4. 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 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.

//NOTHING FOLLOWS//