

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 March 2025

DOCKET NUMBER: AR20240007634

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

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20110013135 on 3 January 2012.

2. The applicant states in 1984 he started basic training in Fort Leonardwood, Missouri. During night drills he was tasked with backpacking the radio. The radio always next in line of the senior drill sergeant. They were using a twenty (20) year old map to navigate thru the woods. Shortly after midnight they were about to reach a stream according to their 20-year-old map. In the 20 years the stream turned into a 30-foot drop. Unable to see their hand in front of their face, the senior drill sergeant stepped off that cliff. The applicant could hear the senior drill sergeant calling out in pain along with tree branches breaking. He retrieved a flashlight and shined it at his feet. He noticed he was a half a step from walking off the cliff. The senior drill sergeant instructed him to radio back to base for help and climb down the tree and cover him with a poncho because he was going into shock. The drill sergeant suffered several broken bones and had to be medical evacuated out. Life for the applicant was not the same after that experience. His behavior changed drastically; he did not want to be in the military anymore. He never knew or understood why his behavior had change after the accident. He was an honor student straight out of high school and suddenly, he couldn't get it right. His mind was constantly on going home and getting far away from people. Then he read about Post Traumatic Stress Disorder (PTSD) and the symptoms. He explained the trauma he experienced in basic training to a doctor and was told he needed help.

3. A review of the applicant's service record shows:

- a. He enlisted in the Regular Army on 31 July 1984.
- b. On 18 February 1986, he accepted nonjudicial punishment for failure to go to the time prescribed to his appointed place of duty. His punishment included reduction to private (PFC)/E-3 and 14 days extra duty.
- c. On 10 March 1986 He was issued a Letter of Reprimand (LOR) for testing positive for marijuana in a urine sample provided on 9 January 1986.
- d. An endorsement from his commander, dated 27 March 1986, indicates he was apprehended and charged with possession of marijuana on 18 February 1986.
- e. On 19 June 1986, he was convicted by a special court-martial for the following specifications:
  - failing to go at the time prescribed to his appointed place of duty
  - disobeying a noncommissioned officer (NCO)
  - being disrespectful towards an NCO
  - wrongful possession of 7.86 grams of marijuana
  - larceny of a sport coat and a suit of a value of approximately \$400.00
  - unlawful entry into a room while at Fort Stewart, GA.
- f. He was sentenced to be discharged from the service with a bad conduct discharge, a forfeiture of \$426.00 pay for 5 months, confinement for 157 days, and reduction to the rank of private/E-1.
- g. Special Court-Martial Order Number 36 dated 11 June 1987, after Article 71(c) was complied with and the sentence was affirmed, ordered the bad conduct discharge executed.
- h. On 11 June 1987, he was discharged from active duty with a bad conduct discharge characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 2 years, 10 months, and 11 days of active service with no lost time. He was assigned separation code JJD and the narrative reason for separation listed as "As a Result of Court Martial, Other," with reentry code 4. It also shows he was awarded or authorized the following:
  - Army Service Ribbon
  - Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)
  - Expert Marksmanship Qualification Badge with Hand Grenade

4. The applicant document PTSD issues/conditions related to his request. The available service record is void mental health medical documentation regarding his request.

5. On 1 December 2011, the ABCMR rendered a decision in Docket Number AR20110013135. The Board determined that the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

6. By regulation, 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.

7. In reaching its determination, the Board can consider the applicant's petition and her service record in accordance with the published equity, injustice, or clemency determination guidance.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his bad conduct discharge. He contends he experienced PTSD 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 31 July 1984; 2) On 19 June 1986, the applicant was convicted by a special court-martial for the following specifications of: A) failing to go at the time to place of duty; B) disobeying and being disrespectful to a NCO; C) wrongful possession of marijuana; D) larceny of a sport coat and a suit of a value of approximately \$400.00; and E) unlawful entry into a room; 3) On 11 June 1987, the applicant was discharged with a bad conduct discharge characterization of service. His narrative reason for separation listed as "As a Result of Court Martial, Other.

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

c. The applicant asserts he was experiencing PTSD while on active service, which mitigates his misconduct. There is insufficient medical evidence the applicant was diagnosed with a mental health disorder including PTSD, while on active service.

d. A review of JLV provided insufficient evidence the applicant has ever been diagnosed with a service-connected mental health condition, including PTSD, and he does not receive any service-connected disability.

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 experienced PTSD on active service, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD on active service, which mitigates his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD, while he was on active service. The applicant did engage in erratic and avoidant behavior, which could be a natural sequelae to PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition at the time of active service. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone 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 records and the medical review, the Board concurred with the advising opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. The Board acknowledged the applicant's account of trauma and the potential impact on his well-being, the available service record does not contain medical documentation or behavioral health evaluations substantiating a diagnosis of PTSD or linking the incident to the misconduct that led to his discharge.

2. However, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct. The Board determined the applicant's record

reflects a pattern of disciplinary infractions, including nonjudicial punishment, a positive drug test, and a special court-martial conviction for multiple offenses, including drug possession, larceny, and unlawful entry. These offenses resulted in a sentence that included confinement and a bad conduct discharge, which was affirmed and executed in accordance with applicable regulations. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination.

3. The Board agreed in accordance with regulatory guidance a bad conduct discharge is issued as a result of serious misconduct adjudicated through the military justice system. Upgrades to such discharges require compelling evidence of error, injustice, or mitigating circumstances not previously considered. In this case, the Board found no such evidence in the official record. The applicant's service, while including honorable elements, was marred by conduct that warranted judicial action and separation under adverse conditions. Based on this, the Board denied relief.

4. Consideration was given to the Kurta Questions:

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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 Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20110013135 on 3 January 2012.

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 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable discharge) states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of the 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 (General discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-7c (Under Other Than Honorable Conditions) states a discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, homosexuality, security reasons, or for the good of the service.

d. Paragraph 3-11 (DD Form 259A (Bad Conduct Discharge Certificate) 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.

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 UCMJ, 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 UCMJ 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. 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.

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 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.

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.

5. 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 post-traumatic stress disorder (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.

6. 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, traumatic brain injury, 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, on 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.

//NOTHING FOLLOWS//