

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 March 2025

DOCKET NUMBER: AR20240008087

APPLICANT REQUESTS: reconsideration of his earlier request for upgrade of his dishonorable discharge to under honorable conditions (general) or honorable.

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

- DD Form 149 (Application for Correction of Military Record), 21 May 2024
- Florida Department of Corrections, Anger and Stress Management Certificate, 2 May 2022
- Certificate of Completion, Biohazard Training, 16 March 2022
- Learning Improvement Course, 24 November 2022
- Florida Department of Corrections, Outpatient Program, 2 March 2023
- Certificate of Completion, Impaired Inmate Assistant Training, 14 November 2023
- Certificate of Participation Mental Health Awareness Seminar II, 14 November 2023
- Drugs Course Certificate, 8 June 2023

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 AR20230010325 on 16 April 2024.
2. The applicant indicates on application that post-traumatic stress disorder (PTSD) and other mental health issues or conditions are related to his request. He states that mental illness conditions of bipolar disorder and uncontrolled anger issues were a factor in his court-martial. He was under the influence of substances at the time of an incident involving a fight.
3. The applicant provided seven certificates of training and achievement related to his request.
4. A review of the applicant's service record shows:

a. On 11 September 1985, he enlisted in the Regular Army for 3 years.

b. On 21 February 1986, he accepted nonjudicial punishment for assaulting another Soldier by hitting him in the face with his fist, pushing him to the floor, and cutting him with a dustpan. He forfeited \$150.00 pay for 1 month (suspended) and was given 14 days of restriction and extra duty.

c. General Court-Martial Order Number 80, dated 23 October 1986, reflects he was arraigned, tried, pled guilty and was found guilty, sentenced to forfeiture of all pay and allowances, confinement for 5 years, and to be dishonorably discharged; of the charges:

(1) wrongful possession of a concealed knife in excess of 3 inches on 13 June 1986;

(2) assault upon PFC HJC____ by intentionally inflicting grievous bodily harm by a deep cut on 13 June 1986;

(3) communicate to PFC HJC____ a threat to injure them; and

(4) communicate to PFC JMM____ a threat to injure PFC HJC____.

(5) The sentence was adjudicated on 26 August 1986.

d. On 23 October 1986, the General Court-Martial convening authority approved only so much of the sentence to a dishonorable discharge, 18 months confinement, and forfeiture of all pay and allowances, and ordered it be executed; except for the part of the sentence extending to the dishonorable discharge. The record of trial was forwarded for appellate review.

e. The available record is void of the general court-martial order, which shows the affirmed sentence was ordered to be duly executed.

f. On 20 November 1987, the applicant was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was dishonorably discharged under the authority of Army Regulation 635-200, paragraph 3-10 as the result of court-martial. He completed 11 months and 15 days of net active service this period.

5. On 16 October 2024, and in ABCMR Docket Number AR20230010325, the Board denied his request for clemency, finding the court-martial conviction and his discharge were warranted by the gravity of the offenses with which he was charged and convicted.

6. On 24 January 2025, the Chief, Case Management Division, requested the applicant provide medical documents in support of his issues or conditions. He did not respond.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his earlier request for an upgrade of his dishonorable discharge. He contends he experienced mental health conditions including PTSD, which 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 11 September 1985; 2) On 21 February 1986, the applicant accepted nonjudicial punishment for assaulting another Soldier by hitting him in the face with his fist, pushing him to the floor, and cutting him with a dustpan; 3) On 23 October 1986, the applicant was found guilty as a result of a general court-martial of: A) wrongful possession of a concealed knife; B) assault on another Soldier by inflicting grievous body harm by a deep cut; and C) communicating a threat to injury the same Soldier and another Soldier; 4) On 20 November 1987, the applicant was discharged, Chapter 3-10 (as the result of court-martial). He completed 11 months and 15 days of net active service this period.

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) and hard-copy civilian certificates provided by the applicant were also examined.

c. The applicant contends he experienced mental health conditions including PTSD, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition, including PTSD while on active service.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition including PTSD. He also does not receive any service-connected disability. In 2017, the applicant was seen as part of a re-entry program for prison inmates by a VA social worker. At the time, he denied any substance abuse or mental health related issues, and he was planning to move to Florida following his release. The applicant provided various certificates of participation or completion of programs in mental health issues, substance use, or stress/anger management from 2023.

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 mental health conditions including PTSD, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing mental health conditions including PTSD, while on active service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD while on active service. In addition, there is no nexus between the applicant's reported mental health conditions including PTSD and his misconduct of having a concealed weapon, threat of assault, and assaulting another Soldier in that: 1) these types of misconduct are not a part of the natural history or sequelae of the applicant's reported mental health conditions including PTSD; 2) the applicant's reported mental health conditions including PTSD 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:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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 applicant was separated for conviction by court-martial for wrongful possession of a concealed knife, assault, and communicating a threat to injure Soldiers on two occasions. The Board noted the applicant's contention he was experiencing mental health conditions, including PTSD, which the Board found partially mitigating based on the medical advisor's review and the following:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he was experiencing mental health conditions including PTSD, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing mental health conditions including PTSD, while on active service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD while on active service. In addition, there is no nexus between the applicant's reported mental health conditions including PTSD and his misconduct of having a concealed weapon, threat of assault, and assaulting another Soldier in that: 1) these types of misconduct are not a part of the natural history or sequelae of the applicant's reported mental health conditions including PTSD; 2) the applicant's reported mental health conditions including PTSD 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.

Based on the foregoing, the Board determined an upgrade to bad conduct was warranted.

2. The applicant was given a dishonorable 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.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant amendment of the ABCMR's decision in Docket Number AR20230010325 on 16 April 2024. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 20 November 1987, to show a characterization of service as bad conduct.
2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading the applicant's characterization of service to honorable or under honorable conditions (General).


X //SIGNED//

CHAIRPERSON

Signed by:

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. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code (USC), 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.

2. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 3 provided that an enlisted person would be given a dishonorable discharge pursuant only to an approved sentence of a general or special court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed.

b. 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.

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 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, homosexual conduct, security reasons, or in lieu of trial by court martial.

3. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

5. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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//