

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 April 2025

DOCKET NUMBER: AR20240008557

APPLICANT REQUESTS:

- upgrade of his bad conduct discharge (BCD)
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect his service in Iraq

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

- DD Form 149 (Application for Correction of Military Record)
- Permanent Orders 051-203 – Temporary Change of Station
- DD Form 2796 (Post-Deployment Health Assessment)
- DD Form 214
- Various medical notes, 42 pages

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. His military records do not reflect his foreign service nor service awards from his deployment to Iraq. His files were not notated properly which denied him of his earned awards. He had undiagnosed post-traumatic stress disorder (PTSD) that went unnoticed by his chain of command. He believes that if he had received treatment, he could have reached his goal of twenty years of honorable service.

b. He was a good Soldier. Prior to his deployment to Iraq, he had no history of non-judicial punishment nor bad counseling statements. After exhausting all avenues to correct this miscarriage of justice, he simply gave up. He has PTSD and most days he can't hold himself together. He served his country honorably. He is not trying to skirt responsibility for what he did; he is asking the Board to correct the wrong.

3. The applicant enlisted in the Regular Army on 17 September 2001, for 4 years.
4. A Defense Finance and Accounting Service, Master Military Pay Account printout shows the applicant served in Kuwait from 7 August 2003 to 21 February 2004.
5. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ); however, the relevant DD Form 458 (Charge Sheet) is not available for review.
6. Before a special court-martial at Fort Riley, KS on 23 September 2004, the applicant was found guilty of:
 - one specification of stealing 25 personal checks of some value, the property of A_L_B_, between on or about 9 July 2004 and on or about 20 July 2004
 - five specifications of stealing money of values between \$100.00 and \$250.00, the property of A_L_B_, between on or about 17 July 2004 and on or about 26 July 2004
 - five specifications of falsely uttering checks in various amounts between \$100.00 and \$250.00, with the signature of A_B_, between on or about 17 July 2004 and on or about 26 July 2004
 - one specification of breaking restriction, on or about 3 September 2004
7. The court sentenced the applicant to forfeiture of \$795.00 pay per month for six months, six months confinement, and to be discharged from the service with a BCD. The sentence was approved on 2 February 2005, and the record of trial was forwarded for appellate review.
8. The U.S. Army Court of Criminal Appeals affirmed the findings of guilty and the sentence on 2 December 2005.
9. Special Court-Martial Order Number 79, issued by Headquarters, U.S. Army Armor Center and Fort Knox, Fort Knox, KY, on 6 April 2006, noted the applicant's sentence had been affirmed and ordered the BCD to be duly executed.
10. The applicant was discharged on 7 July 2006. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 3, by reason of court-martial. His service was characterized as bad conduct. He was credited with 4 years, 4 months, and 26 days of net active service this period with 147 days of lost time.

11. The applicant petitioned the Army Discharge Review Board requesting upgrade of his BCD. On 28 September 2011, the Board voted to deny relief and determined his discharge was both proper and equitable.

12. The applicant provides:

a. A post-deployment health assessment that assessed his state of health following his deployment to Southwest Asia from on or about 3 August 2003, to on or about 3 October 2004.

b. Medical notes that show he has been diagnosed and received treatment for various injuries, including chronic depression and PTSD.

13. 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.

14. 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.

15. 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 17 September 2001.
- Court-martial charges were preferred against the applicant for violations of the UCMJ; however, the relevant DD Form 458 (Charge Sheet) is not available for review.
- Before a special court-martial at Fort Riley, KS on 23 September 2004, the applicant was found guilty of: one specification of stealing 25 personal checks of some value; five specifications of stealing money of values between \$100.00 and

\$250.00; five specifications of falsely uttering checks in various amounts between \$100.00 and \$250.00; one specification of breaking restriction.

- The applicant was discharged on 7 July 2006 and was credited with 4 years, 4 months, and 26 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. The applicant asserts he had no history of NJP or bad counseling statements prior to his deployment to Iraq, and he is not trying to skirt responsibility for what he did. He indicated PTSD as an issue or condition related to his request. The application included a Post-deployment health assessment dated 3 October 2004, which showed the applicant endorsed trauma exposure and mental health symptoms, including nightmares and hypervigilance. A document from Goldsboro Psychiatric Clinic dated 15 December 2015 provided a diagnosis of PTSD and Major Depression, which was attributed to his military service. Medical documentation from April 2018 and August 2019 showed treatment for PTSD. Several pages of handwritten documentation was also provided, but much of it was illegible. However, it appeared the applicant was treated for PTSD dating back to 2016. Additional documentation from January, February 2018, and March 2018 showed counseling and medication management for PTSD, Major Depression, and Alcohol Use Disorder. 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 no history of mental health related treatment or diagnoses. The applicant is ineligible for VA services due to his discharge.

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 condition or experience that fully mitigates his misconduct.

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 Post-Deployment Health Assessment from October 2004, which showed he endorsed some mental health symptoms associated with PTSD, and he provided several pages of mental health records dating from 2015 to 2019, which showed diagnosis and treatment for PTSD, Major Depression, and Alcohol Use Disorder.

(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.

(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 diagnoses while on active service. The applicant did provide documentation of diagnosis and treatment for PTSD and other mental health conditions dating back to 2015, and there is evidence that the applicant reported trauma exposure and some symptoms related to PTSD following his deployment in October 2004. The applicant's misconduct related to breaking restriction can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events and could provide support for partial mitigation. However, there is no nexus between his asserted mental health condition, including PTSD, and his misconduct related to theft and falsely uttering checks: 1) these types of misconduct are not part of the natural history or sequelae of a mental health condition; 2) his asserted mental health conditions do not affect one's ability to distinguish right from wrong and act in accordance with the right.

g. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation, the Board made the following findings and recommendations related to the requested relief:

- Discharge Upgrade: DENY. Based upon the lengthy pattern of misconduct, some of which included criminal activities, the Board concluded there was insufficient evidence of an error or injustice warranting a change in the applicant's characterization of service.
- Service in Iraq: PARTIAL GRANT. Based upon information obtained from DFAS showing the applicant completed foreign service in Kuwait and that service is not properly annotated on his DD Form 214, the Board recommended correcting that error.

A Defense Finance and Accounting Service, Master Military Pay Account printout shows the applicant served in Kuwait from 7 August 2003 to 21 February 2004.

BOARD VOTE:Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by amending the applicant's DD Form 214 by:

- (block 12f) replacing the current entry with: "0000 06 15"
- (block 18) adding the statement: SERVICE IN KUWAIT FROM 20030807-20040221

2. The Board further determined 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.

//SIGNED//

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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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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.
3. Army Regulation 635-8 (Separation Processing and Documents) prescribes policy and procedural guidance relating to transition management. It consolidates the policies, principles of support, and standards of service regarding processing personnel for transition. Paragraph 5-6r provides: for all Soldiers, list any/all outside the continental U.S. deployments completed during the period of the DD Form 214. Include the statement, "SERVICE IN (NAME OF COUNTRY DEPLOYED) FROM (inclusive dates
4. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - 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, Section IV provided that a member would be given a BCD 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.

5. 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.

6. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR), on 3 September 2014, 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.

7. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the mental health condition was not diagnosed until years later. 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.

8. 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, Boards

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//