

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2025

DOCKET NUMBER: AR20240009134

APPLICANT REQUESTS:

- an upgrade of his bad conduct discharge to honorable
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Applicant's Resume
- Certified Peer Recovery Supporter Training
- Newspaper Article
- Bachelor of Science Degree in Social Science from Kansas State University
- Delmarva Toastmasters

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 is requesting an upgrade of his bad conduct discharge to reflect an honorable discharge.

a. While on active duty he experienced a traumatic event which led him to having a less than stellar performance in conduct. His military record shows that he started out with exemplary behavior and conduct. While in basic training, he suffered traumatization when he stood up to a couple of bullies who were intimidating other minority races. At age 5, he was hit by a car and suffered from traumatic brain injury (TBI). He fractured his skull in three places. In addition, he was raised in a physically abusive household. Watching the bullies, brought back childhood memories of him being physically abused.

His courage, however, got him promoted while in basic training from private (PVT), E-1 to private (PV2), E-2.

b. After leaving the military, he enrolled in college as a single parent. It took him eleven years, but he received his bachelor's degree from Kansas State University and obtained an appointment from the state of Delaware to establish the Office of Mental Health Consumer Relations. He served as its' first director from 1994-2004 within the division of substance abuse and mental health. Other positions held included working with the Federal government for the Veterans Administration Behavioral Health Department in Leavenworth, Kansas. By then, he had over two decades of experience working in the behavioral health field and was invited into a meeting at the White House. The meeting was chaired by Tipper Gore, a mental health advocate.

c. He is using the Department of Veterans Affairs for mental health treatment of his post-traumatic stress disorder, depression, anxiety and diabetes. He has for the most part-maintained employment with state and Federal government entities. Part of his therapy was his employment as a certified Peer Recovery Support specialist working in the behavioral health care field. After leaving the military he has been a model citizen. He has not had any infractions with the law over the last forty-six years. He takes full responsibility for his behavior while in the military. It's always been his desire to have his discharge upgraded.

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

a. He enlisted in the Regular Army on 30 June 1976.

b. The applicant served two foreign service periods in Korea from 1 November 1976 to 31 October 1977 and from 28 May 1979 to 31 January 1980.

c. The applicant accepted nonjudicial punishment for the following:

- 26 September 1979 - one specification of abandonment of his post and one specification of failure to obey a lawful order; his punishment included reduction to private first class (PFC), E-3
- 30 October 1979 – one specification of being absent without leave (AWOL) from on or about 19 October 1979 to on or about 23 October 1979 (continuation sheet not available); his punishment included reduction to E-2
- 26 November 1979 – failure to be at his appointed place of duty; his punishment included reduction to E-1

d. Two DA Forms 4187 (Personnel Action) changed the applicant's duty status as follows:

- 19 October 1979 – present for duty (PDY) to AWOL
- 23 October 1979 – AWOL to PDY (surrendered to military authorities)

e. On 1 February 1980, while on assignment in Korea, he was convicted by a special court-martial for:

- two specifications of wrongful possession of marijuana on or about 17 December 1979, 54.76 grams, more or less, and on or about 22 December 1979, 125 grams, more or less
- two specifications of wrongfully transferring marijuana to a military police investigator (MPI) 54.76 grams, more or less, on or about 17 December 1979, and 125 grams, more or less, on or about 22 December 1979
- two specifications of wrongfully selling marijuana to an MPI 54.76 grams, more or less, on or about 17 December 1979, and 125 grams, more or less, on or about 22 December 1979

f. His sentence included forfeiture of \$298.00 pay per month for six months, confinement for 4 months, and a bad conduct discharge.

g. On 25 February 1980, the convening authority approved the sentence and except for that part of the sentence extending to the bad conduct discharge, ordered the sentence executed. The record of trial was forwarded to the Judge Advocate General of the Army for appellate review.

h. Special Court-Martial Order Number 9, dated 9 January 1981, after Article 71(c) was complied with and the sentence was affirmed, ordered the bad conduct discharge executed.

i. On 23 January 1981, he was discharged from active duty with a bad conduct characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 2 years, 6 months, and 4 days of active service with 124 days of lost time. It also shows she was awarded or authorized:

- Army Good Conduct Medal
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)
- Marksman Marksmanship Qualification Badge with Hand Grenade Bar

4. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

5. 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.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his bad conduct discharge to honorable. On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), and Other Mental Health Issues are related to his request. 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 30 June 1976, 2) he received nonjudicial punishment (NJP) on three occasions in 1979 for abandonment of his post and failure to obey a lawful order (26 September 1979), being absent without leave (AWOL) from on or about 19 October 1979 to on or about 23 October 1979 (30 October 1979), and failure to be at his appointed place of duty (26 November 1979), 3) on 01 February 1980, he was convicted by a Special Court-Martial of two specifications of wrongful possession of marijuana (54.76 grams, more or less, on or about 17 December 1979 and 125 grams, more or less, on or about 22 December 1979); two specifications of wrongfully transferring marijuana to a military police investigator (MPI) (54.76 grams, more or less, on or about 17 December 1979 and 125 grams, more or less, on or about 22 December 1979); and two specifications of selling marijuana to an MPI (54.76 grams, more or less, on or about 17 December 1979 and 125 grams, more or less on or about 22 December 1979), 4) the applicant was discharged on 23 January 1981 under the provisions of AR 635-200, Paragraph 11-2, with a separation code of JJD and reentry code of RE-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. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. There were no in-service medical records available for review.

d. A review of JLV shows the applicant is 50% service-connected through the VA for PTSD. A VA Compensation and Pension (C&P) examination dated 29 October 2018 was available for review. At the time of his initial evaluation, the provider determined that he did not meet criteria for a BH condition. The evaluating provider documented the applicant reported a history of childhood trauma and a history of head trauma at age 5. The provider further noted the in-service stressor(s) experienced by the applicant as being rejected by his peers and an attempted sexual assault by an officer. The provider

documented that the applicant's condition existed prior to service (EPTS) and was not aggravated beyond its natural progression by an in-service event, injury, or illness. The subsequent VA C&P examination diagnosing the applicant with PTSD was not available for review.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant has been diagnosed and 50% service-connected through the VA for PTSD, which is a potentially mitigating condition. However, this Advisor would contend that the applicant's misconduct is not mitigated by his diagnosis of PTSD.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed and 50% service-connected through the VA for PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed and 50% service-connected through the VA for PTSD. Service connection establishes that the condition existed in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There were no in-service medical records available for review. Since being discharged from the military, the applicant has been diagnosed and 50% service-connected through the VA with PTSD. Although PTSD is a potentially mitigating BH condition, possession of marijuana, as related to transfer and selling to an MPI, is not part of the natural history and sequelae associated with PTSD. Furthermore, PTSD does not interfere with one's ability to distinguish between right and wrong and adhere to the right. As such, BH mitigation is not supported.

g. Regarding applicant's assertion of TBI and Other Mental Health Issues, while there is insufficient evidence to support these diagnoses, applicant's self-assertion of TBI and Other Mental Health Issues alone merits consideration by the board.

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. The Board

considered the applicant's statement, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the medical records and conclusions of the advising official. The 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 noted possession of marijuana, as related to transfer and selling to an MPI, is not part of the natural history and sequelae associated with PTSD. The Board concurred with the advisory official finding insufficient evidence of in-service mitigating factors to weigh a clemency determination. Based upon a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed and 50% service-connected through the VA for PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed and 50% service-connected through the VA for PTSD. Service connection establishes that the condition existed in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There were no in-service medical records available for review. Since being discharged from the military, the applicant has been diagnosed and 50% service-connected through the VA with PTSD. Although PTSD is a potentially mitigating BH condition, possession of marijuana, as related to transfer and selling to an MPI, is not part of the natural history and sequelae associated with PTSD. Furthermore, PTSD does not interfere with one's ability to distinguish between right and wrong and adhere to the right. As such, BH mitigation is not supported.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 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 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.

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 Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-7c (Under other than honorable conditions discharge) states a discharge under other than honorable conditions in an administrative separation from the service under conditions other than honorable.

d. Paragraph 3-11 (Bad conduct discharge) states 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.

4. 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.

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.
7. 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.

8. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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//