

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 March 2025

DOCKET NUMBER: AR20240009640

APPLICANT REQUESTS: upgrade of his bad conduct discharge to general, under honorable conditions or honorable.

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

- DD Form 149 (Application for Correction of Military Record), 6 May 2024
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 12 November 1980

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 indicates on his DD Form 149, that post-traumatic stress disorder (PTSD) and other mental health issues or conditions are related to his request. He states he has PTSD because of his active duty service. Someone at Fort Stewart gave him a bad drug and he hasn't been the same ever since.
3. A review of the applicant's service records shows the following:
 - a. On 7 November 1978, he enlisted in the Regular Army for 4 years.
 - b. On 19 December 1978, he accepted nonjudicial punishment (NJP) for disobedience of a lawful order from his superior noncommissioned officer, to not drink alcoholic beverages while at the post exchange. He forfeited \$50.00 pay for 1 month (suspended 45 days), and he was given restriction and extra duty for 10 days.
 - c. On 10 March 1979 he was promoted to private 2.
 - d. He was absent without leave from 8 May 1979 to 9 May 1979 (1 day).

d. On 11 May 1979, he accepted NJP for being AWOL on two occasions; 0430 hours, 3 April 1979 to 2330 hours, 3 April 1979; and 0630 hours, 23 April 1979 to 1630 hours, 23 April 1979. He was given 7 days confinement and forfeited \$95.00 pay for 1 month.

e. He was AWOL from his unit, Company C, 3d Battalion, 19th Infantry, 26 May 1979 to 29 May 1979 (4 days).

f. Special Court-Martial Orders (SCMO) Number 104, dated 5 December 1979, reflects he was arraigned, tried, and found guilty at Fort Stewart; and sentenced to be reduced to the rank of private, to be confined at hard labor for 3 months, and discharged from the service with a bad conduct discharge; of the charges:

(1) AWOL from 26 May 1979 to 29 May 1979;

(2) theft of one television of a value of \$80.00, and one eight-track portable radio of a value of \$120.00, the property of another Soldier, on 20 April 1979; and

(3) operating a passenger car at Fort Stewart while drunk on 30 April 1979.

(4) The sentence was adjudged on 27 August 1979.

g. On 5 December 1979, the record of trial was forwarded to the Judge Advocate General of the Army for review by a Court of Military Review.

h. He was reported AWOL from 7 January 1980 to 8 January 1980 (1 day).

i. On 14 January 1980, he accepted NJP for being AWOL from 7 January 1980 to 8 January 1980. His punishment consisted of forfeiture of \$50.00 pay per month for 2 months and 10 days correctional custody (suspended for 2 months).

j. On 13 February 1980, the U.S. Army Judiciary advised him he had 30 days to petition the U.S. Army Court of Military Review for a review; on the same date he acknowledged receipt of this notice.

k. On 22 February 1980, his commanding officer recommended approval of his request for assignment to the Clemency Program.

l. He was reported AWOL from 2 March 1980 to 10 March 1980 (9 days).

m. On 12 March 1980, supplemental NJP vacated the suspension of punishment previously imposed against him.

n. On 10 April 1980, the Court of Military Appeals granted his counsel's petition for review of the decision based on the issue of whether the admission into evidence of two post-Booker NJP records were prejudicial error.

o. On 22 April 1980, he was approved for excess leave.

p. SCMO Number 96, issued on 28 October 1980, affirmed the sentence and ordered it to be duly executed.

q. On 12 November 1980, the applicant was discharged. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 11, with a bad conduct discharge, as a result of court-martial. He completed 1 year and 9 months of net active service this period.

4. On 21 November 2024, the Chief, Case Management Division, requested the applicant provide medical documents in support of his issues or conditions. He did not respond.

5. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his bad conduct discharge (BCD). He contends he experienced other mental health conditions including posttraumatic stress disorder (PTSD) during his military service 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 7 November 1978; 2) On 19 December 1978, he accepted nonjudicial punishment (NJP) for disobedience of a lawful order from his NCO to not drink alcohol; 3) The applicant went AWOL from 08 May 1979 to 09 May 1979; 4) On 11 May 1979, he accepted NJP for being AWOL on two additional occasions on 03 April 1979 from 0430 hours to 2330 hours, and 23 April 1979 from 0630 hours to 1630 hours; 5) Special Court-Martial Orders dated 05 December 1979 reflects that he was found guilty of: AWOL from 26 May 1979 to 29 May 1979, theft on 20 April 1979, and driving while intoxicated on base on 30 April 1979; 6) On 14 January 1980 he accepted NJP for AWOL from 07 January 1980 to 08 January 1980; 7) On 12 March 1980 the applicant's punishment was suspended for going AWOL again from 02 March 1980 to 10 March 1980; 8) The applicant was discharged on 12 November 1980, Chapter 11- BCD as a result of court-martial. He completed 1 year and 9 months of net active service.

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

review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced other mental health disorders including PTSD that mitigate 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 any service-connected mental health condition including PTSD. However, he sought care at the VA initially for assistance with homelessness and substance use disorders starting on 22 October 2020 until his most recent documented encounters on 26 November 2024 for inpatient and outpatient substance use treatment. The applicant has been evaluated by mental health professionals within the VA resulting in diagnoses such as suicidal ideations and substance use disorder diagnoses that include cocaine use disorder, severe; alcohol use disorder, severe; other stimulant use disorder, severe; and other psychoactive substance abuse with psychoactive substance-induced mood disorder. The applicant contend that he experienced schizophrenia and bipolar disorder while on active service, however, there is insufficient evidence that he has ever been diagnosed with either disorder despite multiple evaluations by providers. There is insufficient evidence at this time that the applicant has ever received any service-connected disability for any mental health condition at this time.

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 a mental health condition including PTSD resulting from his drug use, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions PTSD due to drug use while on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report that the applicant has been diagnosed with a service-connected mental health condition, including PTSD. Avoidant and erratic behavior such as going AWOL and not following orders can be a natural sequelae to some mental health conditions including PTSD. However, the presence of misconduct is not sufficient evidence of a mental health condition. In addition, there is no nexus

between the applicant's reported mental health conditions including PTSD and the applicant's charge of theft in that: 1) this type of misconduct is not a part of the natural history or sequelae of the applicant's reported mental health conditions including PTSD and; 2) the applicant's reported mental health conditions including PTSD broadly does not impact one's ability to distinguish right from wrong and act in accordance with the right. Yet, the applicant contends he experienced a mental health condition or experience while on active service that mitigates his misconduct, and the applicant's contention is sufficient for consideration per the Liberal Consideration Policy.

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 relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the short term of honorable service completed prior to a pattern of misconduct leading to the applicant's separation, including some of a criminal nature (theft), the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

//SIGNED//

X

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. By law (Title 10 U.S. Code Section 1552), court-martial convictions stand as adjudged or modified by appeal through the judicial process. This Board 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. The ABCMR does not have authority to set aside a conviction by a court-martial.
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time (21 November 1977 and 1 September 1981), provides the authority for separation of enlisted personnel upon expiration of terms of service (ETS), prior to ETS to meet the needs of the Service, voluntary retirement by reason of length of service, and the criteria governing the issuance of honorable, general, and under other than honorable conditions discharge certificates.
 - a. Paragraph 1-13. Type of administrative discharges/character of service.
 - (1) 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. Only the honorable characterization may be awarded a member upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty training or where required under specific reasons for separation unless an entry level status separation (uncharacterized) is warranted.

(2) 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

(3) An Under other than honorable conditions. 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, for security reasons or for the good of the service.

b. Chapter 11 provided that an enlisted person will be given a bad conduct 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.

4. 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.

5. 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.

6. 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.

7. Section 1556 of Title 10, U.S. Code, 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//