

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 April 2025

DOCKET NUMBER: AR20240009696

APPLICANT REQUESTS: in effect, 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. 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 requests a review of the reasons for his discharge and a correction of the injustice that brought it about. He is also requesting an honorable characterization of service. The applicant states:
 - a. His conviction was unjust and contrary to due process, which was beyond the applicant's ability to comprehend as a teenager. He believes the facts of his case were not allowed to be considered during the Court-Martial.
 - b. The individuals involved in this matter were older than the applicant by more than 20 years and they grossly out ranked the applicant.
 - c. On an afternoon in 1981, he was shopping at a Post Exchange in Germany, when he met a 24 year old woman by the name of Y_____ F_____. During their casual conversation he discovered that Mrs. Y_____ F____ was married, which was a red flag to him, and he broke off the conversation with a promise to dance with her if he ever ran into her at the Noncommissioned Officers (NCO) club sometime. He did not expect to ever see her again, it was just a polite way for him to end the conversation.

d. As time went on, he did run into Mrs. Y_____ F____ again at the NCO club, but he did not speak with her, as she appeared to be in the company of several men at a small table some distance away from his location. However, upon Mrs. Y_____ F____ recognizing the applicant, she waived at him using just her fingers and he tilted his head in acknowledgement, but he did not make any other gesture or have any contact with her whatsoever. At this point, one of the men at the table slapped Mrs. Y_____ F____ in her face and they appeared to get into an argument, which the applicant could not hear from his location. He paid no further attention to them and continued with his evening.

e. At some point, hours later, he went outside, and he ran into the party from the table with Mrs. Y_____ F____; they were standing in front of the exit doors. As the applicant approached the exit, he spoke to the persons present as in, "What's up ya'll?" One of the men, whom he now knows was Specialist Five (SP5) F____, the apparent husband of Mrs. Y_____ F____, said, "look at this nigger speaking, talking about what's up while in there smiling at my wife."

f. The applicant advised SP5 F____ that he did not know him or his wife, and he would like to go outside if SP5 F____ would excuse him. Instead, SP5 F____ took a swing at the applicant's face with a beer bottle; the applicant ducked and backed out the door. SP5 F____ and his friends quickly followed the applicant outside, where SP5 F____ again swung at the applicant with the beer bottle, the applicant again ducked while backing away from the three men. Finally, SP5 F____ threw the beer bottle at the applicant, who ducked out of the way only to be immediately attacked by SP5 F____ and one of the men with SP5 F____.

g. The applicant knocked SP5 F____ to the ground and struck the third man. The applicant fought with all three men until his roommate arrived and started fighting two of the men while the applicant fought with SP5 F____. SP5 F____ went down and the applicant turned his attention to one of the other men fighting his roommate and noticed he was reaching into his back pocket attempting to pull out a knife. The applicant ran over to the man attempting to pull out his knife and kicked him in the chest. The man fell against the side wall of the club and as the applicant waited for him to recover from the kick, SP5 F____ recovered first and stabbed the applicant in the back with a knife.

h. The applicant turned to face SP5 F____ and struck him hard on the jaw; SP5 F____ went down again but the applicant continued to hit him until the men from his barracks grabbed him and threw him into the backseat of a car to leave because the Military Police (MP)s were coming.

i. Once back in the barracks, the applicant noticed he was bleeding badly and did not know what to do. He was afraid he would get into trouble even though he was attacked. A short time later the MPs knocked on his door, but he did not answer at first. The MPs told him through the door they knew he was there and that he had been hurt;

the MPs said they wanted to take him to get help. The applicant opened the door and was taken to the hospital to be patched up.

j. After the hospital, he was taken to the Criminal Investigation Division (CID), where he was interviewed about the incident. He was advised that SP5 F____ had made a complaint against him. The applicant explained he was the one who was attacked, but nobody would listen to or believe him.

k. SP5 F____ was not the first ranking official to attack the applicant, nor was he the last. The applicant was a young 19-20 year old man. He was attractive to women because of his dancing and his build. Because of these attractions, many of the men were jealous of the applicant and attacked him.

l. At one point in 1981, he was dating a young lady from a until on the same base as his unit. One day, some new guys from her unit approached her, but she rejected their advances and advised them that she had a man. These new men refused to leave the young lady alone, even throwing a brick through her window with a note attached that said she was going to be with them, and they would take care of the applicant if she wouldn't be with them.

m. One day, one of these new men met the applicant coming out of his barracks and attacked him. The attack was unsuccessful, and the attacker ran off after the applicant beat him. On a subsequent night, the applicant was in the club on the dance floor when out of nowhere, he was kicked in the face from behind. The kick landed in his right eye, and he was temporarily blinded. When the applicant turned around, he saw it was another one of the new guys; the applicant managed to toss him over a table and beat him too.

n. Finally, one night, he was at the same club sitting with some friends waiting for his girlfriend. One of his friends went outside to get some fresh air but came running back inside to tell the applicant that the young lady who was his girlfriend was outside laying in the parking lot with her throat cut. The applicant rushed out, found her lying there bleeding, and asked her who did that to her. She wouldn't say who hurt her because she didn't want the applicant to get into trouble. The applicant told his girlfriend she did not have to tell him who hurt her because he already knew who did it. After the ambulance took his girlfriend away, he went back into the club and approached the table where two of the same men who had been threatening his girlfriend were sitting and he told them he knew they were the ones who hurt his girlfriend and that he intended to deal with it.

o. One of the men at the table twisted the head of his cane and attempted to draw the sword it became, but the applicant was faster and knocked him out of his chair and

unconscious. The other man tried to run, but the applicant threw him up against a wall and told him, while holding him by his neck, that he was going to get them.

p. The applicant left the club and went home to the barracks, he expected a visit from the MPs, but they never came. His girlfriend was shipped out back home and he never saw her again.

q. The applicant was not a snitch, and he never reported any of the attacks because he was a Soldier and a fighting man. He was attacked many times by older ranking Soldiers as high as sergeant first class (SFC) because he was young, lower in rank, popular with women, and built like an action figure. The applicant did not tell anyone about the attacks, and he won most of the fights. However, these attacks caused him to suffer some mental illness, in that once he was wrongfully court-martialed and deprived of the main witness in the SP5 F____ fight, which was the offense charged in the court-martial, his career came to an end before it was started.

r. Mrs. Y_____F____ made statements during the investigation indicating that SP5 F____ was an "extremely jealous person and crazy," a fact which she was willing to testify to in addition to the fact that SP5 F____ attacked and stabbed the applicant. The applicant's assigned JAG lawyer refused to call Mrs. Y_____F____ as a witness even though she was present and willing to testify.

s. He was repeatedly victimized by ranking older Soldiers throughout his military career; only his ability to fight kept him from being killed at the hands of these men. This type of thing has plagued his life; he has never been able to live a normal life or maintain normal social relationships with anyone.

t. The applicant is convinced that his holding in these matters for so long has affected him mentally because he has never been able to shake the feeling of failure. For these reasons, his life has never been the same. He was not a troubled youth, he was never in trouble, he did not drink, he did not smoke until all the things described above took place. He felt he had nowhere to go and no one to help him. He even tried staying around the barracks and out of the club, but he was attacked there by an SFC.

u. The applicant would like to have these accounts fully investigated and a review of his court-martial, where he was provided constitutionally defective assistance. The applicant believes that what he perceived as his failures, and the injustices of his military court-martial led him to feelings of inadequacy, hopelessness, and a desire for death. These feelings eventually led to drug addiction, failed marriages, crime, and prison. Therefore, he is requesting the Board review his entire record due to mental health concerns including what is now called post-traumatic stress disorder (PTSD).

3. The applicant enlisted in the regular Army on 1 August 1979 and was assigned to Germany after training. On 3 August 1980, he was promoted to the rank/grade of private first class (PFC)/E-3; the highest rank he held.

4. Special Court-Martial Order Number 58, dated 5 November 1981 shows, on 28 August 1981:

a. The applicant was arraigned and tried, and found guilty of the following charges and specifications:

(1) Charge II: Violation of the Uniform Code of Military Justice (UCMJ) Article 109 (Non-Military Property Damage); Specification: In that [the applicant] ... did... on or about 12 June 1981, willfully and wrongfully destroy by slashing with a knife the right front tire of [SP5 F____'s] car, of a value of about \$45.00, said offense occurring outside the territorial limits of the United States.

(2) Charge III: Violation of the UCMJ, Article 116 (Riot or breach of peace); Specification: In that [the applicant] ... did... on or about 12 June 1981, participate in a breach of peace by wrongfully engaging in a fray in the parking lot of the... NCO Club, said offense occurring outside the territorial limits of the United States.

(3) Additional Charge II: Violation of the UCMJ, Article 91 (Insubordinate conduct) -

(a) Specification 1: in that [the applicant] ... did... on or about 22 August 1981, violate a lawful regulation... by wrongfully having in his possession a switchblade knife, said offense occurring outside the territorial limits of the United States.

(b) Specification 2: In that [the applicant] ... did... on or about 23 August 1981, violate a lawful regulation... by wrongfully having in his possession a switchblade knife, said offense occurring outside the territorial limits of the United States.

(4) Additional Charge III: Violation of the UCMJ, Article 128 (Assault) -

(a) Specification 2: In that [the applicant] ... did... on or about 12 June 1981, commit an assault upon Specialist Four C____ L. M____ by cutting him on the right arm with a dangerous weapon, to wit: a knife, said offense occurring outside the territorial limits of the United States.

(b) Specification 3: In that [the applicant] ... did... on or about 23 August 1981, commit an assault upon Private E2 V____ M. H____ by cutting him with a dangerous weapon, to wit: a knife, said offense occurring outside the territorial limits of the United States.

(c) Specification 4: In that [the applicant] ... did... on or about 23 August 1981, unlawfully strike Private E2 V____ M. H____ on the head with his fist, said offense occurring outside the territorial limits of the United States.

b. The applicant was sentenced by a military Judge to be reduced to the grade of Private E-1, to forfeit \$250.00 pay per month for five months, to be confined at hard labor for five months, and to be discharged from the service with a bad conduct discharge. The sentence was adjudged on 3 September 1981.

c. On 5 November 1981, the sentence was approved, and the record of trial was forwarded to the Judge Advocate General of the Army for review by a Court of Military Review.

5. On 5 May 1982, the United States Army Court of Military Review found the approved findings of guilty, and the sentence correct in law and in fact and having determined on the basis of the entire record that they should be approved, such findings of guilty and the sentence was affirmed.

6. On 8 November 1982, the applicant was discharged with a Bad Conduct characterization of service under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), paragraph 11-2, as a result of Court-Martial, other. His DD Form 214 shows his rank as private/E-1 and his date of rank as 5 November 1981. He also received a separation code of "JJD" and a reentry code of "4." Additionally, he completed 2 years, 11 months, and 24 days of net active service and he received no decorations or awards.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his Bad Conduct Discharge (BCD). He contends mental health conditions including PTSD 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 1 August 1979; 2) On 28 August 1981, the applicant was found guilty of property damage by slashing a tire, participating in a fight, possession of a switch blade (x2), committing assault by cutting another Soldier on the arm with a weapon (x2), and assaulting another Soldier with his fists; 3) On 8 November 1982, the applicant was discharged, Chapter 11-2, as a result of a Court-Martial with a Bad Conduct characterization of service. He completed 2 years, 11 months, and 24 days of net active service.

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) was also examined. No additional medical records were provided for review.

- c. 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, and he currently does not receive any service-connected disability for a mental health condition including PTSD.
- 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 mental health 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 contends he experienced mental health conditions including PTSD, which mitigates his misconduct.
- (2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced mental health conditions including PTSD while 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 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 and 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:

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 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 property damage, participating in a fight, possession of a switch blade, and committing assault twice. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board concurred with the medical advisor's review finding insufficient evidence the applicant had a mental health condition or experience that mitigates his misconduct.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

[REDACTED] [REDACTED] [REDACTED] 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.

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 considers individual applications that are properly brought before it. In appropriate cases, it directs or recommends correction of military records to remove an error or injustice. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
3. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), then in effect -
 - a. Chapter 11 (Dishonorable and Bad Conduct Discharge) provides a member 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.
 - 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. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.
 - c. 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.
4. 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.

5. 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; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to 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 that misconduct which led to the discharge.

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. 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 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, 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.

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