

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 March 2025

DOCKET NUMBER: AR20240009724

APPLICANT REQUESTS: Reconsideration of his request for an upgrade of his bad conduct discharge (BCD) 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)

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 AR20100026993 on 19 July 2011.
2. The applicant states he served 95 percent of his enlisted time, honorably. He is not asking for a handout or making excuses, but he was a good Soldier who made a mistake. He was only 23 years old. This mistake has followed him his entire life. He asks for forgiveness; he needs a miracle. He didn't receive the help he needed during his time in service. He is a homeless Veteran and still struggles from his past mistakes.
3. On his DD Form 149, the applicant notes post-traumatic stress disorder (PTSD), and other mental health issues are related to his request
4. The applicant enlisted in the Regular Army on 29 January 1991.
5. Before a general court-martial at Fort Bliss, TX on 2 August 1993, the applicant was found guilty of:
 - one specification of wrongfully using cocaine between 25 January and 26 February 1993
 - one specification of wrongfully distributing cocaine between 1 February and 1 March 1993
 - one specification of wrongfully manufacturing some amount of crack cocaine between 1 February and 1 March 1993
 - two specifications of failing to repair, on or about 1 December 1992 and on or about 29 February 1993

6. The court sentenced him to reduction to E-1, forfeiture of all pay and allowances, to be discharged from the service with a BCD, and 9 months confinement. The sentence was approved on 20 September 1993; however, only so much of the sentence as provided for reduction to E-1, forfeiture of all pay and allowances, to be discharged from the service with a BCD, and 6 months confinement. The record of trial was forwarded for appellate review.

7. General Court-Martial Order Number 182, issued by Headquarters, U.S. Army Armor Center and Fort Knox, Fort Knox, KY on 29 June 1994, noted the applicant's sentence had been affirmed and ordered the BCD to be duly executed.

8. The applicant was discharged on 10 August 1994. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 3, Section IV, by reason of court-martial. His service was characterized as bad conduct. He was credited with 3 years, 2 months, and 3 days of net active service this period with 131 days of lost time.

9. The applicant petitioned the ABCMR requesting upgrade of his BCD. On 19 July 2011, the Board voted to deny relief and determined the overall merits of this case were insufficient as a basis for correction of the applicant's records.

10. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his prior request of an upgrade of his bad conduct discharge (BCD) to under honorable conditions (general) or honorable. He selected PTSD and OMH on his application as related to his request.

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:

- Applicant enlisted in the Regular Army on 29 January 1991.
- Before a general court-martial at Fort Bliss, TX on 2 August 1993, the applicant was found guilty of one specification of:
 - wrongfully using cocaine between 25 January and 26 February 1993
 - wrongfully distributing cocaine between 1 February and 1 March 1993
 - wrongfully manufacturing crack cocaine between 1 February and 1 March 1993
- two specifications of failing to repair, on or about 1 December 1992 and on or about 29 February 1993
- Applicant was discharged on 10 August 1994. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted

Personnel), Chapter 3, Section IV, by reason of court-martial. His service was characterized as bad conduct, with separation code JJD, and RE 4.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states he served 95 percent of his enlisted time, honorably. He is not asking for a handout or making excuses, but he was a good Soldier who made a mistake. He was only 23 years old. This mistake has followed him his entire life. He asks for forgiveness; he needs a miracle. He didn't receive the help he needed during his time in service. He is a homeless Veteran and still struggles from his past mistakes.

d. Due to the period of service no active-duty electronic medical records were available for review.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and there is no evidence he has been diagnosed with or has participated in treatment for any behavioral health condition despite being eligible for mental health services via humanitarian assistance. A note dated 13 October 2020, shows the applicant received a response to his letter from a reentry specialist indicating he was ineligible for enrollment in the VA Health Care System due to the character of his discharge. However, he was offered housing programs for homeless veterans. The specialist stated the programs were particularly helpful for veterans going to "corrections halfway house placements", indicating the applicant was being discharge from incarceration.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge. However, regardless of BH condition, his misconduct of manufacturing and distributing cocaine is unlikely to be mitigated by any BH condition.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserted PTSD and OMH on his application as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service or post-discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant selected PTSD and OMH on his application as related to his request, there is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses and the VA has not service-connected the applicant for any BH condition. In addition, the VA electronic record indicates the applicant has not been diagnosed or treated for any mental health condition. And while the applicant selected PTSD and OMH on his application, he did not provide any medical documentation substantiating any BH diagnosis. However, regardless of BH condition, his misconduct of manufacturing and distributing cocaine is not part of the natural sequelae of any BH condition and would not be mitigated.

h. Per Liberal Consideration guidelines, his selection of PTSD and OMH on his application is sufficient to warrant 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 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 using, distributing, and manufacturing cocaine. The Board found no error or injustice in the separation proceedings. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration, the Board determined relief was not warranted.

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserted PTSD and OMH on his application as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service or post-discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant selected PTSD and OMH on his application as related to his request, there is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses and the VA has not service-connected the

applicant for any BH condition. In addition, the VA electronic record indicates the applicant has not been diagnosed or treated for any mental health condition. And while the applicant selected PTSD and OMH on his application, he did not provide any medical documentation substantiating any BH diagnosis. However, regardless of BH condition, his misconduct of manufacturing and distributing cocaine is not part of the natural sequelae of any BH condition and would not be mitigated.

2. The applicant was given a bad conduct 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
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XX	:XX	:XX	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 amendment of the ABCMR decision rendered in Docket Number AR20100026993 on 19 July 2011.



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//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 1556, 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.

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.

a. Paragraph 2-9 states 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.

b. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) 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.

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. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval 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.

6. 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.

//NOTHING FOLLOWS//