

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 August 2025

DOCKET NUMBER: AR20240009773

APPLICANT REQUESTS:

- upgrade of his bad conduct discharge (BCD) based on disability
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record) with self-authored statement
- statement of support, undated
- award
- x-ray image
- Post-Traumatic Stress Index, dated 24 February 2015

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 was self-medicating to cope with post-traumatic stress disorder (PTSD) related to his deployment. He was falsely accused of selling drugs. Since his discharge, he has dedicated himself to living an honorable life and helping Veterans. He received an award from the Mayor of Philadelphia. He notes PTSD and other mental health as conditions related to his request.
3. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 5 June 2003.
  - b. He served in Iraq from 10 February 2004 to 20 July 2004.

c. Before a special court-martial on 31 October 2005, at Wiesbaden, Germany, he was found guilty of the following charges:

- wrongful use of heroin, on divers occasion, between on or about 1 September 2004 and 1 March 2005
- wrongful introduction of some amount of heroin onto an installation with intent to distribute, on divers occasions, between on or about 1 September 2004 and 1 March 2005
- wrongful distribution of heroin, on divers occasions, between on or about 1 September 2004 and 1 March 2005

d. The court sentenced him to reduction to private/ E-1, confinement for 6 months, and to be discharged from the service with a BCD. The sentence was approved on 18 April 2006, and except for the BCD, ordered executed.

e. On 19 June 2007, the U.S. Army Court of Criminal Appeals affirmed the findings of guilty and the sentence.

f. Special Court-Martial Order 190, issued on 12 October 2007, shows the appellate review was finally affirmed; Article 71(c) was complied with; and the BCD was ordered executed.

g. Accordingly, he was discharged with a BCD on 25 January 2008, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 3, as a result of court-martial, other. He completed 4 years, 2 months, and 24 days of net active service this period.

4. The applicant provides a statement of support and a photograph of a plaque which was awarded to him by the Mayor of Philadelphia. Additionally, an x-ray image and post-traumatic stress index will be reviewed and summarized in the "MEDICAL REVIEW" section of this Record of Proceedings (ROP).

5. The Board should consider the applicant's overall 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 (BCD). He contends that he experienced other mental health conditions including posttraumatic stress disorder (PTSD) during his military service that mitigate 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 5 June 2003; 2) The applicant was

deployed to Iraq from 10 February 2004 to 20 July 2004; 3) On 31 October 2005, Court-martial charges were preferred against the applicant and he was found guilty of heroin use, bringing heroin on a military installation with the intent to distribute, and distribution of heroin; 4) The applicant was discharged on 25 January 2008, Chapter 3- BCD as a result of court-martial (other). He completed 4 years, 2 months, and 24 days of net active service this period. He accrued lost time between 31 October 2005 to 27 March 2006.

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) and hardcopy medical records provided by the applicant were also reviewed. 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 was insufficient evidence of mental health symptoms, diagnoses, or evaluations during his time in service.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with any service-connected mental health condition including PTSD. He sought care at the VA initially for depression and PTSD symptoms starting on 15 September 2008. The applicant was officially diagnosed with PTSD related to his previous military deployment as well as cannabis dependence, alcohol abuse, and a history of heroin dependence on 28 January 2015. There is insufficient evidence that the applicant is VA service-connected or has ever received any service-connected VA disability for a mental health condition.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence beyond self-report the applicant has been diagnosed with symptoms consistent with service-connected PTSD that may mitigate some of the applicant's avoidant behavior such as utilizing drugs.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant contends he was experiencing mental health conditions including PTSD at the time of his active service which mitigates his misconduct. The applicant was diagnosed with PTSD in 2015 related to his combat experiences by a VA provider.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing mental health conditions including PTSD at the

time of his active service, which mitigates his misconduct. The applicant was diagnosed with PTSD in 2015 related to his combat experiences by a VA provider.

(3) Does the condition experience actually excuse or mitigate the misconduct? Partially, the applicant contends he experienced PTSD while on active service. There is sufficient evidence beyond self-report that the applicant was diagnosed with PTSD in 2015 related to his combat experiences through his VA psychological examination. The applicant did display avoidant behavior during his time in service such as utilizing drugs. This type of avoidant behavior can be a natural sequelae to PTSD and some mental health conditions. However, there is no nexus between the applicant's experience of PTSD and his misconduct of transporting drugs or distributing drugs on a military installation in that this type of misconduct is not a part of the natural history or sequelae of most mental health conditions including PTSD; 2) and these conditions broadly do not impact one's ability to distinguish right from wrong and act in accordance with the right. However, per Liberal Consideration, the applicant's experience of PTSD alone is sufficient for the board's consideration.

#### 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 wrongful use, introduction, and distribution of heroin. The Board found no error or injustice in the separation proceedings and designated characterization of service.

2. The Board considered the following Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant contends he was experiencing mental health conditions including PTSD at the time of his active service which mitigates his misconduct. The applicant was diagnosed with PTSD in 2015 related to his combat experiences by a VA provider.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing mental health conditions including PTSD at the time of his active service, which mitigates his misconduct.

(3) Does the condition experience actually excuse or mitigate the misconduct? Partially, the applicant contends he experienced PTSD while on active service. There is sufficient evidence beyond self-report that the applicant was diagnosed with PTSD in 2015 related to his combat experiences through his VA psychological examination. However, there is no nexus between the applicant's experience of PTSD and his misconduct of transporting drugs or distributing drugs on a military installation in that this type of misconduct is not a part of the natural history or sequelae of most mental health conditions including PTSD.

3. The Board concurred with the medical advisor's review finding there is no nexus between the applicant's experience of PTSD and his misconduct. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

4. 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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.



**X** //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 (USC), 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 Army Board for Correction of Military Records (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. Title 10, USC, Section 1203 provides for the physical disability separation of a member who has less than 20 years of service and a disability rating at less than 30 percent (%).

3. Title 38, USC, Sections 1110 and 1131, permit the Department of Veterans Affairs (VA) to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

a. The Army rates only conditions determined to be physically unfitting at the time of discharge which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career.

b. The VA does not have authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

4. Section 1556 of Title 10, USC, 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 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, advisory opinions, and reviews to ABCMR applicants and/or their counsel prior to adjudication.

5. 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. The ABCMR is not an investigative body and decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application.

6. Army Regulation 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). Once a determination of physical unfitness is made, the physical evaluation board (PEB) rates all disabilities using the Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Chapter 2, provides physical standards for enlistment, appointment, and induction with the purpose to ensure members medically qualified are medically capable of completing required to training, adapt to a military environment without geographical limitations, perform duties without aggravation of existing physical defects or medical conditions.

b. The standards in Chapter 2 are applicable to individuals who enlist in the Regular Army - for medical conditions or physical defects pre-dating original enlistment, standards are applicable for enlistee's first 6 months of active duty. It states that enlisted Soldiers identified within the first 6 months of active duty with a condition that existed prior to service that does not meet the physical standards may be separated following an evaluation by an Entrance Physical Standards Board, under the provisions of AR 635-200, Chapter 5.

7. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System (DES) and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. It states, in part:

a. Only the unfitting conditions or defects and those that contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability. The mere presence of impairment does not, in and of itself, justify a finding of unfitness because of physical disability.

b. The PEB-appointed counsel advises the Soldier of the Informal PEB (IPEB) findings and recommendations and ensures the Soldier knows and understands his or her rights. The Soldier records his or her election to the PEB on the DA Form 199 and has 10 calendar days from the date of receiving the PEB determination to make the election, submit a rebuttal, or request an extension.

8. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. The regulation provides:

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.

9. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, 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.

10. 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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; 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 sexual assault or sexual harassment was unreported, or 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.

11. 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-

marital; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

//NOTHING FOLLOWS//