

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 August 2025

DOCKET NUMBER: AR20240010037

APPLICANT REQUESTS: upgrade of his bad conduct discharge (BCD).

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 1 August 2024
- Army Commendation Medal (ARCOM), showing Permanent Orders #274-153 awarded the applicant the ARCOM for his courageous service in support of Operation Iraqi Freedom from 29 January 2005 to 15 January 2006, awarded October 2005
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 25 July 2008
- Medical documentation showing his diagnosis of post-traumatic stress disorder (PTSD), major depressive disorder recurrent and moderate, and generalized anxiety disorder, his medications prescribed and treatment plan
- Four-character reference statements summarizing the applicant's childhood, service time, and post discharge. The characters mention the applicant's service in Iraq and reference how different he became after his deployment, stating his behavior was withdrawn, deeply depressed, lonely, irresponsible, uncooperative, he became a drinker and marijuana user.
- Correspondence from the Army Review Boards Agency dated 8 July 2021 showing ARBA agreed to accept re-applications from a group of Soldier who previously requested an upgrade of their discharge due to settlement Kennedy v. McCarthy

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

- a. He enlisted in the Regular Army on 17 February 2004, for a 3-year period.
- b. He deployed to Iraq from 23 January 2005 to 22 January 2006.
- c. He received a memorandum of reprimand on 27 February 2006 for his misconduct on 22 January 2006. He was cited for drunken driving (refusal), open container while operating a vehicle, and no driver's license on person. He acknowledged the memorandum of reprimand and elected to not submit a statement.
- d. On 6 November 2006, at Fort Stewart, GA, the applicant was found guilty by a special court-martial (SPCM) of:
 - Disobeying a lawful order by failing to report to the Battalion Staff Duty Non-Commissioned Officer every hour on the hour starting 4:00 a.m. between on or about 17 March 2006 and 19 March 2006
 - Assaulting a Non-Commissioned Officer by shoving him in the chest with open hands on or about 10 April 2006
 - Two specifications of wrongfully using marijuana on or between 14 March 2006 and 13 April 2006 and between 3 May 2006 and 2 June 2006
 - Wrongfully possessing some amount of marijuana on or about 2 June 2006
 - The court sentenced him to confinement for 10 months and to be discharged from the service with a BCD, the sentence was adjudged on 20 July 2006
- e. The convening authority approved the sentence as provides for 10 months confinement and a BCD, and except for the BCD, ordered the sentence executed.
- f. The Record of Trial was forwarded to The Judge Advocate General of the Army for appellate review.
- g. On 18 October 2007, the U.S. Army Court of Criminal Appeals affirmed the findings of guilty and the sentence.
- h. SPCM Number 25 dated 6 February 2008 ordered the BCD to be executed.
- i. Accordingly, he was discharged with a BCD on 25 July 2008. His DD Form 214 shows he was discharged in the grade of E-1 as a result of court-martial, in accordance with Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 3. He completed 3 years, 9 months, and 10 days of net active service. He was awarded the following decorations, medals, badges, citations, and campaign ribbons:
 - Iraq Campaign Medal
 - National Defense Service Medal

- Army Service Ribbon
- Overseas Service Ribbon
- Combat Action Badge

4. On 15 October 2014, the Army Discharge Review Board (ADRB) carefully examined the applicant's records, and the Board found no cause for clemency and voted to deny the applicant's request for an upgrade of his BCD.

5. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his bad conduct discharge (BCD) and other corresponding changes to his DD-214. He contends he experienced a traumatic brain injury (TBI) and mental health conditions including posttraumatic stress disorder (PTSD) 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 17 February 2004; 2) The applicant deployed to Iraq from 23 January 2005 to 22 January 2006; 3) On 27 February 2006, the applicant received a Letter of Reprimand for driving while intoxicated, having an open container of alcohol while driving, and driving without a license; 4) On 06 November 2006 the applicant was found guilty by a special court-martial of: A) Disobeying a lawful order; B) Assaulting an NCO, C) Two specifications of marijuana use, and D) Possession of marijuana; 5) The applicant was discharged on 25 July 2008, Chapter 3- As a result of Court-Martial, Other. His character of service was BCD. He completed 3 years, 9 months, and 10 days of net active service this period. 6) On 15 October 2014, the applicant previously applied to the ABCMR for discharge upgrade where his discharge was determined to be fair and equitable.

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

c. The applicant asserts he experienced TBI and mental health conditions including PTSD during his time in service that mitigate his misconduct. On 16 March 2006 and 03 April 2006, the applicant was documented as attending sessions with ASAP for the treatment of alcohol disorders. However, additional documentation regarding the course and nature of the applicant's ASAP treatment was unavailable for review. On 28 March 2006, the applicant was evaluated by social work case management due to behavioral problems within his unit, diagnosed him with adjustment disorder with disturbance of emotional and conduct and referred for mental health treatment. There was insufficient evidence of any follow-up or additional mental health care. On 10 April 2006, the applicant underwent a mental status evaluation in service of Chapter 14 administrative

procedures which resulted in a diagnosis of antisocial personality disorder by an army behavior health officer and was cleared from a mental health perspective without any additional information provided. There is insufficient evidence that the applicant reported or was diagnosed with a TBI or PTSD while on active service.

d. The VA's Joint Legacy Viewer (JLV) was examined, and no relevant results were found. The applicant has not been diagnosed with a service-connected mental health condition, and he does not receive service-connected disability for a mental health condition at this time. No additional mental health documentation was provided by the applicant at this time.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence beyond self-report the applicant has been diagnosed with a TBI or mental health condition including PTSD that may mitigate some of the applicant's misconduct. The applicant was diagnosed with adjustment disorder with disturbance of emotions and conduct during his time in service, however this was only documented following the applicant's misconduct without any documentation as to an attributable stressor. There is insufficient evidence to support the applicant had a diagnosed TBI or mental health condition including PTSD that existed prior to and 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 was experiencing a TBI and mental health conditions including PTSD at the time of his active service which mitigates his misconduct. The applicant was previously diagnosed with adjustment disorder with disturbance of emotions and conduct following his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing a TBI PTSD at the time of his active service which mitigates his misconduct. The applicant was previously diagnosed with adjustment disorder with disturbance of emotions and conduct following his misconduct while still on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a TBI and/or mental health conditions including PTSD while on active service that impacted his misconduct. In addition, there is no nexus between the applicant's reported TBI and mental health conditions including PTSD and assaulting an NCO or driving without a license in that: 1) these types of misconduct are not a part of the diagnosis or natural sequelae of most mental health conditions including PTSD nor TBI; 2) TBI and most mental health conditions including PTSD do not impact one's ability to distinguish right

from wrong. However, the applicant contends he experienced mental health conditions or experiences while on active service, which mitigate his misconduct. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

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 DoD 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 disobeying a lawful order, assault on an NCO, and wrongfully use and possession of marijuana. The Board also noted his prior misconduct in which he received and acknowledged a written reprimand. The Board concurred with the medical advising official who found insufficient evidence to support the applicant had a diagnosed TBI or mental health condition including PTSD that existed prior to and mitigates his misconduct. Therefore, the Board found no error or injustice in the separation proceedings. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

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.

3. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant contends he was experiencing a TBI and mental health conditions including PTSD at the time of his active service which mitigates his misconduct. The applicant was previously diagnosed with adjustment disorder with disturbance of emotions and conduct following his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing a TBI PTSD at the time of his active service which mitigates his misconduct. The applicant was previously diagnosed with

adjustment disorder with disturbance of emotions and conduct following his misconduct while still on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a TBI and/or mental health conditions including PTSD while on active service that impacted his misconduct. In addition, there is no nexus between the applicant’s reported TBI and mental health conditions including PTSD and assaulting an NCO or driving without a license in that: 1) these types of misconduct are not a part of the diagnosis or natural sequelae of most mental health conditions including PTSD nor TBI; 2) TBI and most mental health conditions including PTSD do not impact one’s ability to distinguish right from wrong. However, the applicant contends he experienced mental health conditions or experiences while on active service, which mitigate his misconduct. The applicant’s contention alone is sufficient for consideration per the Liberal Consideration Policy.

The Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant’s characterization of service.

4. ADMINISTRATIVE NOTES; A review of the applicant's record shows his DD Form 214, for the period ending 25 July 2008 is missing his award of the Army Commendation Medal, permanent orders #274-153. As a result, amend the DD Form 214 (Certificate of Release or Discharge from Active Duty) Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) by adding the Army Commendation Medal.

BOARD VOTE:

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

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214, for the period ending 25 July 2008 is missing his award of the Army Commendation Medal, permanent orders #274-153. As a result, amend the DD Form 214 (Certificate of Release or Discharge from Active Duty) Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) by adding the Army Commendation Medal.

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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

3. Army Regulation 635 – 200 (Personnel Separations – Active Duty Enlisted Administrative Separations, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge was separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate

b. A general discharge was a separation from the Army under honorable conditions. When authorized, separation authorities could issue a general discharge to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

4. 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.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and Service 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//