

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 June 2025

DOCKET NUMBER: AR20240010091

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his dishonorable discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 26 May 1994
- Medical document that shows he sought treatment for a depressive disorder, on 25 June 2024

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 AR20120000596 on 17 July 2012.

2. In a new argument, the applicant states he had a mental health condition (depressive disorder) that contributed to his bad conduct discharge. He now lives in a homeless shelter.

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

- a. He enlisted in the Regular Army on 1 December 1987.
- b. He was reported as absent without leave, on or about 17 December 1990 and remained absent until his apprehension, on or about 13 December 1991.
- c. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice; however, the relevant DD Form 458 (Charge Sheet) is not available for review.

d. Before a general court-martial on 29 January 1992, at Fort Stewart, GA, the applicant was found guilty of:

- one specification of conspiring to sell stolen property between on or about 1 October 1990 and 15 December 1990
- one specification of desertion from on or about 17 December 1990 until apprehended on or about 13 December 1991
- one specification of selling stolen military property between on or about 12 November 1990 to on or about 11 December 1990
- one specification of using marijuana between on or about 1 June 1990 to on or about 12 July 1990

e. The court sentenced him to be discharged from the service with a dishonorable discharge, confinement for four years, and to forfeit \$500.00 pay per month for a period of 48 months. The sentence was approved, however only so much of the sentence as provided for a dishonorable discharge, confinement for 24 months, and forfeiture of \$500.00 pay per month for a period of 48 months. The record of trial was forwarded for appellate review.

f. The U.S. Army Court of Military Review affirmed the findings and sentence on 22 July 1992.

g. General Court-Martial Order Number 155, issued by Headquarters, U.S. Army Armor Center and Fort Knox, Fort Knox, KY, on 6 May 1994, noted the applicant's sentence had been affirmed and ordered the dishonorable discharge to be duly executed.

h. The applicant was discharged on 26 May 1994. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 3, Section IV, as a result of court-martial. His service was characterized as dishonorable. He completed 3 years, 8 months, and 20 days of net active service with 1,011 days of lost time.

i. The applicant petitioned the ABCMR requesting upgrade of his dishonorable discharge. On 17 July 2012, 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.

4. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

5. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request for an upgrade of his dishonorable discharge. He contends OMH 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:

- The applicant enlisted into the Regular Army on 1 December 1987.
- He was reported as absent without leave, on or about 17 December 1990 and remained absent until his apprehension, on or about 13 December 1991.
- Before a general court-martial on 29 January 1992, at Fort Stewart, GA, the applicant was found guilty of:
 - one specification of conspiring to sell stolen property between on or about 1 October 1990 and 15 December 1990
 - one specification of desertion from on or about 17 December 1990 until apprehended on or about 13 December 1991
 - one specification of selling stolen military property between on or about 12 November 1990 to on or about 11 December 1990
 - one specification of using marijuana between on or about 1 June 1990 to on or about 12 July 1990
- Applicant was discharged on 26 May 1994. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 3, Section IV, as a result of court-martial. His service was characterized as dishonorable with separation code JJD, and reentry code 4. He was credited with 3 years, 8 months, and 20 days of net active service this period with 1,011 days of lost time.

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 had a mental health condition (depressive disorder) that contributed to his bad conduct discharge. He now lives in a homeless shelter.

d. Active-duty electronic medical records available for review show the applicant was treated for medical conditions but there is no evidence of treatment for any behavioral health condition.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected but has received supportive services from the VA related to issues with homelessness and substance abuse. The applicant provided a form dated 25 June 2024 indicating he presented to the hospital and complained of depressive

disorder. However, the medical documentation that would have been provided by the treatment team, detailing the course of treatment and diagnoses, was not provided. On 29 July 2024 the applicant participated in a psychosocial assessment as part of the admission process into a residential program. His chief complaint was homelessness. He reported a long-standing history of substance abuse that was exacerbated when his mother, grandmother, and cousin were all killed in a motor vehicle accident in 2017. He stated he was able to cope and fulfill his life roles prior to this incident which precipitated a decompensation of his mental health, and he could no longer maintain employment. He reported at least four inpatient admissions for psychiatric stabilization/detox due to his long history of substance use beginning in 1987. He identified alcohol and marijuana as his primary substances of use but further disclosed a history of opiate use, noting medication assisted treatment (suboxone) in 2017, and methamphetamine use. The electronic medical record shows the applicant discontinued contact in December 2024.

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.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. Applicant self-asserts depressive disorder 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.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. 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. The applicant has received support from the VA related to homelessness and substance use. During a psychosocial assessment, in July 2024, he reported inpatient admissions for psychiatric stabilization/detoxification due to his long history of substance use. He further described a motor vehicle accident in 2017, post-military service, as the cause of his decompensation. Regardless, there is no evidence/medical documentation of any psychiatric condition or diagnosis.

h. Per liberal consideration guidelines, applicant's assertion of OMH 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 partial relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, medical advisor's review, 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 conspiring to sell stolen property, desertion from 17 December 1990 until 13 December 1991, selling stolen military property, and for using marijuana. The Board found no error or injustice in the separation proceedings. The Board concurred with the medical advisor's review in that there was insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge. However, the Board voted to grant partial relief to upgrade his dishonorable discharge to a bad conduct discharge due to the non-violent nature of his crime and the fact that he is currently a homeless Veteran. However, the Board denied the applicant's request for a full honorable characterization of service.

2. 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 discharge? Yes. Applicant self-asserts depressive disorder 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.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. 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. The applicant has received support from the VA related to homelessness and substance use. During a psychosocial assessment, in July 2024, he reported inpatient admissions for psychiatric stabilization/detoxification due to his long history of substance use. He further described a motor vehicle accident in 2017, post-military service, as the cause of his decompensation. Regardless, there is no evidence/medical documentation of any psychiatric condition or diagnosis.

h. Per liberal consideration guidelines, applicant's assertion of OMH is sufficient to warrant consideration by the board.

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

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:XXX	:XXX	:XXX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial amendment of the ABCMR's decision in Docket Number AR20120000596 on 17 July 2012. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 26 May 1994, to reflect his character of service as "Bad Conduct Discharge" vice "Dishonorable Discharge".

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to a more favorable character of service.

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.

REFERENCES:

1. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. 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.
2. 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.
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 dishonorable discharge pursuant only to an approved sentence of a general 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 Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR) on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating 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 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.

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.

a. This guidance does not mandate relief, but rather 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, Boards 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.

//NOTHING FOLLOWS//