

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 June 2025

DOCKET NUMBER: AR20240010544

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)

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 during his military tenure, he was under a lot of stress. He participated in events that were out of character for him and his upbringing.
3. On his DD Form 293, the applicant notes other mental health issues are related to his request.
4. The applicant enlisted in U.S. Army Reserve (USAR) and entered initial active duty for training on 9 May 2005. He was issued a DD Form 214 (Certificate of Release or Discharge from Active Duty) for this period of service. [see Administrative Note].
5. Having previous service in the USAR, he enlisted in the Regular Army on 7 September 2005 [DD Form 214 shows 25 May 2005 as date entered active duty].
6. Before a general court-martial at Fort Riley, KS on 16 July 2007, the applicant was found guilty of:
 - one specification of wrongful possession of marijuana, with the intent to distribute, between on or about 15 February 2007 on or about 18 February 2007
 - one specification of wrongfully distributing some amount of marijuana, weighing less than one-half ounce, on or about 30 January 2007
 - one specification of wrongfully possessing 64 grams of marijuana, with the intent to distribute, on or about 22 February 2007

7. The court sentenced the applicant to be discharged from service with a BCD, confinement for 15 months, reduction to E-1, and forfeiture of all pay and allowances. The sentence was approved on 21 August 2009, and the record of trial was forwarded for appellate review.
8. The U.S. Army Court of Criminal Appeals affirmed the findings and sentence on 26 October 2008.
9. General Court-Martial Order Number 22, issued by Headquarters, U.S. Army Armor Center and Fort Knox, Fort Knox, KY, on 3 March 2010, noted the applicant's sentence had been affirmed and ordered the BCD to be duly executed.
10. The applicant was discharged on 3 June 2010. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 3, by reason of court-martial. His service was characterized as bad conduct. He was credited with 4 years and 9 days of net active service this period.
11. On 28 April 2025, the ABCMR staff requested the applicant provide medical documents to support his issue of other mental health conditions. He was advised that he could contact the doctor that diagnosed him or his Veterans Affairs regional office for assistance. He did not respond.
12. 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.

13. MEDICAL REVIEW:

- a. The applicant is applying to the ABCMR requesting an upgrade of his bad conduct discharge (BCD). He contends he experienced mental health conditions, which are related to his request for an upgrade. 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) Having had prior service in the U.S. Army Reserve, the applicant enlisted in the Regular Army on 7 September 2005; 2) Before a general court-martial on 16 July 2007, the applicant was found guilty of possession of marijuana with the intent to distribute and wrongfully distributing marijuana; 3) The applicant was discharged on 3 June 2010, Chapter 3, by reason of court-martial. His service was characterized as bad conduct.
- b. The Army Review Boards 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 documentation

was provided for review.

c. The applicant contends he experienced mental health conditions, which mitigate his misconduct. There is evidence the applicant was seen for two behavioral health appointments during his initial training at Fort Sam Houston. One appointment was for excessive sleepiness during his classes and the other was for grief related to the reported recent loss of a family member. The applicant did not attend regular individual therapy after these initial appointments. He was seen again by behavioral health services on 26 September 2006 for a Mental Status Exam as part of his administrative separation proceedings for a Chapter 14. The applicant was reported to have been charged with being possession of a controlled substance, driving with a suspended license, and larceny. He reported difficulty adjusting to military life, but he described wanting to remain in the military due to his father retiring from the Army and wanted a second chance. He was diagnosed with an occupational problem, and he was cleared from a psychiatric perspective for administrative separation. He was also referred to individual therapy to assist him with his adjustment to military life. There is insufficient evidence the applicant attended additional behavioral health therapy while on active service.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition by the VA. He does not receive service-connected disability for a mental health condition.

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 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 asserts he was experiencing mental health conditions, which mitigate his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing mental health conditions while on active service, which mitigate 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 mental health conditions, while on active service. In addition, there is no nexus between the applicant's reported mental health conditions and his misconduct of distribution of marijuana in that: 1) this type of misconduct is not a part of the natural history or sequelae of the applicant's reported mental health conditions; 2) the applicant's

reported mental health conditions 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 mitigates his misconduct, and per Liberal Consideration his contention 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 possession of marijuana with the intent to distribute and wrongfully distributing marijuana. The Board concurred with the medical advisor's review finding insufficient evidence the applicant had a condition or experience that mitigates his misconduct. 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. Prior to closing the discussion, the Board reviewed and concurred with the administrative note below.

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):

The applicant completed a period of initial active duty for training (IADT). He was awarded a military occupational specialty at the completion of training and was transferred back to the USAR. Army Regulation 635-200 provides that when a Reserve Component Soldier successfully completes IADT, the characterization of service is Honorable unless directed otherwise by the separation authority. As a result, reissue him a DD Form 214 for the period ending 20 August 2005, showing his character of service as Honorable.

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. 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 (Active Duty Enlisted Administrative Separations) 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 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//