

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 May 2025

DOCKET NUMBER: AR20240010631

APPLICANT REQUESTS: reconsideration of his bad conduct discharge upgrade

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Resume
- Certificate of License (The Gospel Ministry)
- Certificate of Ordination
- Certificate (Doctor of Ministry)
- Certificate (Master of Arts in Religion)
- Certificate (Bachelor of Science)
- Medical Records

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 AR20120013392 on 19 February 2013.

2. The applicant states he is requesting reconsideration due to injuries suffered and changes in administrative processes.

a. While serving, he suffered a traumatic brain injury and PTSD. The injuries are affecting his life, and he is asking for a modification of his discharge. He was injured during training and experienced a traumatic brain injury which resulted in posttraumatic stress disorder. He was involved in an MVA. The Humvee rolled and he lost consciousness for an undisclosed period of time.

b. Once he was released from the hospital, he began his recovery. He was on medical profile with several restrictions, and he never fully recovered from the accident. He became a malfunctioning weapon, was unable to perform field duties or drills due to his injuries. While completing his tour in Korea, he was assigned duties to match his medical profile like chaplain assistant.

c. His next assignment was Fort Campbell, KY, where things changed quickly for him. His military career suffered greatly under leadership unaware of the extent of his injuries and interpretation of his medical history. He was treated like a broken weapon and liability to his unit.

d. He was mentally, emotionally and physically damaged from the previous years and things became worse. His unit was on alert to be deployed to Iraq and Somalia. He could not sleep and began drinking alcohol uncontrollably to try to cope with the anxiety, stress, and depression.

e. He was brought up on charges for theft, a crime he did not commit. He was found innocent during a court-martial of all charges relating to theft. The accusations affected the perception of many. He was embarrassed and humiliated. The 1SG decided to take the matter to trial. While being advised of the decision, the 1SG said to the squad leader, "I'm going to get rid of this broken piece of shit once and for all. He ain't been no good since I got here. This broke back bastard has to get out of my Army. I'm sick of having him in my unit."

f. He was placed on all kinds of duties just to be picked on. His counsel could not get him transferred out of the unit which is standard procedure for similar cases. Within a month of the decision, he was brought up on an additional charge for failing to obey a lawful order.

g. The unit was being called out for warfare training. He could not train due to being on medical profile. The 1SG insisted he go to training even after the squad leader advised of the medical profile and had started the process for medical discharge.

h. He is requesting a change in discharge due to the new legislation regarding TBIs and PTSD. He was 21 years old, immature, physically damaged and mentally unstable to make the best decision. He still today has trouble sleeping. He is drinking more alcohol and gets irritated and angry to the point of almost blacking out. The TBI leading to PTSD from the injury remains untreated and managed by alcohol or other risks. Treatment is denied until there is a change in the discharge. He understands now his actions were from complications of the TBI and PTSD which were evident in his behavior.

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

- a. On 9 July 1991, he enlisted in the Regular Army for a period of three years.
- b. He served overseas in Korea from 29 October 1991 – 28 October 1992.
- c. DA Form 4187 (Personnel Action) shows his duty status was changed:

- From present for duty (PDY) to confined by military authorities (CMA) on 22 June 1994
 - From CMA to PDY on 2 September 1994
- d. The applicant was convicted by special court-martial (SCM) on 22 June 1994 of:
- Charge I (Article 87), and its specification of on or about 10 May 1994, missing movement
 - Charge II (Article 91), and its specification on or about 10 May 1994, willful disobedience of a noncommissioned officer
 - The court sentenced him to reduction to grade of Private/E-1, confinement for 90 days, forfeiture of \$550.00 pay per month for three months, and a bad-conduct discharge.
- e. On 7 November 1994, the convening authority approved the sentence and except for the bad-conduct discharge, will be executed.
- f. The Record of Trial was forward to the U.S. Army Court of Criminal Appeals for appellate review. On 22 December 1995, the U.S. Army Court of Criminal Appeals on consideration of the entire record, held the findings of guilty and the sentence as approved by the convening authority correct in law and fact. Accordingly, those findings of guilty and the sentence were affirmed.
- g. SCMO Number 29, 21 August 1996, shows the Army Court of Criminal Appeals review had been finally affirmed; Article 71© having been complied with; the bad-conduct discharge will be executed.
- h. Accordingly, the applicant was discharged with a BCD on 11 December 1996. His DD Form 214 shows he was discharged in the rank/grade of private/E-1 as a result of court-martial conviction in accordance with Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) chapter 3.
- i. It also shows he completed 5 years, 2 months, 23 days of net active service this period. His DD Form 214 also shows:
- Item 26 (Separation Code): JJD
 - Item 27 (Reentry Code): 4
 - Item 29 (Dates of Time Lost During this Period): 19940622 – 19940708 and he was on excess leave from 19940709 – 19940901

4. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his request to upgrade his bad conduct discharge. On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD), and Traumatic Brain Injury (TBI) are related to his request. More specifically, he indicated that he was involved in a motor vehicle accident (MVA) on 29 January 1992 resulting in a loss of consciousness (LOC) of more than 10 minutes. He contends that the accident resulted in PTSD. 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 09 July 1991, 2) he served in Korea from 29 October 1991 through 28 October 1992, 3) the applicant was found guilty by a special court-martial of, on or about 10 May 1994, missing movement and willful disobedience of a noncommissioned officer (NCO). He was sentenced to reduction in grade of Private/E-1, confinement for 90 days, forfeiture of \$550.00 pay per month for three months, and a bad-conduct discharge, 4) the applicant was discharged on 11 December 1996 under the provisions of AR 635-200, Chapter 3, with a separation code of JJD and reentry code of '4,' 5) the applicant's previous petition to the ABCMR for relief, as summarized in Docket Number AR 20120013392 dated 19 February 2013, was denied.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. In-service records included as part of his application were reviewed. It appears the applicant first presented for treatment while in the field as documented on an Emergency Care and Treatment form dated 29 January 1992 following an MVA. It was documented that he was hanging upside down for 5-10 minutes, had a brief period of LOC, and reported neck and left shoulder pain. He was diagnosed with rule out (R/O) cervical fracture, left shoulder trauma, and abdominal tenderness. He was referred to the emergency room for evaluation through neuro, ortho, and general surgery. The hospital note shows he reported wearing a seatbelt but that it broke, and he had a brief episode of LOC. He was admitted for observation. An Abbreviated Medical Record note dated 29 January 1992 shows he was diagnosed with 'CHI s/p MVA,' [*Advisor's note:* the abbreviation CHI was not defined in the available documentation; however, given the context of MVA and in light of the documented LOC is presumed to mean closed head injury] and abdominal pain. His discharge diagnosis was documented as status-post MVA, rolled HMMWV, no significant injuries.

d. A review of JLV was void of medical information. There is no documentation that the applicant is service-connected through the VA and there were no VA medical records available for review. It is of note that the applicant's BCD renders him ineligible for VA medical services.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant was diagnosed with a closed head injury (now referred to as TBI) in-service, which is a potentially mitigating condition. This Advisor would contend that the applicant's misconduct is mitigated by his diagnosis of closed head injury/TBI.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, in-service medical records show the applicant was diagnosed with closed head injury in-service.

(2) Did the condition exist or experience occur during military service? Yes, in-service medical records show the applicant was diagnosed with closed head injury in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. In-service medical records show the applicant was diagnosed with closed head injury, which is considered a type of TBI. As there is an association between problems with decision-making, motivation, oppositionality and head injury, there is a nexus between the applicant's misconduct of missing movement and willful disobedience of a noncommissioned officer and his diagnosis of closed-head injury. As such, BH mitigation is supported.

g. Regarding applicant's assertion of PTSD, while there is no evidence to support this diagnosis, applicant's self-assertion of PTSD alone merits consideration by the board.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct leading to the applicant's separation and the following findings outlined in the medical review:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes.

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes,

the Board determined relief was warranted by upgrading the applicant's characterization of service to General, Under Honorable Conditions.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:XXX :XXX :XXX GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Under Honorable Conditions (General)
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

//SIGNED//

X

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 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. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for separation of enlisted personnel.

a. Chapter 3 states a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or a special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

b. Paragraph 3-7 states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the soldier'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.

c. Paragraph 3-7b provides that 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.

3. 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.

4. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

5. The Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta Memorandum]. 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 PTSD, traumatic brain injury (TBI), 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

a. Guidance documents are not limited to under other than honorable conditions discharge characterizations but rather apply to any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from general to honorable characterizations.

b. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.

c. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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. 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 based on equity, injustice, or clemency grounds, BCM/NRs 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. 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//