

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 April 2025

DOCKET NUMBER: AR20240010882

APPLICANT REQUESTS: An upgrade of his under other than honorable conditions discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD: Two DD Forms 149 (Application for Correction of Military Record)

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 AR20160017078 on 10 June 2019.

2. The applicant states, in effect, he was a troubled youth at the time he joined the Army. He enlisted at the age of 17, with the consent of D. B. The applicant made a serious mistake while in the Army, which he regrets each and every day, but he was dealing with financial issues at home and on post. He indicated post-traumatic stress disorder (PTSD) and other mental health conditions were related to the application.

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

a. On 4 November 1975, the applicant enlisted in the Regular Army; he was 17 years old.

b. He received four Company Grade Article 15s, Uniform Code of Military Justice, nonjudicial punishment, on:

- 23 July 1976 for disobeying a lawful order from his superior officer on 8 July 1976
- 11 August 1976 for failure to go at the time prescribed to his appointed place of duty on 2 August 1976; he was reduced to private/E-2
- 14 December 1976 for violating a lawful general order by misappropriating government funds on 1 December 1976

- 25 January 1977 for stealing a leather coat of a value of \$95, the property of the Fort Benning Post Exchange on 15 January 1977; he was reduced to private/E-1

c. On 5 May 1977, at Fort Benning, Georgia, the applicant was found guilty, consistent with his pleas, by general court-martial (GCM) of:

- Charge I (Larceny), and its specifications, of stealing stereo equipment, of a value of \$2,200, and 42 eight-track tapes, of a value of \$2,494, the property of Staff Sergeant [REDACTED] on 24 January 1977; and stereo equipment, of a value of about \$1,584, the property of Major [REDACTED] on 11 March 1977
- Charge II (Housebreaking), and its specifications, of unlawfully entering the quarters of SSG [REDACTED] on 24 January 1977, and the quarters of MAJ [REDACTED] on 11 March 1977, with intent to commit the criminal offenses of larceny
- The court sentenced him to be separated from the service with a bad conduct discharge, forfeiture of \$200.00 pay per month for 17 months, and confinement to hard labor for 17 months

d. On 25 May 1977, the convening authority approved the sentence and ordered the forfeiture to become due on or after the date of the action.

e. The Record of Trial was forwarded to The Judge Advocate General of the Army for appellate review.

f. The applicant was released from confinement on parole on 19 December 1977.

g. DA Form 2-2 (Insert Sheet to DA Form 2, Record of Court-Martial Conviction) reflects the supervisory review was complete per General Court-Martial Order Number (GCMO) Number 131, 28 February 1978.

h. On 4 June 1979, the applicant was discharged with an under other than honorable conditions characterization of service, and issued a DD Form 259A (Bad Conduct Discharge Certificate); his DD Form 214 shows he was discharged in the rank/grade of private/E-1, in accordance with Army Regulation (AR) 635-200 (Personnel Separations Enlisted Personnel), paragraph 11-2. It also shows:

- He completed 1 year, 11 months, and 24 days of net active service.
- He was released on parole, pending completion of Appellate Review
- He had 587 lost days, retained 213 days for the convenience of the government

4. In his previous request (AR20160017078) on 10 June 2019, after reviewing the application and all supporting documents, the Board determined based on the serious criminal nature of the misconduct which resulted in his discharge, the characterization of

the service he received at the time was appropriate. The application submitted was denied by the ABCMR.

5. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his prior request of an upgrade of his under other than honorable conditions (UOTHC) discharge. He contends PTSD and 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:

- Applicant enlisted in the Regular Army on 4 November 1975.
- Applicant received four Company Grade Article 15s, Uniform Code of Military Justice, nonjudicial punishment, on:
 - 23 July 1976 for disobeying a lawful order from his superior officer on 8 July 1976
 - 11 August 1976 for failure to go at the time prescribed to his appointed place of duty on 2 August 1976; he was reduced to private/E-2
 - 14 December 1976 for violating a lawful general order by misappropriating government funds on 1 December 1976
 - 25 January 1977 for stealing a leather coat of a value of \$95, the property of the Fort Benning Post Exchange on 15 January 1977; he was reduced to private/E-1
- On 5 May 1977, the applicant was found guilty, consistent with his pleas, by general court-martial (GCM) of:
 - Charge I (Larceny), and its specifications, of stealing stereo equipment, of a value of \$2,200, and 42 eight-track tapes, of a value of \$2,494, the property of Staff Sergeant [REDACTED] on 24 January 1977; and stereo equipment, of a value of about \$1,584, the property of Major [REDACTED] on 11 March 1977
 - Charge II (Housebreaking), and its specifications, of unlawfully entering the quarters of SSG [REDACTED] on 24 January 1977, and the quarters of MAJ [REDACTED] on 11 March 1977, with intent to commit the criminal offenses of larceny
- On 4 June 1979, the applicant was discharged with an under other than honorable conditions characterization of service and issued a DD Form 259A (Bad Conduct Discharge Certificate). His DD Form 214 shows he was discharged in the rank/grade of private/E-1, in accordance with Army Regulation (AR) 635-200 (Personnel Separations Enlisted Personnel), paragraph 11-2 with an RE code 4.

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 was a troubled youth at the time he joined the Army. He enlisted at the age of 17. He made a serious mistake while in the Army, which

he regrets each and every day, but he was dealing with financial issues at home and on post.

d. Due to the period of service no active-duty electronic medical records were available for review.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and has not participated in treatment for any behavioral health condition. The VA electronic medical record shows the applicant received supportive case management services from July 2024 to October 2024 while incarcerated. Following his release from jail, in November 2024, the applicant was provided with supportive case management services due to homelessness and was housed via the Homeless Residential Transitional Program. The applicant continues to receive monthly case management support, and, per the available record, there is no evidence of any mental health diagnosis.

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. Regardless of diagnosis, the applicant's misconduct would not be mitigated by PTSD.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts PTSD and OMH on his application 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, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated for any mental health condition. And while the applicant self-asserted PTSD and OMH, he did not provide any medical documentation substantiating any BH diagnosis. Overall, while in service, the applicant evidenced a pattern of theft that continually escalated from misappropriating government funds, stealing a leather coat from the Post Exchange, to breaking and entering. Regardless of diagnosis, the applicant's misconduct of breaking and entering with intent to commit a crime and subsequently engaging in theft is not part of the natural history or sequelae of PTSD or of any other

mental health condition. Specifically, the conditions do not impair an individual's ability to know right from wrong, understand consequences, and make purposeful, conscious decisions.

h. Per Liberal Consideration guidelines, his assertion of PTSD and OMH are 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 relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.
2. The Board considered the applicant's claim that he suffered from a condition or an experience, such as, PTSD during his military service; the Board considered the applicant's statements and all the supporting documents he provided; the Board considered his record of service to include the frequency and nature of his misconduct, the reason for his separation, the ARBA Medical Advisory opinion, and whether to apply clemency and liberal consideration.
3. The Board concurred with the medical advisory opinion, that, based on the information available there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge. Regardless of diagnosis, the applicant's misconduct would not be mitigated by PTSD.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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|---|---|---|----------------------|
| : | : | : | GRANT FULL RELIEF |
| : | : | : | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| █ | █ | █ | 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 to amend decision of the ABCMR set forth in Docket Number AR20160017078, dated 10 June 2019.

5/6/2025

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 1556 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 (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.

2. Army Regulation 635-200 (Personnel Separations Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. Issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

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. A general discharge may be issued if an individual has been convicted by general court-martial or has been convicted by more than one special court-martial in the current enlistment period or obligated service or any extension thereof. The decision is discretionary; if there is evidence the individual's military behavior has been proper over a reasonable period of time subsequent to the conviction(s), he may be considered for an honorable.

c. An under other than honorable conditions discharge is an administrative separation from the Service under conditions other than honorable.

d. Paragraph 11-2 provides a Soldier would be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial and that the appellate review must be completed and the affirmed sentence ordered duly executed.

e. The issuance of discharge certificates is governed by this regulation. The regulation provides the character of discharge or separation for a Bad Conduct

Certificate (at the time of the applicant's separation) is under conditions other than honorable.

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 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.

5. 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.

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, 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.

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//