

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 July 2025

DOCKET NUMBER: AR20240011033

APPLICANT REQUESTS:

- upgrade of his bad conduct discharge to under honorable conditions (General)
- change the narrative reason for discharge to "Secretarial Authority"
- reissue new discharge documents

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

- DD Form 149 (Application for Correction of Military Record), 7 August 2024
- Counsel Statement with exhibits list, 7 pages
- Applicant Statement, 5-pages, 2 December 2020
- Department of Veterans Affairs (VA) Statement in Support of Post-Traumatic Stress Disorder (PTSD), 4 November 2020
- Letter of support, LK____, 2 December 2020, a Soldier claiming to have served and witnessed the incidents of racism and in particular, a racially motivated fight involving multiple Soldiers in the barracks
- Opinion, U.S. Army Court of Military Review, 30 June 1982
- Special Court-Martial Order (SCMO) Number 20, 4 June 1981
- DA Form 2-1, page 2 only
- VA Discharge Summary Report, 22 January 2018, reflecting he was admitted on 1 January 2018 and discharged on 22 January 2018 following treatment for depression and suicidal plans
- Behavioral Health Evaluation, 30 October 2023, in which the examining licensed clinical social worker opines that his mental health condition is a direct result of racism and oppression he experienced in the military.
- VA PTSD Research Paper, 2021

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 indicates on his DD Form 149 that PTSD and other mental health issues or conditions are related to his request. The applicant states, through counsel:

a. The misconduct that led to his separation was in direct response to the race-based harassment and trauma he experienced while serving. He was routinely called ethnically derogatory names and intimidated with a white hood.

b. He was kicked and punched while with his unit during jungle training in Panama. Some of the Soldiers threw spiders and threatened to kill him. During one incident, six Soldiers attacked him, tried to put him in a sleeping bag and throw him out a third-story window. The incident escalated into a brawl between White, Black, and Puerto Rican Soldiers.

c. After months of torment, he and two other Soldiers devised a plan to get back at the other Soldiers by taking items from their rooms so they could panic about it. He never intended to keep the property. The U.S. Army Court of Military Review reduced his sentence to confinement from 4 months to 2 months, although the sentence had already been served; forfeiture of pay from 4 months to 2 months.

d. He was not diagnosed with PTSD while in the Army but has since been diagnosed with PTSD, depression, and anxiety. The neuropsychologist evaluation noted he linked his depression, anxiety, and PTSD to experiences while serving in the military.

e. His decision to get back at his tormenters was a result of his degraded mental state to get them to stop the harassment. His singular lapse in judgement has had a negative impact on his life post-Army.

3. The applicant's self-authored statement dated 2 December 2020, in which he provides detail of the abuse and torment he received from other Soldiers, notes he developed depression, PTSD, and anxiety around White people because his tormenters were White. He cooperated with the authorities and told them everything that happened in regard to the larceny and housebreaking.

- he admitted to taking items and tried to get the other Soldier to return them
- after his confinement, he was assigned to Fort Knox at a retraining unit and was a model Soldier
- he developed back, hip, knee, and foot pain while he was at Fort Knox
- he attributes his disabilities to his physical training and parachute jump training
- the years following his service were very hard and he struggled finding and keeping jobs due to his trouble adjusting to his mental disabilities
- his PTSD destroyed his relationships with his ex-wife and parents
- he had nightmares and was unable to fall asleep; this led to a confrontation with police in which he was sent to prison

- he wants a positive character to help him return his pride so people will not look down on him

4. A review of the applicant's service records show the following:

a. On 11 July 1979, he enlisted in the Regular Army for 3 years beginning at rank private first class (PFC).

b. Special Court-Martial Order (SCMO) Number 20, dated 4 June 1981, reflects that on 9 January 1981, he was arraigned, tried, pled not guilty, but was found guilty, and sentenced to forfeit \$334.00 per month for 4 months, reduction to private 1 (PV1), confinement at hard labor for 4 months, and a bad conduct discharge; of the charges:

- (I): on 9 September 1980, conspire with PV1 JB___ to commit larceny of one JVC receiver, one JVC cassette deck, two JVC speakers, one Sears stereo system, one Sears black and white television, and one ten-speed bicycle; a total value in excess of \$400.00
- (II): on 9 September 1980, with PV1 JB___ did steal one JVC receiver, one JVC cassette deck, two JVC speakers, one Sears stereo system, one Sears black and white television, and one ten-speed bicycle; a total value of in excess of \$400.00
- (III): on 9 September 1980, enter the room of two Soldiers with intent to commit larceny

c. On 4 June 1980, the sentence was approved and sent to the Judge Advocate General of the Army for review by a Court of Military Review.

d. On 30 June 1982, the U.S. Army Court of Military Review affirmed only so much of the sentence as provides for a bad conduct discharge, confinement at hard labor for 2 months, forfeiture of \$334.00 per month for 2 months, and reduction to the lowest grade.

e. SCMO Number 10, dated 10 January 1983, affirmed the finding U.S. Army Court of Military Review; Article 71(c) having been complied with, the sentence would be duly executed.

f. On 4 February 1983, he was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects he was discharged under provisions of Army Regulation 635-200, chapter 3 as the result of court-martial with a bad conduct discharge. He completed 3 years, 3 months, and 13 days of net active service.

5. On 13 February 1991, the Army Discharge Review Board found his discharge was both proper and equitable and voted to deny his request for clemency.

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

6. 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 including posttraumatic stress disorder (PTSD) during his military service related to racism and related harassment he experienced that mitigates 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 11 July 1979; 2) On 4 June 1981, the applicant was found guilty by special court-martial of conspiring to commit larceny, committing larceny, and entering a fellow soldier's room with the intent to commit larceny; 3) The applicant received a bad conduct discharge on 4 February 1983-chapter 3-section IV, as a result of court-martial, other. He completed 3 years, 3 months, and 13 days of net active service. 4) On 13 February 1991, the Army Discharge Review Board found his discharge was both proper and equitable following the applicant's request for clemency.

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) and hardcopy service and medical documentation provided by the applicant were also reviewed. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced mental health conditions including PTSD as a result of racism and associated harassment during his time in service that mitigates his misconduct. There is insufficient evidence that the applicant reported or was diagnosed with any mental health conditions including PTSD while on active service.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with any service-connected mental health condition including PTSD. There is insufficient evidence at this time that the applicant has ever received any service-connected disability for any mental health condition, including PTSD, at this time. However, the applicant provided a civilian inpatient behavioral health discharge summary (signed on 22 January 2018), that described the applicant attending inpatient behavioral health treatment (of unknown length), and included the discharge diagnoses of major depressive disorder, recurrent, moderate; cocaine use disorder, moderate; alcohol use disorder, moderate; unspecified personality disorder; and PTSD. Per a civilian neuropsychological evaluation, dated 04 June 2018, the applicant was diagnosed with depression, unspecified anxiety disorder, and posttraumatic stress disorder without

additional evidence of their etiology. In addition, per a 30 October 2023 memorandum from the applicant's civilian mental health provider, the applicant was diagnosed with PTSD as a direct result of his experiences while on active service.

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 during his time on active service that would mitigate the specific misconduct that led to his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions including PTSD related to his experience of racism and associated harassment, which mitigates his misconduct. The applicant was diagnosed by a civilian mental health provider with PTSD related to his experiences while in active service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD during his time in service as a result of his experience of racism and associated harassment. The applicant was diagnosed by a civilian mental health provider with PTSD related to his experiences while in active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence that the applicant was experiencing a mental health condition, including PTSD associated with racism and harassment during his time in service that mitigates the misconduct leading to his discharge. There is no nexus between the applicant's reported mental health conditions including PTSD and the applicant's charge of conspiracy to commit larceny, entering a soldier's room to commit larceny, and the act of larceny 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 including PTSD and; 2) the applicant's reported mental health conditions including PTSD broadly does not impact one's ability to distinguish right from wrong and act in accordance with the right. Yet, the applicant contends he experienced mental health conditions including PTSD while on active service that mitigates his misconduct, and the applicant's contention is sufficient for consideration per the Liberal Consideration Policy.

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 not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the criminal nature of the misconduct against fellow Soldiers, and the following findings from the medical review:

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

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

(3) Does the condition experience actually excuse or mitigate the misconduct? No,

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

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

//SIGNED//

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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. Section 1556 of Title 10, U.S. Code, 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.
3. By law (Title 10 U.S. Code Section 1552), court-martial convictions stand as adjudged or modified by appeal through the judicial process. This Board 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. The ABCMR does not have authority to set aside a conviction by a court-martial.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), then in effect, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Paragraph 3-7a Honorable discharge: 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.

b. Paragraph 3-7b. General discharge: 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 characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

c. Paragraph 3-7c. Under other than honorable conditions. A discharge under other than honorable conditions is an administrative separation for the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or for the good of service.

d. Paragraph 3-11. Bad conduct discharge. A Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court martial. The appellate review must be completed, and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing staff judge advocate.

5. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

6. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to

veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

7. 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/NR) 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//