

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 August 2025

DOCKET NUMBER: AR20240011051

APPLICANT REQUESTS: reconsideration of his prior request for upgrade of his bad conduct discharge

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

- DD Form 293 (Application for Review of Discharge from the Armed Forces of the United States)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Five-character letters

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 AR20120023057 on 8 August 2013.

2. The applicant states at the time of discharge, he was undergoing a major negative spot in his life including drug use that contributed to his misbehavior. He is now drug free and has been sober for over 15 years. He has taken steps to correct his negative disposition. He is now dedicated to contributing his time and effort in the community by assisting the Boys and Girls Club, Shriners, and The American Legion. The applicant marked post-traumatic stress disorder (PTSD) on the DD Form 293 as a condition related to his request.

3. The applicant provides five-character letters that affirm his strong and enduring presence within the community, each written by individuals who have known him for many years. He is consistently portrayed as an outstanding individual and a pillar of the community, actively engaged in esteemed organizations such as the American Legion, the Shriners, the Masons, Big Brothers Big Sisters, and the Boys and Girls Club. These endorsements highlight his selfless nature, leadership, and commitment to mentorship, illustrating how he uplifts others and creates a welcoming environment. While acknowledging past challenges, the writers firmly support his continued growth and

contributions, expressing confidence in his character and the lasting positive influence he brings to those around him.

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

a. He enlisted in the Regular Army on 31 March 1982.

b. On 17 September 1993, the U.S. Army Court of Military Review (ACMR) affirmed the findings and sentence as approved by the convening authority:

- the applicant was convicted by a general court-martial (GCM) of absence without leave, wrongful use of cocaine, and forgery
- charges were preferred 11 May 1992
- the convening authority approved the adjudged sentence of a bad conduct discharge, confinement for eight months, forfeiture of \$200 pay per month for eight months, and reduction to private E-1
- the ACMR reviewed the assertions of errors raised in the applicant's original pleading and found them to be without merit; the findings of guilty and the sentence were affirmed

c. General Court-Martial Order Number 8 dated 17 May 1994, after Article 71(c) was complied with and the sentence was affirmed, ordered the bad conduct discharge executed.

d. On 17 May 1994, he was discharged from active with a bad conduct characterization of service. His DD Form 214 shows he completed 12 years and 22 days of active service with 23 days of lost time. It also shows he was awarded or authorized:

- Army Commendation Medal
- Army Achievement Medal (3rd oak leaf cluster)
- Army Good Conduct Medal with number (4th award)
- National Defense Service Medal
- Army Service Ribbon
- Noncommissioned Officer Professional Development Ribbon with Numeral 3
- Overseas Service Ribbon with numeral 2
- Expert Marksmanship Qualification Badge with Hand Grenade Bar
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Infantryman Badge
- Drill Sergeant Identification Badge

5. On 8 August 2013, the ABCMR rendered a decision in Docket Number AR20120023057. The Board concurred the applicant's trial by court martial was

warranted by the gravity of the offenses for which he was charged. Conviction and discharge were effected in accordance with applicable laws and regulations and the applicant's rights were protected throughout the court-martial process, including the applicant's appeal. Therefore, the Board determined that the overall merits of the case were insufficient as a basis for correction of the records and his request was denied.

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.

7. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his bad conduct discharge (BCD). He contends he experienced undiagnosed PTSD that mitigates his misconduct.

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 31 March 1982.
- The applicant had court-martial charges preferred against him on 11 May 1992 for being AWOL, wrongful use of cocaine, and forgery. The sentence was approved on 17 September 1993.
- The applicant was discharged on 17 May 1994 with a bad conduct characterization. He completed 12 years and 22 days of active service with 23 days of lost time.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he was going through a negative time in his life, including getting on drugs, and he is now drug free. He indicated PTSD as an issue or condition related to his request. The application was void of any medical or mental health records. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed the applicant established healthcare with the VA in March 2024, but he has not utilized any mental health services.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that 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 discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. There were no records available from his time in service or post-discharge that showed any mental health diagnoses.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service or after discharge. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. However, the applicant contends he had a mental health condition or an experience that mitigated 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 DoD 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 being convicted by a general court-martial for being absent without leave, wrongful use of cocaine, and forgery. The Board found no error or injustice in the separation proceedings. The Board also concurred with the medical advisory opinion that found no documentation of any mental health condition(s) while on active service or after discharge and there is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. Based on a preponderance of the evidence, the Board determined that the characterization of service the applicant received upon separation was appropriate and denied relief.

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. 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. The applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. There were no records available from his time in service or post-discharge that showed any mental health diagnoses.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service or after discharge. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. However, the applicant contends he had a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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

4. ADMINISTRATIVE NOTES: A review of the applicant's records shows his DD Form 214 omitted administrative entries. As a result, amend the DD Form 214 by adding in item 18 (Remarks) the entry "Continuous Honorable Active Service from 19820331 to 19870303."

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : 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 for amendment of the ABCMR decision rendered in Docket Number AR20120023057 on 8 August 2013.

8/15/2025

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows his DD Form 214 omitted administrative entries. As a result, amend the DD Form 214 by adding in item 18 (Remarks) the entry "Continuous Honorable Active Service from 19820331 to 19870303."

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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of the 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 member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, homosexuality, security reasons, or for the good of the service.
 - d. A member 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.
 - e. Medical and mental examination provides that a medical examination is not required but may be requested by the Soldier under AR 40–501, chapter 8.
3. 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 post-traumatic stress disorder (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.

4. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. 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 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.

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.

6. Section 1556 of Title 10, United States 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.

//NOTHING FOLLOWS//