

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 April 2025

DOCKET NUMBER: AR20240011178

APPLICANT REQUESTS:

- an upgrade of his bad conduct discharge
- a change to the narrative reason for separation and separation code
- a personal appearance before the Board via video/telephone

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- New Jersey Auto Driver License, which contains his photo, home address, and date of birth

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 that the circumstances leading to his bad conduct discharge were primarily a result of self-medicating with alcohol to cope with his post-traumatic stress disorder (PTSD) symptoms. This incident was isolated; he was under the influence of alcohol and mistakenly believed he was being attacked by enemies when, in fact, he was confronted by military police. Throughout his service, he demonstrated great pride and received various awards and medals.

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

a. He enlisted in the Regular Army on 13 July 2010.

b. He served in Afghanistan from 27 January 2012 to 25 August 2012 and from 6 December 2013 to 25 August 2014.

c. On 6 January 2023, at Headquarters, Eighth Army, the applicant was convicted/or found guilty by a special court-martial (SPCM) of:

- Charge I, Specification 2 (Assault), for wrongfully grabbing and slamming Specialist D.E.T., who was then known by the accused to be a person then having and in the execution of military police duties
- Charge III (Disorderly Conduct, Drunkenness), and its specification of his conduct on or about 18 July 2022, drunk and disorderly, and that said conduct was to the prejudice of good order and discipline in the armed forces
- The court sentenced him to reduction to the grade of E-4, confinement for 100 days, and to be discharged from the service with a bad conduct discharge

d. On 25 January 2023, the convening authority approved the findings and the sentence.

e. Department of the Army orders 0003994416.00, dated 9 February 2023, reflects the applicant was reduced to the rank/grade of specialist (SPC)/E-4, effective date 6 January 2023, with the reason cited as "Code of Military Justice."

f. Accordingly, the applicant was discharged with a bad conduct discharge on 28 June 2024. His DD Form 214 shows he was discharged in the rank/grade of specialist/E-4 as a result of court-martial conviction in accordance with Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 3.

g. It also shows he completed 13 years, 8 months, and 22 days of active service. 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): from 6 January 2023 to 29 March 2023

4. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

5. 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 posttraumatic stress disorder (PTSD) during his military service 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 13 July 2010; 2) The applicant deployed to Afghanistan from 27 January 2012 to 25 August 2012 and from 6 December 2013 to 25 August 2014; 3) On 6 January 2023, the applicant was convicted/or found guilty by a special court-martial of assault (article 128) and disorderly conduct/drunkenness (article 134); 4) The applicant was dishonorably discharged on 28 June 2024, as a result of court-martial (other). He completed 13 years, 8 months, and 22 days of net active service with time lost between 6 January 2023 to 29 March 2023.

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) was also reviewed. No additional medical records were provided for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced PTSD that mitigates his misconduct. On 10 December 2018, the applicant was evaluated for a mental health clearance for White House duties, where he was cleared from a psychiatric perspective for relevant duties. On 02 August 2021, the applicant was command referred to SUDCC subsequent to an alcohol related incident in June 2021 where the applicant was arrested. He reported symptoms of anxiety, depression, and PTSD which he attributed to his prior deployment and childhood trauma. He was diagnosed with alcohol use disorder, mild and referred for continued individual and group substance abuse treatment. On 19 November 2021, the applicant attended a behavioral health intake in which he was diagnosed with alcohol use disorder, mild and unspecified stressor and trauma related disorder. He was recommended for continued follow-up; however, he did not attend any additional mental health appointments. On 11 January 2022, the applicant was seen as part of administrative separation proceedings for Chapter 14 and was cleared from a mental health perspective with no diagnosis rendered. He successfully completed and was discharged from SUDCC on 01 March 2022. However, the applicant was command referred back to SUDCC on 19 July 2022 following an additional alcohol related incident on 18 July 2022 and was diagnosed with alcohol use disorder, severe. On 01 August 2022, he was referred to a 5-week substance use intensive outpatient program. The applicant did not complete SUDCC treatment and his final session occurred on 07 September 2022. His final documented mental health encounter occurred on 06 March

2023 where he was cleared for confinement with no reported mental health symptoms and no diagnosis.

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 at this time.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence to support the applicant had a condition or experience that may partially mitigate 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 experienced PTSD due to childhood trauma and deployment experiences, which mitigate his misconduct. The applicant was diagnosed with unspecified stressor and trauma related disorder during his only behavioral health encounter.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD due to childhood trauma and deployment experiences during his time in service. The applicant was diagnosed with unspecified stressor and trauma related disorder during his only behavioral health encounter.

(3) Does the condition experience actually excuse or mitigate the misconduct? Partially, there is sufficient evidence that the applicant has been diagnosed with a trauma related disorder, while on active service. There is evidence the applicant was engaged in repeated alcohol related misconduct, and he was diagnosed with a severe alcohol use disorder. Avoidant and erratic behavior such as disorderly conduct while intoxicated can be a natural sequelae to PTSD and other trauma related mental health conditions. However, there is no nexus between the applicant's reported PTSD and the applicant's charge of assault in that: 1) this type of misconduct is not a part of the natural history or sequelae of the applicant's reported PTSD and; 2) the applicant's reported 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 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:

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 convicted at a court-martial for assault (wrongfully grabbing and slamming a fellow Soldier – military police) and for disorderly conduct and drunkenness. The Board found no error or injustice in the separation proceedings. The Board considered the medical advisory opinion who found sufficient evidence to support the applicant had a condition or experience that may partially mitigate his misconduct. However, the Board did not concur with the medical advisor that the applicant's conduct was partially mitigated. Therefore, based on a preponderance of the evidence, the Board concluded 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.

- Upgrade of his BCD. Deny: The Board found the applicant was convicted at a court-martial for assault (wrongfully grabbing and slamming a fellow Soldier – military police) and for disorderly conduct and drunkenness. The Board found no error or injustice in the separation proceedings. The Board considered the medical advisory opinion who found sufficient evidence to support the applicant had a condition or experience that may partially mitigate his misconduct. However, the Board did not concur with the medical advisor that the applicant's conduct was partially mitigated. Therefore, based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate and denied relief.
- Change to the narrative reason for separation. Deny: The Board found the applicant was convicted at a court-martial for assault (wrongfully grabbing and slamming a fellow Soldier – military police) and for disorderly conduct and drunkenness. The Board found no error or injustice in the separation proceedings. The Board considered the medical advisory opinion who found sufficient evidence to support the applicant had a condition or experience that may partially mitigate his misconduct. However, the Board did not concur with the medical advisor that the applicant's conduct was partially mitigated. Therefore, based on a preponderance of the evidence, the Board concluded that the

narrative reason for separation the applicant received upon separation was appropriate and denied relief.

- Change to his separation code. Deny: The Board found the applicant was convicted at a court-martial for assault (wrongfully grabbing and slamming a fellow Soldier – military police) and for disorderly conduct and drunkenness. The Board found no error or injustice in the separation proceedings. The Board considered the medical advisory opinion who found sufficient evidence to support the applicant had a condition or experience that may partially mitigate his misconduct. However, the Board did not concur with the medical advisor that the applicant's conduct was partially mitigated. Therefore, based on a preponderance of the evidence, the Board concluded that the separation code the applicant received upon separation was appropriate and denied relief.

2. 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 misconduct? Yes, the applicant asserts he experienced PTSD due to childhood trauma and deployment experiences, which mitigate his misconduct. The applicant was diagnosed with unspecified stressor and trauma related disorder during his only behavioral health encounter.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD due to childhood trauma and deployment experiences during his time in service. The applicant was diagnosed with unspecified stressor and trauma related disorder during his only behavioral health encounter.

(3) Does the condition experience actually excuse or mitigate the misconduct? Partially, there is sufficient evidence that the applicant has been diagnosed with a trauma related disorder, while on active service. There is evidence the applicant was engaged in repeated alcohol related misconduct, and he was diagnosed with a severe alcohol use disorder. Avoidant and erratic behavior such as disorderly conduct while intoxicated can be a natural sequelae to PTSD and other trauma related mental health conditions. However, there is no nexus between the applicant's reported PTSD and the applicant's charge of assault in that: 1) this type of misconduct is not a part of the natural history or sequelae of the applicant's reported PTSD and; 2) the applicant's reported 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 PTSD while on active service that mitigates his misconduct, and the applicant's contention is sufficient for consideration per the Liberal Consideration Policy.

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

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

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.

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 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for separation of enlisted personnel. 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.
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.

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.

//NOTHING FOLLOWS//