

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2025

DOCKET NUMBER: AR20240011284

APPLICANT REQUESTS: reconsideration of his earlier requests for:

- upgrade of his under other than honorable conditions discharge to under honorable conditions (general)
- change the narrative reason to "convenience of the government" or another appropriate designation
- change the separation program designator (SPD) code to another appropriate designator

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

- DD Form 149 (Application for Correction of Military Record), 19 August 2024
- Five pages of service medical records, October 1973
- DA Form 20 (Enlisted Qualification Record), page 3 only
- Resume, undated (circa 2011)
- letter, Department of Veteran's Affairs (VA), 19 April 2011

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 AR20140007953 on 27 January 2015.

2. The applicant indicates on his DD Form 149 that other mental health issues or conditions are related to his request. He states:

- his previous request for an upgrade was denied due to an erroneous report indicating a bad conduct discharge
- he was given options to return to duty or be sent home but his commander did not want him to return
- he chose the discharge because of a back injury

3. A review of his service records show the following:

- a. On 18 May 1973, he enlisted in the U.S Army Reserve for 6 years and on 17 August 1973, he was ordered to active duty for basic combat training.
 - b. On 29 October 1973, he was given a temporary physical profile for 21 days by reason of low back strain, found medically qualified for duty with temporary limitations, and he was returned to duty with physical limitations.
 - c. On 20 November 1973, he was given a temporary physical profile for 30 days by reason of low back strain, found medically qualified for duty with temporary limitations, and he was returned to duty with physical restrictions.
 - d. On 21 November 1973, he accepted nonjudicial punishment for being absent without leave (AWOL) from 10 November 1973 to 15 November 1973 and for disobedience of a lawful order from his superior commissioned officer on 15 November 1973. He forfeited some pay for 1 month.
 - e. Special Court-Martial Order (SCMO) Number 5, dated 18 January 1974 reflects he was tried, plead guilty, and was found guilty of two specifications of larceny of U.S. currency from two Soldiers; \$58.00 from one Soldier, and \$78.00 from a second Soldier. He was sentenced to be discharged with a bad conduct discharge, forfeiture of pay for 4 months, and confinement at hard labor for 3 months. The sentence was adjudged on 26 November 1973.
 - f. On an illegible date in August 1974, the U.S. Army Court of Military Review affirmed the sentence of the special court-martial convening authority.
 - g. SCMO Number 79, dated 8 February 1974, approved the sentence to a bad-conduct discharge, forfeiture, and confinement at hard labor for 3 months.
 - h. On 8 November 1974, he was discharged. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 11 with an under other than honorable conditions characterization of service, and SPD code JJD (Court-Martial). He completed 11 months and 29 days of net active service with 90 days' time lost due to confinement.
4. On 17 August 1977, the Army Discharge Review Board (ADRB) determined he was properly discharged.
 5. On 27 January 2015, the ABCMR found his sentence by special court-martial was affected in accordance with applicable law and regulations, and it found the type of discharge was appropriate.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his other than honorable conditions discharge. The applicant contends that his request is related to his experience of mental health conditions that impacted the circumstances of his discharge. 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 entered the Army Reserves on 18 May 1973; 2) On 21 November 1973, he accepted NJP for going AWOL from 10 November 1973 to 15 November 1973 and for disobeying a lawful order; 3) On 18 January 1974 by a Special Court-Martial Order, the applicant was found guilty of two specifications of larceny; 4) The applicant was discharged on 8 November 1974, Chapter 11. He completed 11 months and 29 days of net active service with 90 days' time lost due to confinement. His military service was characterized as under other than honorable conditions. 5) On 17 August 1977, the Army Discharge Review Board (ADRB) determined he was properly and equitably discharged.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service and medical records. The VA's Joint Legacy Viewer (JLV) and hardcopy VA 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 during his active service that impacted his conduct resulting in his discharge. There is insufficient evidence that the applicant reported or was diagnosed with any mental health conditions, including PTSD, while on active service.

d. The VA's Joint Legacy Viewer (JLV) was examined. The applicant initiated VA contact beginning on 25 April 2011 for physical and mental health issues through the veterans' crisis line, primarily for suicidal ideation. The applicant has received continued treatment for suicidal ideation as well as a variety of mental health diagnoses including alcohol use disorder severe, cocaine use disorder moderate, tobacco use disorder moderate, substance induced mood disorder, PTSD, in addition to various physical conditions. In addition, the applicant provided hardcopy VA documentation of a VA claim by the applicant that was received on 07 January 2022 that listed PTSD and major depressive disorder with alcohol use disorder as listed VA connected conditions for treatment purposes. Similarly, the applicant was formally diagnosed with major depressive disorder, recurrent, moderate and alcohol use disorder, mild from a VA compensation and pension (C&P) examination that was dated 13 December 2023. There was insufficient information that any of his VA mental health providers connected

any of his mental health symptoms with his military service within their treatment notes. The applicant is currently 0% service connected for PTSD and a physical condition for treatment only.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence beyond self-report the applicant has been diagnosed with VA service-connected PTSD that may partially mitigate some of the applicant's misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant contends he was experiencing mental health conditions, which mitigate his misconduct. The applicant is currently 0% VA service connected for PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced mental health conditions at the time of his active service that mitigates his misconduct. The applicant is currently 0% VA service connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Partially. The applicant contends he experienced mental health conditions while on active service. There is sufficient evidence beyond self-report the applicant was diagnosed with PTSD through the VA which was connected with his military service. In addition, the applicant's misconduct included going AWOL and a failure to obey orders. This type of avoidant behavior can a natural sequelae to some mental health conditions, including PTSD. However, there is no nexus between the applicant's mental health conditions including PTSD and his charge of larceny in that: 1) This manner of misconduct is not a part of the diagnosis or natural sequelae of most mental health conditions including PTSD; 2) Most mental health conditions, including PTSD, do not impact one's ability to distinguish right from wrong. Yet, the applicant contends he experienced mental health condition or experience while on active service, which mitigates his misconduct. The applicant's contention alone 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, medical advisor's review, 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 received nonjudicial punishment for being AWOL and was convicted at a special court martial for larceny – stealing from other Soldiers and was separated due to a court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service, separation code and narrative reason assigned during separation. The Board noted the applicant's post service accomplishments, the VA medical assessment post service and the medical advisor's opinion that the applicant claim of PTSD is sufficient evidence beyond self-report, that he has been diagnosed with a VA service-connected PTSD that may partially mitigate some of the applicant's misconduct. However, the Board did concur with the medical advisor. The Board agreed that the applicant's substance abuse may be mitigating but stealing from fellow Soldiers was not, and determined that based on a preponderance of the evidence, the applicant's characterization of service, separation program designation and narrative reason for separation he received upon separation was appropriate.

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 contends he was experiencing mental health conditions, which mitigate his misconduct. The applicant is currently 0% VA service connected for PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced mental health conditions at the time of his active service that mitigates his misconduct. The applicant is currently 0% VA service connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Partially. The applicant contends he experienced mental health conditions while on active service. There is sufficient evidence beyond self-report the applicant was diagnosed with PTSD through the VA which was connected with his military service. In addition, the applicant's misconduct included going AWOL and a failure to obey orders. This type of avoidant behavior can a natural sequelae to some mental health conditions,

including PTSD. However, there is no nexus between the applicant’s mental health conditions including PTSD and his charge of larceny in that: 1) This manner of misconduct is not a part of the diagnosis or natural sequelae of most mental health conditions including PTSD; 2) Most mental health conditions, including PTSD, do not impact one’s ability to distinguish right from wrong. Yet, the applicant contends he experienced mental health condition or experience while on active service, which mitigates his misconduct. The applicant’s contention alone 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, separation program designator, or narrative reason for separation.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 AR20140007953 on 27 January 2015.



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. 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.

2. Title 10, U.S. Code, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. Army Regulation 635-200 (set forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member'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. 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.

c. Chapter 11 provided that an enlisted person would be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed.

4. Army Regulation 635-5-1 (Separation Program Designators), then in effect, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full-time training duty. The separation program designator "JJD" corresponded to "As a Result of Court-Martial, Other" and the authority, Army Regulation 635-200, Chapter 11.

5. 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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including Post-Traumatic Stress Disorder; traumatic brain injury (TBI); 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 to those conditions or experiences.

6. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and BCM/NRs on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, Boards 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//