

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2025

DOCKET NUMBER: AR20240011344

APPLICANT REQUESTS: upgrade of his bad conduct discharge to under honorable conditions (general).

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

- DD Form 149 (Application for Correction of Military Record), 5 August 2024
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 3 May 1995

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 post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and other mental health issues or conditions are related to his request. He states he is requesting an upgrade so he may receive desperately needed benefits to heal and recover his life.
3. A review of the applicant's service record shows the following:
 - a. On 29 April 1993, he enlisted in the Regular Army for 4 years beginning at rank private first class.
 - b. A DD Form 458 (Charge Sheet) and a record of trial are not available for review.
 - c. General Court-Martial Order (GCMO) Number 31, dated 22 July 1994 reflects:
 - he was arraigned, at Fort Stewart before a General Court-Martial
 - he entered pleas of guilt and was found guilty of:
 - possession and distribution of 8 grams of marijuana on 9 February 1994
 - possession and distribution of 8 grams of marijuana on 12 February 1994

- possession and distribution of 2 grams of cocaine on 21 March 1994
- introducing 3 grams of cocaine onto Fort Stewart on 20 March 1994
- wrongful use of cocaine on 20 March 1994

- he was sentenced to forfeiture of all pay and allowances, reduction to private/E-1, confinement for 23 Months, and a bad conduct discharge

- only so much of the sentence of confinement for 16 months, forfeiture of all pay and allowances, reduction to E-1, and a bad conduct discharge would be executed

d. On 7 November 1994, the U.S. Army Court of Criminal Appeals affirmed the findings of guilty and the sentence.

e. GCMO Number 37, dated 27 March 1995, confirmed the provisions of Article 71(c) were complied with, and ordered the bad conduct discharge executed.

f. On 3 May 1995, he was discharged. His DD Form 214 reflects he was discharged under the provisions of Army Regulation 635-200, chapter 3 as the result of court-martial with a bad conduct discharge. He completed 1 year and 24 days and had 346 days' time lost due to confinement from 23 May 1994 to 3 May 1995.

4. On 2 April 2025, the Chief, Case Management Division requested the applicant provide medical and/or behavior health treatment documents in response to his issues, but he did not respond.

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 a traumatic brain injury (TBI) and mental health conditions including 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 29 April 1993; 2) The applicant's charge sheet was unavailable for review; 3) On 22 July 1994, the applicant was found guilty by general court-martial of 2 counts of possessing and distributing marijuana, 1 count of possession and distribution of cocaine, 1 count of introducing cocaine onto a military base, and 1 count of wrongful use of cocaine; 4) The applicant received a bad conduct discharge on 3 May 1995-Chapter 3, as a result of court-martial,

other. He completed 1 year and 24 days of net active service and had 346 days' time lost due to confinement.

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. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced a TBI and mental health conditions including PTSD that mitigate his misconduct. There is insufficient evidence that the applicant officially reported or was diagnosed with a mental health condition while on active service.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed by the VA with service-connected PTSD, and he does not receive any service-connected disability for PTSD. The applicant connected with VA HUD services beginning on 24 October 2023 until 16 July 2024.

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 diagnosed TBI or mental health condition or experience including PTSD that mitigates 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 a TBI and mental health conditions including PTSD, which mitigate his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced a TBI and mental health conditions including PTSD while on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a TBI or mental health conditions including PTSD while on active service. The applicant did engage in avoidant behavior such as using illegal drugs, which could be a natural sequelae to a TBI or mental health conditions including PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition or TBI. In addition, there is no nexus between the applicant's reported a TBI and mental health conditions including PTSD and the selling of illegal drugs in that: 1) this type of misconduct is not a part of the diagnosis or natural sequelae of a TBI or mental health conditions including PTSD; 2) A TBI and mental health conditions including PTSD does

not impact one's ability to distinguish right from wrong. However, the applicant contends he experienced a TBI and 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 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 conviction by a general court-martial for possession and distribution of 8 grams of marijuana on two occasions, possession and distribution of 2 grams of cocaine, introducing 3 grams of cocaine onto a military base, and wrongful use of cocaine. The Board found no error or injustice in the separation proceedings. The Board concurred with the medical advisor's review that there is insufficient evidence to support the applicant had a diagnosed TBI or mental health condition or experience including PTSD that mitigates his misconduct. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

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 misconduct? Yes, the applicant asserts he experienced a TBI and mental health conditions including PTSD, which mitigate his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced a TBI and mental health conditions including PTSD while on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a TBI or mental health conditions including PTSD while on active service. The applicant did engage in avoidant behavior such as using illegal drugs, which could be a natural sequelae to a TBI or mental health conditions including PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition or TBI. In addition, there is no nexus between the applicant’s reported a TBI and mental health conditions including PTSD and the selling of illegal drugs in that: 1) this type of misconduct is not a part of the diagnosis or natural sequelae of a TBI or mental health conditions including PTSD; 2) A TBI and mental health conditions including PTSD does not impact one’s ability to distinguish right from wrong. However, the applicant contends he experienced a TBI and 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.

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 correction of the records of the individual concerned.



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.

//NOTHING FOLLOWS//