

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 June 2025

DOCKET NUMBER: AR20240011364

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

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

DD Form 149 (Application for Correction of Military Record)

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. On his DD Form 149, the applicant lists the following reasons why relief is warranted.
 - other mental health issues are related to his request
 - accountability
 - compassion
 - his gratitude
 - his difficulty in advancement
3. A review of the applicant's service records reflects the following:
 - a. He enlisted in the Regular Army on 1 October 1981.
 - b. He accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) on 29 November 1983, for wrongfully using marijuana on or about 17 October 1983. His punishment included reduction to E-1, forfeiture of \$286.00 pay per month for two months, and 45 days extra duty and restriction.
 - c. Court-martial charges were preferred against the applicant for violations of the UCMJ; however, the relevant DD Form 458 (Charge Sheet) is not available for review.

d. Before a special court-martial at Aschaffenburg, Germany, on 1 February 1984, the applicant was found guilty of:

- one specification of wrongfully appropriating U.S. currency of a value of \$220.00, the property of Corporal E_M_, on or about 13 July 1983
- one specification of wrongfully possessing 15.85 grams, more or less, of marijuana, on or about 30 November 1983

e. The court sentenced him to forfeiture of \$300.00 pay per month for three months, confinement at hard labor for 75 days, and to be discharged from the service with a BCD. The sentence was approved on 24 March 1984, and the record of trial was forwarded for appellate review.

f. The U.S. Army Court of Military Review affirmed the findings of guilty and the sentence on 21 May 1984.

g. Special Court-Martial Order Number 128, issued by Headquarters, U.S. Army Armor Center and Fort Knox, Fort Knox, KY on 23 August 1984, noted the applicant's sentence had been affirmed and ordered the BCD to be duly executed.

h. The applicant was discharged on 14 September 1984. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 3, Section IV, as a result of court-martial. His service was characterized as bad conduct. He was credited with 2 years, 9 months, and 12 days of net active service this period with 62 days of lost time.

4. On 2 December 2024, the ABCMR staff requested that the applicant provide medical documents to support his mental health issues. He was advised that he could contact the doctor that diagnosed him or his Veterans Affairs regional office for assistance. He did not respond.

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

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his Bad Conduct Discharge (BCD) to under honorable conditions (general), or honorable. On his DD Form 149, the applicant indicated Other Mental Health Issues are related to his request. 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 01 October 1981, 2) he received an Article 15 on 29 November 1983 for wrongfully using marijuana on or about 17 October 1983, 3) Court-martial charges were preferred against the applicant for violations of the UCMJ; however, the relevant DD Form 458 (Charge Sheet) is not available for review, 4) the applicant was found guilty by a Special Court-Martial on 01 February 1984 of wrongfully appropriating U.S. currency of a value of \$220.00, the property of a Corporal, on or about 13 July 1983 and wrongfully possessing 15.85 grams, more or less, of marijuana on or about 30 November 1983, 5) the applicant was discharged on 14 September 1984 under the provisions of AR 635-200, Chapter 3, Section IV, as a result of court-martial.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The Department of Veterans Affairs (VA) Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. There were no in-service medical records available for review.

d. A review of JLV shows the applicant is not service connected through the VA for any conditions.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends that his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There were no military medical records available for review and he provided no medical documentation supporting his assertion of Other Mental Health Issues. In absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his

misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant 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 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. Based upon the misconduct leading to the applicant's separation and the recommendation found in the medical review related to liberal consideration, the following Kurta Questions were considered:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There were no military medical records available for review and he provided no medical documentation supporting his assertion of Other Mental Health Issues.

2. 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.

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. Title 10, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets 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 3, Section IV provided that a member would be given a BCD 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. 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.

5. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR) on 25 August 2017. 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 post-traumatic stress disorder (PTSD), traumatic brain injury, 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 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.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 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//