

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 June 2025

DOCKET NUMBER: AR20240011532

APPLICANT REQUESTS: an 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 under the Provisions of Title 10, U.S. Code, Section 1552)
- Witness Statement in Support, 24 April 2022
- Department of Veterans Affairs (VA) Rating Decision, 1 November 2022
- VA Benefits Letter, 3 November 2022
- VA Rating Decision, 8 August 2023
- VA Benefits Letter, 10 August 2023

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 at the time of the incident, unbeknown to him, he was suffering from post-traumatic stress disorder (PTSD). He was not in the right state of mind at the time, which led to his separation from the Army.
3. He enlisted in the Regular Army on 20 October 1986. He was promoted to the rank/grade of sergeant/E-5 effective 1 July 1990.
4. His available record contains:
 - a. General Court-Martial Order Number 2, issued by Headquarters Fort Hood, Fort Hood, TX on 5 January 1994 shows the applicant was sentenced to a bad conduct discharge, confinement for 33 months, forfeiture of all pay and allowances, and reduction to the grade of private/E-1. It was adjudged on 11 June 1993, as promulgated in General Court-Martial Order Number 51 issued by Headquarters, Fort Hood, dated

26 July 1993 and has been affirmed. Article 71(c) having been completed the bad conduct discharge was ordered to be duly executed.

b. Headquarters, III Corps and Fort Hood Orders 69-11, discharged him from the Army effective 14 April 1994.

5. The exact facts and circumstances that led to his court-martial and discharge from the Army are not available for review.

6. He was discharged on 14 April 1994, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 3, as a result of court-martial in the rank/grade of private/E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows:

- he completed 6 years, 7 months, and 21 days of net active service
- his character of service as "Bad Conduct"
- his separation code as "JJD"
- he had lost time from 11 June 1993 through 14 April 1994

7. He provides:

a. A witness statement in support from his former commander when he was stationed in Germany. His commander noted that he and the applicant were involved in an incident on the island of Crete during an exercise. This proved to be a traumatic experience for him (see attached for further details).

b. Multiple documents from the VA showing he was evaluated with service connected PTSD and was given a 70 percent (%) disability rating effective 29 April 2022 and was increased to 100% on 9 May 2023.

8. The Board should consider the applicant's statement in accordance with the published equity, injustice, or clemency determination guidance.

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his bad-conduct discharge. He contends he experienced PTSD, which 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 20 October 1986; 2) General Court-Martial Order Number 2, issued by Headquarters Fort Hood, Fort Hood, TX on 5 January 1994 shows the applicant was sentenced to a bad-conduct discharge, confinement for 33 months, forfeiture of all pay and allowances, and reduction to the grade of private/E-1. The exact

facts and circumstances that led to his court-martial and discharge from the Army are not available for review; 3) The applicant was discharged on 14 April 1994, Chapter 3, as a result of court-martial. His character of service was determined to be bad conduct.

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) and VA documentation provided by the applicant were also reviewed.

c. The applicant asserts he experienced PTSD while on active service which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with PTSD, while on active service.

d. A review of JLV provided evidence the applicant began to engage with VA in 2014. There is sufficient evidence the applicant has been diagnosed with a service-connected PTSD by the VA in 2022. He is currently determined to be 100% disabled for this condition by the VA since 2023.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence the applicant was experiencing PTSD while on active service. However, there is insufficient evidence surrounding the events and circumstances which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of his reported mental health condition or experience.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No. There is sufficient evidence the applicant was experiencing PTSD while on active service. However, there is insufficient evidence surrounding the events and circumstances which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of his reported mental health condition or experience.

Yet, the applicant contends he experienced PTSD while on active service, which mitigates his misconduct, and his contention is sufficient for consideration per the Liberal Consideration Policy.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

BOARD DISCUSSION:

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 record of service, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The applicant was separated for conviction by court-martial. The Board concurred with the medical advisor's review finding sufficient evidence the applicant was experiencing PTSD while on active service. However, there is insufficient evidence surrounding the events and circumstances which resulted in his discharge to opine on possible mitigation. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XX	:XX	:XX	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. 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 ABCMR applicants (and/or their counsel) prior to adjudication.
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. Article 71(c) of the UCMJ stipulates that if a sentence extends to death, dismissal, or dishonorable or bad-conduct discharge and if the right of the accused to appellate review is not waived and an appeal is not withdrawn, that part of the sentence extending to death, dismissal, or a dishonorable or bad-conduct discharge may not be executed until there is final judgment as to the legality of the proceedings. A judgement as to legality of the proceedings is final in such cases when review is completed by a Court of Military Review.
5. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel:
 - a. Paragraph 3-7a provides that 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. Paragraph 3-7b provides that 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 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.

6. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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.

7. 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 to 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.

8. The Under-Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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.

//NOTHING FOLLOWS//