

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 June 2025

DOCKET NUMBER: AR20240011637

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

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

- DD Form 149 (Application for Correction of Military Record)
- Legal brief, 10 pages
 - Exhibit A – DD Form 214 (Certificate of Release or Discharge from Active Duty) reflecting his service record for the period ending 28 February 1989
 - Exhibit B – DA Form 2A (Personnel Qualification Record) provides a snapshot of his military service history
 - Exhibits C – various documents related to his court-martial
 - Exhibit D – medical documents (38 pages) that show he received treatment for various illnesses and injuries, including depression, substance abuse, and post-traumatic stress disorder (PTSD)
 - Exhibit E – 15 letters of support that collectively attest to his faith, family bond, compassion, work ethic, selfless service to others in need, and struggles following his separation from the Army
 - Exhibit F – self-authored letter

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 he has suffered extreme emotional anxiety, panic attacks, stress and depression for 36 years since his incarceration at Fort Knox. Later, he became angry with mood disorders, not sleeping, and withdrew from his family and friends. He would get professional help for his issues. For the last 13 years he has become a loner, taking one day at a time; putting God into his life. He was living at a homeless shelter; he now does odd jobs to survive.

3. Counsel states in a 10-page brief in support of the application which is available for the Board's review in supporting documents:

a. The applicant is an Army Veteran who served honorably for 7 years before being incarcerated and discharged for bad conduct. He pled guilty in a court-martial for negligent homicide resulting from driving under the influence in 1988. This brief discusses why despite the seriousness of the offense the applicant should be granted an upgrade from a BCD to an honorable, or at least a general discharge.

b. Counsel argues the Board may upgrade, by finding (1) a material injustice at the time of the original characterization. For example, if the Board found that the original punishment was grossly disproportionate to the underlying offense. (2) The Board may find that an upgrade would be appropriate in equity by balancing the effects of a discharge characterization, the actions of the member both before and after the discharge, and any other relevant context. (3) Finally, the Board may find that clemency is appropriate for persons after making the same analysis as would be done for an equitable relief and found that the former member has fully reformed. A clemency finding is most akin to a pardon and may restore the member beyond the scope of an equitable finding. Counsel elaborates the following areas:

- The applicant's candor. He pled guilty; he was wracked with guilt after the incident. He hid nothing from the Army
- Whether the punishment, including collateral consequences were too harsh
- The aggravating and mitigating facts related to the record or punishment from which the servicemember wants relief
- Length of time since the misconduct. It has been over 36 years
- Acceptance of responsibility, remorse, or atonement for misconduct
- Character and reputation of the applicant
- Whether misconduct may have been youthful indiscretion
- Evidence of rehabilitation
- Letters of recommendation

c. Counsel concludes stating the applicant was an honorable exceptional Soldier. He conformed with the standards of his time and place, drinking at a unit function. He drove at the request of a superior. That single choice had an extreme consequence for both him and his passenger. The applicant immediately and unequivocally took responsibility for his mistake. He has since bore the great weight of his error as best he could and has found reformation through service to others. But he is now an aging man who does not deserve to continue suffering, more than he already will for the mistake he made in 1988. This Board has the authority and good cause to let him live out the remaining years of his life with the dignity afforded an honorable or general discharge. Upgrading the applicant's discharge characterization is the fair outcome.

4. A review of the applicant's service record reflects the following:

a. He enlisted in the Regular Army on 10 July 1981. He reenlisted on 10 July 1984.

b. Before a general court-martial at Bad Kreuznach, Germany, on 28 April 1988, the applicant was found guilty of one specification of unlawfully killing Staff Sergeant L_ by driving a vehicle in a reckless manner while intoxicated, on or about 16 January 1988.

c. The court sentenced him to be discharged from the service with a BCD, confinement for 60 days, and reduction to E-1. The sentence was approved on 3 June 1988, and the record of trial was forwarded for appellate review.

d. The U.S. Army Court of Military Review affirmed the findings of guilty and the sentence on 16 August 1988.

e. General Court-Martial Order Number 60, issued by Headquarters, U.S. Army Armor Center and Fort Knox, Fort Knox, KY on 14 December 1988, noted the applicant's sentence had been affirmed and ordered the BCD to be duly executed.

f. The applicant was discharged on 28 February 1989. His DD Form 214 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 7 years, 6 months, and 2 days of net active service this period with 49 days of lost time.

g. The applicant's DD Form 214 does not show his continuous honorable active service period information that is required for members who honorably served their first term of enlistment [see Administrative Notes].

4. 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.

5. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his bad conduct discharge (BCD) to under honorable conditions (General). He contends PTSD as related to his request.

b. 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:

- Applicant enlisted in the Regular Army on 10 July 1981. He reenlisted on 10 July 1984.
- Before a general court-martial at Bad Kreuznach, Germany, on 28 April 1988, the applicant was found guilty of one specification of unlawfully killing Staff Sergeant L_ by driving a vehicle in a reckless manner while intoxicated, on or about 16 January 1988.
- Applicant was discharged on 28 February 1989. His DD Form 214 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 7 years, 6 months, and 2 days of net active service this period with 49 days of lost time.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states he has suffered extreme emotional anxiety, panic attacks, stress and depression for 36 years since his incarceration at Fort Knox. Later, he became angry with mood disorders, not sleeping, and withdrew from his family and friends. He would get professional help for his issues. For the last 13 years he has become a loner, taking one day at a time; putting God into his life. He was living at a homeless shelter; he now does odd jobs to survive. His counsel further states the applicant is an Army Veteran who served honorably for 7 years before being incarcerated and discharged for bad conduct. He pled guilty in a court-martial for negligent homicide resulting from driving under the influence in 1988. Counsel argues, despite the seriousness of the offense, the applicant should be granted an upgrade from a BCD to an honorable or at least a general discharge.

d. Due to the period of service no active-duty electronic medical records were available for review. The applicant provides hardcopy documentation of a mental status evaluation while incarcerated, dated 29 April 1988, which indicates soon after the accident he appeared depressed and was monitored due to concern about possible harm to self. However, during this assessment he denied any suicidal ideation and "denied having any feelings toward the accident". The clinician noted he "showed no emotion in facial or verbal expression". The documentation further shows the applicant was involved in a MVA on 27 September 1984, possibly indicating a pattern of reckless driving.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. The applicant has received services via the VA since May 2005. He participated in a psychiatric consult on 24 April 2014, that noted he had not participated in treatment for any behavioral health condition. The note further states, the applicant "was in a car accident in November 2013 when another car ran a stop sign and t-boned into his car. He sustained back, shoulder and neck injuries. He states that

getting into a car is very stressful and he has panic attacks. His nightmares are related to the car accident. Since the car accident veteran has had difficulty maintaining employment due to his physical limitations...". He was diagnosed with Depression and Unspecified Anxiety. A psychiatry note dated 13 June 2014, shows the applicant was diagnosed with non-combat PTSD related to his car accident in November 2013. The applicant reengaged in treatment in May 2015 due to homelessness and was treated for his symptoms via medication management and group therapy. He participated inconsistently in treatment and revealed issues with alcohol and substance use. An addiction medicine consult, on 12 June 2015, diagnosed him with Alcohol Use Disorder and he was offered addiction focused group therapy. A therapy note dated 26 May 2016 shows the applicant was diagnosed with Alcohol Use Disorder, Severe, and Cannabis Use Disorder, Moderate. He participated in services until June 2016. A note dated 20 November 2019, states he presented to the MH Clinic in August 2019 to re-engage in services following a 3-year break in service. He noted ongoing difficulties with symptoms of trauma related to multiple car accidents as well as significant substance use. He was diagnosed with PTSD, Alcohol Use Disorder, and Cannabis Use Disorder; he participated in treatment until March 2020. In November 2022, he once again sought assistance due to homelessness and was admitted into a residential program on 17 November 2022. He was discharged on 12 June 2023 as partially successful.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge. Regardless of diagnosis, the applicant's misconduct of negligent homicide predates the incident he identifies as the cause of his PTSD, incarceration at Fort Knox, and as such it would not mitigate his misconduct.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts PTSD on his application as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. There is medical documentation indicating the applicant presented with depressed mood during his incarceration following the accident.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence the applicant had a BH condition prior to his misconduct. The applicant was court martialed due to negligent homicide resulting from driving under the influence. He asserts being incarcerated following his car accident as the index trauma that caused his PTSD. However, the medical record shows evidence his

PTSD is related to a motor vehicle accident that occurred several years post military service. Overall, there is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and the VA electronic record shows the applicant's PTSD is not related to his military service but as a result of a motor vehicle accident post-military service (November 2013). Regardless of diagnosis, the applicant's misconduct of negligent homicide resulting from driving under the influence predates the incident he identifies as the cause of his PTSD, incarceration at Fort Knox. In addition, the applicant made a purposeful conscious decision to drive under the influence and PTSD would not mitigate his misconduct, since PTSD does not impair the ability to distinguish right from wrong and act in accordance with the right.

h. Per Liberal Consideration guidelines, his assertion of PTSD is sufficient to warrant consideration by the Board.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

2. 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 applicant was separated for conviction by court-martial for killing another Soldier by driving a vehicle in a reckless manner while intoxicated. The Board found no error or injustice in the separation proceedings. The Board concurred with the medical advisor's review finding insufficient evidence the applicant had a behavioral health condition during military service that mitigates his discharge. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

3. Upon review of the applicant's service record, the Board determined he served a period of continuous honorable service from 10 July 1981 to 9 July 1984 and his record should reflect that service accordingly.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

■ ■ ■ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 28 February 1989, to show:

- Continuous Honorable Service from 10 July 1981 to 9 July 1984
- Soldier Has Completed First Full Term Of Service

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading his characterization of service.

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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 635-8 (Separation Processing and Documents) provides: for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable, enter Continuous Honorable Active Service From" (first day of service for which DD Form 214 was not issued) until (date before commencement of current enlistment). Then, enter the specific periods of reenlistment as prescribed above.
4. 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

5. 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.

6. 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 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.

7. 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//