

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 December 2024

DOCKET NUMBER: AR20240011638

APPLICANT REQUESTS: clemency, and an upgrade to his bad conduct discharge (BCD) due to post-traumatic stress disorder (PTSD) and a traumatic brain injury.

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Statement
- Partial copy of his Department of Veterans Affairs (VA) Disability Rating Determination
- Confinement Order 26 January 2009
- DA Form 4187 (Personal Action), 16 March 2009
- General Court Martial Order (GCMO) Number 2, 11 January 2010
- Inmates Release Order, 10 May 2010
- DA Form 4187, 14 May 2010
- GCMO Number 98, 8 August 2013
- Orders 231-1301, 19 August 2013
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 19 August 2013

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:

a. He believes his discharge was not equitable based on retroactive changes due to the Kurta memorandum. He believes his characterization of service would be different. In 2005, while in the line of duty, he was the victim of a violent motorcycle accident that left him with a skull fracture and a severe TBI. Once he was physically recovered, he deployed to Iraq in 2007 as a maintenance company first sergeant (1SG) in support of Operation Iraqi Freedom (OIF).

b. Soon after his unit arrived, they received numerous mortar attacks with resulted in severe injuries and deaths. To compound this, his company was identified as the "recovery company" which had a the unfortunate and gruesome task of removing human remains from vehicles destroyed by the improvised explosive device (IED), vehicle borne IED (VBIED), and indirect fire. Since this was a very traumatic experience, he exempted the younger Soldiers and chose to conduct these vehicle sterilizations with a small team of senior noncommissioned officers (NCOs). In retrospect, these experiences had a much deeper effect of his wellbeing and mental stability than he initially thought.

c. Not long after these experiences, his behavior began to change as he started to believe that he would not make it home alive. The continuous mental trauma exacerbated his ongoing TBI symptoms and he began having frequent headaches, insomnia, and made poor decisions. Those around me recognized these changes and tried to coach me but I felt like I have to live as much as I could each day and ignored them.

d. At the time, when he reached out to his command sergeant major (CSM), rather be provided leadership, he found another avenue for his excessive behavior. This acceptance and even encouragement of his behavior led to a partnership in crime with the CSM, another senior NCO and himself. These events were out of character for him, but he was not able to see through the haze of fear of death. Every day, he felt a compulsion for accumulation and pleasure. Once these deeds were ultimately discovered, he was and continued to be for years, in complete denial. He felt that the relationship with his leadership (CSM) gave him immunity.

e. Prior to the incident that led to his discharge, he honorably served his country for 21 years and 3 months with no prior disciplinary actions under the Uniform Code of Military Justice (UCMJ). After many challenging positions and exceptional evaluations, his career culminated in a promotion to the rank of 1SG. He has included his last five noncommissioned officer evaluation reports (NCOERs) for the Board to review in his decision [note: no evaluations were provided by the applicant in his application]. He feels that these evaluation will depict his true service prior to my accident and traumatic deployment experiences.

f. All this ultimately led to a general court-martial (GCM) and a dishonorable discharge [he actually received a BCD]. Since his discharge, he began seeking counsel from his mentors and church. His friends, family and faith have helped him in the last few years to not only accept his role in his discharge but relied that his underlying conditions were direct contributors to his drastic change in behavior.

g. It was only recently, he applied the VA for medical care associated with his

injuries he sustained while on active duty. As he exited the military, his denial and embarrassment would not allow him to ask for help. He just wanted to go home and he passed on the mental and physical care that he needed. After his initial struggle and coming to terms with his discharge, he found employment and his record has remained spotless. He is an active member of the church and has been promoted numerous time in his job.

h. Had these behaviors been recognized, diagnosed, and treated while on active duty, his discharge would have been different. He requests the three-year time limit be waived to the Hagel Memorandum due to his PTSD and TBI.

i. Finally, the last few months of his career are not reflective of his entire service. He was an excellent Soldier and leader until his accident resulting in a TBI and the traumatic experiences in Iraq, which caused undiagnosed PTSD. He respectfully requests that the Board consider his entire performance, service, and medical record in making their decision to upgrade his characterization to honorable to reflect his service up to the aforementioned events.

3. The applicant provides a partial copy of his VA Disability Determination Rating, which lists his service-connected conditions for:

- TBI – 40 percent (%)
- PTSD – 30%

4. The applicant's service record contains the following documents:

a. DD Form 4, shows he enlisted in the Regular Army and entered active duty on 4 May 1988, with continuous enlistments.

b. NCOERs for the following periods show, in pertinent part:

- August 2002 thru July 2003: "Among the Best" Overall Performance – Potential for Promotion "1" – Promote to master sergeant (MSG) now/Select for 1SG course
- August 2003 thru April 2004: "Among the Best" Overall Performance – Potential for Promotion "1" – Promote to MSG now/Select for 1SG course/Unlimited potential to excel/Soldiers are deserving of his leadership
- May 2004 thru January 2005: : "Among the Best" Overall Performance – Potential for Promotion "1" – Promote to MSG now/Technical and Tactical Skills Well Above That of his Peers/Superb Performance in Teaching Beyond his MOS for mobilization of Soldiers as part of OIFII and III
- February 2005 thru August 2005: "Among the Best" Overall Performance – Potential for Promotion "1" – Promote now to MSG and sent to the resident 1SG

course/Unlimited leadership potential; will serve the Army best in the most demanding and critical positions/Extremely versatile and capable of functioning in any capacity/Superb Performance; Extremely Loyal

- September 2005 thru August 2006: "Among the Best" Overall Performance – Potential for Promotion "1" – Promote to MSG immediately/a must select for attendance at the resident 1SG/Possesses the drive, experience, knowledge and initiative to excel in any position to which assigned/Performed 1SG duties in a decisive and positive manner with outstanding results
- September 2006 thru January 2007: "Among the Best" Overall Performance – Potential for Promotion "1" – Promote and appoint to Command Sergeant Major (CSM) immediately/send to the U.S. Sergeants Major Academy now/Clearly capable of serving with distinction in the most demanding and critical assignments

b. DA Form 2707 (Confinement Order), 26 January 2009, shows his confinement was due to a GCM

c. GCMO Number 2, 11 January 2010, reflects the applicant was arraigned on the following offenses at a GCM by the Commander, 4th Infantry Division (Mechanized) and Multi-National Division-Baghdad, Iraq:

- Charge I –

(1) Specification 1 – Pled – Not Guilty/Found – Guilty for between on or about 15 January 2008 and on or about 15 April 2008, in Rustamiyah, Iraq, conspired with Sergeant First Class (SFC)/E-7 [REDACTED] and CSM [REDACTED] to commit an offense under the UCMJ, to wit; extortion by communicating threats with intent unlawfully to obtain something of value, and in order to effect the object of the conspiracy to fire six civilians from their jobs and permanently remove them from the Forward Operating Base FOB) in Rustamiyah, Iraq and wrongfully collected money from them. Guilty except for three of the civilians, which he was found not guilty.

(2) Specification 2 – In that [applicant] did at or near FOB Rustamiyah, Iraq, between on or about 15 January 2008 and on or about 15 April 2008 conspire with SFC [REDACTED] to commit an offense under the UCMJ to wit: bribery by asking, accepting, and receiving an order to effect the object of the conspiracy, [applicant], being at the time, the 1SG, and an agent of the battalion CSM and an agent of the Force Protection noncommissioned officer in charge (NCOIC), SFC [REDACTED] wrongfully asked from civilian an agent of company operation ass NetGate, a contracting company engaged in the satellite television business, the sum of \$16,000.00 and wrongfully accepted and received from another civilian the sum of \$10,000, all with the intent to have their actions influenced with respect to providing a mechanical satellite television system and awarding an authorization to operate a satellite television on FOB Rustamiyah, an

official matter in which the U.S. was and is interested to wit: the providing of satellite service to the Soldiers and civilian residing in Iraq. Plea- Not Guilty/Found Guilty.

- Charge II – In that [applicant] having received a lawful command from lieutenant colonel (LTC) [REDACTED] his superior commissioned officer, then know by the accused to be his superior commissioned officer, to have no contact with vendors, interpreters or other civilian employees at FOB Rustamiah, or words to that effect, did at or near Victory Base Complex, Iraq and FOB Rustamiah, Iraq between on or about 5 April 2008 and on or about 25 May 2008, willfully disobey the same by wrongfully contacting a civilian employee. Pled – Not Guilty/Found Guilty.
- Charge III – In that [applicant] at or near FOB Rustamiah, Iraq on or about 5 April 2008, violate a lawful general order, to wit: paragraph 2c. Multi-National Division – Baghdad General Order Number 1, dated 19 December 2007, by wrongfully possessing alcohol. Pled- Guilty/Found Guilty.
- Charge IV –

(1) Specification 1: In that [applicant] did, at or near FOB Rustamiah, Iraq between on or about 15 January 2008 and on or about 15 April 2008, with intent to unlawfully obtain money, communicate to a civilian, a threat to fire him from his job and remove him from the FOB Rustamiah, or words to that effect. Pled – Not Guilty/Found – Not Guilty.

(2) Specification 2: In that [applicant] did at or near FOB Rustamiah, Iraq between on or about 15 January 2008 and on or about 15 April 2008, with intent to unlawfully obtain money, communicate to civilian to fire him from his job and remove him from FOB Rustamiah or words to tht effect. Plea - Not Guilty/Found – Not Guilty.

(3) Specification 3: In that [applicant] did, at or near FOB Rustamiah, Iraq between on or about 15 January 2008 and on or about 15 April 2008 with intent to unlawfully obtain money, communicate to another civilian a threat to fire him from his job and remove him from FEB Rustamiah, or words to that effect. Plea – Not Guilty/Found – Guilty.

(4) Specification 4: In that [applicant] did at or near FOB Rustamiah, Iraq between on or about 15 January 2008 and on or about 15 April 2008, with intent to unlawfully obtain money, communicate to another civilian, a threat to fire her from her job and remove her from FOB Rustamiah, or words to that effect. Plea – Not Guilty/Found – Not Guilty.

(5) Specification 5: In that [applicant] did at or near FOB Rustamiah, Iraq

between on or about 15 January 2008 and on or about 15 April 2008, with intent to unlawfully obtain money, communicate to another civilian a threat to fire him from his job and remove him from FOB Rustamiyah, or words to that effect. Plea – Not Guilty/Found Guilty.

(6) Specification 6: In that [applicant, did at or near FOB Rusamiyah, Iraq, between on or about 15 January 2008 and on or about 15 April 2008, within intent to unlawfully obtain money, communicate to another civilian, a threat to fire him from his job and to remove him from FOB Rustamiyah, or words to that effect. Plea – Not Guilty/Found – Guilty.

- Charge V –

(1) Specification 1: In that [applicant] being at the time the 1SG and an agent of the battalion CSM and the Force Protection NCOIC, did at or near FOB Rustamiyah, Iraq between on or about 15 January 2008 and on or about 15 April 2008, wrongfully ask from a civilian, an agent of the company operating as NetGate, a contracting company, the sum of \$16,000, and wrongfully accept and receive from a civilian, an agent of a company operating as NetGate, a contracting company, the sum of \$10,000 all with intent to have his action influenced with respect to providing a mechanical satellite television system and awarding an authorization to operate a satellite television business on FOB Rustamiyah, official matters, in which the U.S. was and is interested, to wit: the providing of satellite television service to Soldiers and civilians residing on FOB Rustamiyah. Plea – Not Guilty/Found Guilty.

(2) Specification 2: Specification 1: In that [applicant] being at the time the 1SG and an agent of the battalion CSM and the Force Protection NCOIC, did at or near FOB Rustamiyah, Iraq between on or about 15 January 2008 and on or about 15 April 2008, wrongfully ask from a civilian, an agent of the company operating as NetGate, a contracting company, the sum of \$16,000, and wrongfully accept and receive from a civilian, an agent of a company operating as NetGate, a contracting company, the sum of \$20,000 all with intent to have his action influenced with respect to providing of office space, office improvement equipment and materials, and special access to employee entrance badges to FOB Rustamiyah, an official matter in which the U.S. was and is interested, to wit: the providing internet service to Soldiers and civilians residing on FOB Rustamiyah. Plea – Not Guilty/Found – Guilty.

(3) Specification 3: In that the [applicant] a married man, did at or near FOB Rustmiyah, Iraq, between on or about 15 January 2008 and on or about 15 April 2008 wrongfully have sexual intercourse with Sergeant [REDACTED] a woman not his wife. Plea – Not Guilty/Found – Not Guilty.

- Additional Charge I –

(1) Specification 1: Dismissed.

(2) Specification 2: In that [applicant –now a master sergeant (MSG)] did nor near FOB Rustamiyah, Iraq between on or about 1 December 2007 and on or about 15 April 2008, conspire with SFC [REDACTED] and CSM to commit an offense under the UCMJ, to wit: extortion with the intent to unlawfully obtain something of value, to wit: seven barber shop mirror, seven barber shop shelves, three coaches, three barber chairs, one shampoo chair, two shampoo stand sinks, one hair dryer, one office chair, one large mirror, and barber accessories, and in order to effect the object of the conspiracy, the said CSM, [applicant] and SFC [REDACTED] communicated to a civilian CSM and Master Sergeant, the owner of [REDACTED], a threat to prevent him from receiving government contracts and to permanently remove him from FOB Rustamiyah. Plea - Not Guilty/Found – Not Guilty.

(3) Specification 3: Dismissed.

- Additional Charge II: Dismissed.
- Additional Charge III: Specification 1 and 2: Dismissed.

(1) Specification 3: In that [applicant], did at or near FOB Rustamiyah, Iraq between on or about 1 March 2008 and on or about 16 April 2008, steal property, to wit: a set of speakers, a 500 GB hard drive, a phone card and one painting, of a total value of about \$335.00, the property of the civilian, owner of [REDACTED]. Plea – Not Guilty/Found Guilty, except the words “one painting” and the words and figures “about \$355.00”, substituting the words “some value”. Of the excepted words and figures, Not Guilty; of the substituted words, Guilty.

(2) Specification 4: (Renumbered Specification 2): in that [applicant] did , at FOB Rustamiyah, Iraq, did on or about 1 March 2008 and on or about 16 April 2008, steal property, to withy: cable equipment and cables, of a value of about \$15,000.00, the property of a civilian, the owner of the Al'aa Store. Plea – Not Guilty/Found – Guilty.

- Additional Charge IV (Redesignated as Additional Charge III) –

(1) Specification 1: In that [applicant] did at or near FOB Rustamiyah, Iraq between on or about 1 December 2007 and on or about 15 April 2008, with intent to unlawfully obtain something of value, to wit: two DVD players, two tables, four barber chairs, five couches, an office chair, a power cable, five pictures frames, and a speaker system, of a total value of about \$3,295.00 communicate to civilian, the owner of the Al'aa Store, a threat to fire him from his job and remove him from FOB Rustamiyah, or words to that effect. Plea – Not Guilty/Finding – Not Guilty.

(2) Specification 2: In that [applicant] did at or near FOB Rustamiyah, Iraq between on or about 1 December 2007 and on or about 15 April 2008, with intent unlawfully to obtain money, communicate to a civilian, a threat to fire him from his job and remove him from FOB Rustamiyah, Iraq or words to that effect. Plea – Not Guilty/Found – Guilty.

(3) Specification 3: In that [applicant] did at or near FOB Rustamiyah, Iraq, between on or about 1 December 2007 and on or about 15 April 2008, with intent to unlawfully obtain money, communicate to another civilian, a threat to fire him from his job and remove him from FOM Rustamiyah, Iraq or words to that effect. Plea – Not Guilty/Found – Not Guilty.

(4) Specification 4: In that [applicant] did at or near FOB Rustamiyah, Iraq between on or about 1 December 2007 and on or about 15 April 2008, with intent to unlawfully obtain something of value, to wit: one 21' television set, one 14' television set, one television stand, two love seats, one sofa, two rugs, one queen size bed, one incense machine, one security safe, one blanket, one wood coffee table, one cellular phone, pair of sunglasses – mp3 player, one DVD player, one set of speakers, one computer desk, one 500GB hard drive, one refrigerator, fifty bottles of liquid incense, and twenty three phone cards, of a total value of about \$2,800, communicate to a civilian, the owner of the Al'aa Store, a threat to fire him from his job and remove him from FOB Rustamiyah, Iraq or words to that effect. Plea – Not Guilty/Found Not Guilty.

- Additional Charge V: Dismissed.

d. His sentence was adjudged on 9 January 2009 and to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 30 months, and to be discharged with a BCD.

e. Only so much of the sentence as provides for reduction to the grade of E-1, confinement for 28 months, and a BCD is approved and except for the part of the sentence extending to the BCD, will be executed. The automatic forfeitures of all pay and allowances, as required by Article 59b, UCMJ, was waived effective 13 February 2009 for a period of six months. [Applicant] will be credited with 6 days of confinement against the sentence to confinement.

f. A from 4187 (Personal Action), 14 May 2009 shows the applicant duty status was changed from present for duty to confined by military authorities, effected 30 January 2009, as a result of a court-martial.

g. Inmate Release Order, 10 May 2010, shows the applicant was release from confinement due to being paroled.

h. Special Court-Martial Order Number 98, published by Headquarters, U.S. Army Fires Center of Excellence and Fort Sill, Fort Sill, OK, dated 8 August 2013, shows he was tried by a GCM, in the rank of MSG/E-8 and was found of guilty of Specifications 1 and 2 of Charge V, and Charge V, were set aside and those specifications were dismissed without prejudice. The remaining finding of guilty and only so much of the sentence as provides for reduction of the grade to private /E1, confinement for 28 months, and a BCD, adjudged on 30 January 2009, as promulgated by GCMO Number 2, dated 11 January 2010, have been finally affirmed. The automatic forfeitures of all pay and allowances required by Article 58b UCMJ was waived effective 13 February 2009, for a period of 6 months. The accused was credited with 6 days of confinement against the sentence to confinement. Article 71c having been complied with, the BCD will be executed.

e. DD Form 214, shows he was discharged from the Army on 19 August 2013, in the rank of PVT/E1. He had completed 24 years and 5 days of net active service. This document shows the following:

- item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized):
 - Army Commendation Medal (4th Award)
 - Army Achievement Medal (3rd Award)
 - Army Good Conduct Medal (6th Award)
 - National Defense Service Medal (2nd Award)
 - Southwest Asia Service Medal with Bronze Service Star (3rd Award)
 - Global War on Terrorism Service Medal
 - Korean Defense Service Medal
 - Iraq Campaign Medal with Campaign Star
 - Noncommissioned Officer Professional Development Ribbon (3rd Award)
 - Army Service Ribbon
 - Overseas Service Ribbon (4th Award)
 - Kuwait Liberation Medal – Saudi Arabia
 - Kuwait Liberation Medal – Kuwait
 - Air Assault Badge
 - Basic Marksmanship Qualification Badge
 - Driver and Mechanic Badge – Mechanic
- item 18 (Remarks): Continuous Honorable Active Service – Served in a Designated Imminent Danger Pay Area/Service in Saudi Arabia (19901223 – 19910505)/Service in Iraq (20071128 – 20090104)
- item 23 (Type of Discharge): Discharge
- item 24 (Character of Service): “Bad Conduct”

- item 25 (Separation Authority): “AR 635-200, CHAP 3”
- Item 26 (Separation Code): “JJD”
- Item 27 (Reentry Code): “4”
- Item 28 (Narrative Reason for Separation): “Court-Martial, Other”
- Item 29 (Dates of Time Lost During This Period): 30 January 2009 to 10 May 2010

6. The applicant record does not reflect any prior nonjudicial punishments or any other court-martial or disciplinary actions through his career.

7. MEDICAL REVIEW:

1. The applicant is applying to the ABCMR requesting clemency and an upgrade of his bad conduct discharge (BCD) due to Posttraumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI). 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 04 May 1988, 2) GCMO Number 2 dated 11 January 2010 shows, in effect, the applicant was arraigned on the following offenses: extortion by communicating threats; bribery; disobeying a lawful order; violating a general order by wrongfully possessing alcohol; theft; 3) he was released from confinement on 10 May 2010 due to being paroled, 4) the applicant was discharged on 19 August 2013. His DD Form 214 shows service in Saudi Arabia (23 December 1990 – 05 May 1991) and Iraq (28 November 2007 – 04 January 2009).

2. 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 VA’s Joint Legacy Viewer (JLV) was also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

3. In-service medical records were available for review via JLV from 08 May 2003 through 06 August 2013. Records show the applicant was referred for a CT scan on 10 September 2005 following a motorcycle accident with the impressions noting there was extra-axial fluid collection with mass effect and leftward shift of midline structures. An MRI was ordered on 07 December 2005 due to headache, noting blurred vision and some dizziness. On 16 December 2005, he was seen for a follow-up appointment following a craniotomy with burr holes. He denied experiencing headache, loss of consciousness, or blurry vision and was diagnosed with Encephalopathies and Hydrocephalies. He was followed by neurology in January 2006 due to a subdural hematoma. He was being treated off-post at LSU and was cleared by LSU on 24 January 2006 to return to limited duty. It was documented that he complained of occasional head discomfort. On 03 February 2006, he presented for a fitness for duty evaluation at the military treatment facility (MTF). He reported feeling dizzy during loud noises (resolving) and numbness to the surgical site. He was diagnosed with acute

epidural hemorrhage and head injury with subdural hemorrhage and was released without limitations. The provider noted that the applicant was “doing quite well at this time and [had] no complaints.” It was noted that the headaches were not out of proportion to what was typical for him. Moreover, it was noted that he denied experiencing psychiatric disorders such as anxiety or depression. He was put on a P2 profile to avoid push-ups, sit-ups, and running for PT tests. He requested a neuro evaluation on 01 May 2006 due to headaches noting that Tylenol was no longer effective. On 24 April 2007, a neurology note documented that he was experiencing headaches several times per week which woke him up sometimes. It was noted the headaches were well-controlled with rest, ibuprofen, and acetaminophen. The provider noted on his Mental Status Exam (MSE) that his affect was normal, oriented to all spheres (e.g., person, place, time, and situation), his thought processes were not impaired, and demonstrated no abnormalities in attention. He was diagnosed with Post-concussion Syndrome and Head Injury with Subdural Hemorrhage. He was released without limitations. He was started on Nortriptyline for headaches on 19 June 2007. He was diagnosed with Common Migraine without Aura on 24 April 2008 and was prescribed Metoclopramide and Reglan. It was noted that he had been having trouble sleeping for the past several months, reporting nightmares and other visual images related to his work. The applicant noted his unit was responsible for clearing out vehicles after they were damaged by IED attacks which frequently had remains inside that he had to help clean up.

4. The applicant was command-referred to BH while deployed on 07 April 2008 due to recent legal problems and to determine if he was a danger to himself or others after being informed that he was the subject of a CID investigation. The applicant reported he was in his “state of excellent mental health until 05 April 2008” when he was informed of the investigation. Due to frustration, he had expressed that he could understand why Soldiers in such situations take their own lives which led to the command directed BH evaluation. The applicant denied suicidal and/or homicidal ideation (SI/HI) and it was documented that he did not meet criteria for a psychiatric diagnosis. He was returned to full duty without limitations and noted that no psychiatric follow-up was needed. The applicant was evaluated through the TBI clinic on 27 September 2010, and it was noted he reported inability to sleep, depression, mood swings, quick temper, flashbacks, forgetfulness, stress, walking around at night, always in a daze, headaches, anhedonia, and did not like being around others. He reported that he discontinued alcohol use after his accident in 2005 and the provider noted he had no history of alcohol abuse or excessive drinking. The provider noted he had to leave the FOB in June 2008 while deployed in order to start talking about these issues. The provider diagnosed him with Adjustment Disorder with Disturbance of Emotions, he was released without limitations, and his MSE was within normal limits. He was started on Rozerem and Trazodone for insomnia on 20 September 2010. He completed a psychiatry intake on 18 October 2010, and it was noted that there were not any significant symptoms of Major Depressive Disorder (MDD), TBI, or PTSD, and he was diagnosed with Persistent

Insomnia and prescribed Quetiapine and Trazodone for sleep. His final in-service BH note dated 29 March 2011 for the purposes of psychological testing showed his test results were within the normal ranges, he did not have any disabling disorder, and was diagnosed with Adjustment Disorder with Disturbance of emotions.

5. Review of JLV shows the applicant is 100% service-connected through the VA, 40% for Traumatic Brain Disease (noted in an excerpt of his VA rating letter to also be claimed as subdural hematoma, brain hemorrhage/thrombosis/embolism; PTSD claimed a shell shock/combat fatigue/combat neurosis with alcohol abuse and anxiety). He completed a Compensation and Pension (C&P) examination through the VA on 14 October 2020 and was diagnosed with TBI and Posttraumatic Headaches of the Migraine Type. His TBI was noted to be due to his 2005 motorcycle accident. Regarding the facts of TBI, the provider noted mildly impaired judgment (for complex or unfamiliar decisions), a complaint of mild memory loss, reduced concentration and attention in completing tasks, social interactions were noted to be frequently inappropriate (e.g., difficulty being around others, avoids crowds, does not participate in socializing), occasionally disoriented, motor activity was WNL, mildly impaired visual-spatial orientation, subjective complaints (e.g., mild dull daily headaches with occasional severe headaches, dizziness with severe headache, chronic insomnia), irritability and reduced patience, verbal and physical aggression with others, communication and consciousness were noted to be WNL. The provider noted the residuals as headaches, including Migraines. A separate C&P examination dated 29 September 2020 shows the applicant was diagnosed with PTSD. The provider noted the stressor(s) associated with his diagnosis as his motorcycle accident with skull fracture resulting in severe TBI which was compounded by his experiences in Iraq (e.g., frequent mortar attacks). The provider opined that the mental trauma of his deployment exacerbated his TBI symptoms, and he began making poor decisions which led to his dishonorable discharge.

6. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant was diagnosed with several potentially mitigating conditions in-service: Post-concussion Syndrome, Head Injury with Subdural Hemorrhage, and Persistent Insomnia. Although his medical records show he was diagnosed with Adjustment Disorder with Disturbance of Emotions, there is no indication in the record if this diagnosis was constituted as chronic or separate acute episodes of adjustment, of which acute Adjustment Disorders do not constitute mitigating conditions. Furthermore, the records show this diagnosis was made in response to his legal stressors/after the misconduct had taken place, and, as such does not constitute a mitigating condition. His diagnoses of Post-concussion Syndrome and Head Injury with Subdural Hemorrhage are subsumed by his diagnosis of TBI, and his diagnosis of Persistent Insomnia is subsumed by his diagnosis of PTSD. Post discharge, the applicant has been diagnosed and service-connected through the VA for TBI and

PTSD. This Advisor would contend that two of the applicant's charges are mitigated by his BH condition(s).

7. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with Post-concussion Syndrome, Head Injury with Subdural Hemorrhage, and Persistent Insomnia in-service. Post discharge, he has been diagnosed and service-connected through the VA for PTSD and TBI.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with Post-concussion Syndrome, Head Injury with Subdural Hemorrhage, and Persistent Insomnia in-service. Post discharge, he has been diagnosed and service-connected through the VA for PTSD and TBI.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. In-service medical records show the applicant was diagnosed with Post-concussion Syndrome and Head Injury with Subdural Hemorrhage following a motorcycle accident. Post discharge, he has been diagnosed and service-connected through the VA for PTSD and TBI. As there is an association between self-medicating with alcohol, trouble with authority figures, and trauma, there is a nexus between his wrongful possession of alcohol, disobeying a lawful order, and diagnosis of PTSD. Although the sequelae of TBI may be associated with impulsivity and poor decision making, there is no documentation in his in-service medical records indicating that he was having problems with decision making or impulsivity prior to the misconduct nor he was not placed on a BH profile due to mood or behavioral issues as a result of TBI. Furthermore, there is no evidence in his in-service medical records that the applicant's judgment was so severely impaired such that he was unable to distinguish between right and wrong and adhere to the right. Thus, BH mitigation is not supported for his misconduct of extortion by communicating threats, bribery, and theft. As such, BH mitigation is partially supported for his misconduct of wrongful possession of alcohol and disobeying a lawful order.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the lengthy pattern of misconduct leading to the applicant's separation, some of which included criminal activity, and the findings of any partial mitigation for the misconduct, 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
■	■	■	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.

12/27/2024

X

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. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

2. Title 10, USC, section 1552(b), provides, with respect to courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of the Secretary's Department may extend only to actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. The Secretary of the Army shall make such corrections by acting through boards of civilians within the executive part of the Army.

3. 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. An honorable discharge was separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty, or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish Soldiers an honorable discharge Soldiers when subsequent honest and faithful service over a greater period outweighed any disqualifying entries in the Soldier's military record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. A general discharge was a separation from the Army under honorable conditions. When authorized, separation authorities issued general discharges to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. A discharge under other than honorable conditions is an administrative separation from the Service under conditions other than honorable. It may be issued in lieu of trial by court martial.

d. A Soldier could receive a bad conduct discharge pursuant only to the approved sentence of a general or special court-martial, and, following the completion of an appellate review, such affirmed sentence had been ordered duly executed.

4. Army Regulation 635-5-1 (Separation Program Designators (SPD)) states that the Separation Program Designator (SPD) codes are three-character alphabetic combinations which identify reasons for, and types of, separation from active duty. SPD code "JJD" is the appropriate code to assign to enlisted Soldiers who are discharged as a result of Court-Martial.

5. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

6. 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.

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 (TBI); 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 sexual assault or sexual harassment was unreported, or 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. 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. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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, BCM/NRs 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.

9. Army Regulation 635-8 (Separation Processing and Documents). The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of REFRAD, retirement, or discharge. The DD Form 214 is not intended to have any legal effect on termination of a Soldier's service.

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10. PTSD can occur after someone goes through a traumatic event like combat, assault, or disaster. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is published by the American Psychiatric Association (APA) and provides standard criteria and common language for the classification of mental disorders. In 1980, the APA added PTSD to the third edition of its DSM nosologic classification scheme. Although controversial when first introduced, the PTSD diagnosis has filled an important gap in psychiatric theory and practice. From a historical perspective, the significant change ushered in by the PTSD concept was the stipulation that the etiological agent was outside the individual (i.e., a traumatic event) rather than an inherent individual weakness (i.e., a traumatic neurosis). The key to understanding the scientific basis and clinical expression of PTSD is the concept of "trauma."

11. PTSD is unique among psychiatric diagnoses because of the great importance placed upon the etiological agent, the traumatic stressor. In fact, one cannot make a PTSD diagnosis unless the patient has actually met the "stressor criterion," which means that he or she has been exposed to an event that is considered traumatic. Clinical experience with the PTSD diagnosis has shown, however, that there are individual differences regarding the capacity to cope with catastrophic stress. Therefore, while most people exposed to traumatic events do not develop PTSD, others go on to develop the full-blown syndrome. Such observations have prompted the recognition that trauma, like pain, is not an external phenomenon that can be completely objectified. Like pain, the traumatic experience is filtered through cognitive and emotional processes before it can be appraised as an extreme threat. Because of individual differences in this appraisal process, different people appear to have different trauma thresholds, some more protected from and some more vulnerable to developing clinical symptoms after exposure to extremely stressful situations.

12. The fifth edition of the DSM was released in May 2013. This revision includes changes to the diagnostic criteria for PTSD and acute stress disorder. The PTSD diagnostic criteria were revised to take into account things that have been learned from scientific research and clinical experience. The revised diagnostic criteria for PTSD include a history of exposure to a traumatic event that meets specific stipulations and symptoms from each of four symptom clusters: intrusion, avoidance, negative alterations in cognitions and mood, and alterations in arousal and reactivity. The sixth criterion concerns duration of symptoms, the seventh criterion assesses functioning, and the eighth criterion clarifies symptoms as not attributable to a substance or co-occurring medical condition.

13. Title 10, U.S. Code, section 1556 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.

//NOTHING FOLLOWS//