

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 June 2025

DOCKET NUMBER: AR20240011738

APPLICANT REQUESTS:

- reconsideration of his prior request for upgrade of his bad conduct discharge
- personal appearance before the Board

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

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20120002811 on 14 August 2012.

2. The applicant states:

a. He is requesting upgrade of his bad conduct discharge status to honorable. After so many years, it should be updated and corrected based on physical, mental and administrative policy amendments and updates.

b. The correction and relief should be made to ensure he can receive the physical, mental, medical and all the Department of Veterans Affairs (VA) benefits and resources that he deserves for his service to our country.

c. He has also marked the boxes on his application indicating post-traumatic stress disorder (PTSD), other mental health, and disability are issues related to his request and further indicated he has mental health and other medical issues.

d. He has previously applied for correction of this injustice four or five times and filed for help when he left Fort Stewart, GA, and when he came from Korea, but to no avail. He is also applying for all benefits to which he is entitled.

3. The applicant enlisted in the Regular Army on 30 January 1985.

4. Headquarters, 24th Infantry Division (Mechanized) and Fort Stewart General Court-Martial Order Number 2, 28 January 1988, shows:

a. The applicant was arraigned and tried by general court-martial that convened at Hunter Army Air Field, GA, where he was found guilty of distribution of cocaine.

b. On 16 December 1987, he was sentenced to reduction in rank and grade to private/E-1, forfeiture of \$500.00 pay per month for 12 months, confinement for 1 year and 1 day, and a bad conduct discharge.

c. The sentence was approved and, except for that part of the sentence extending to a bad conduct discharge, would be executed.

5. A U.S. Army Court of Military Review Decision, 22 March 1988, shows on consideration of the entire record, including consideration of the issues personally specified by the applicant, the Army Court of Military Review held the findings of guilty and the sentence as approved by the convening authority correct in law and fact. Accordingly, those findings of guilty and the sentence were affirmed.

6. U.S. Army Correctional Activity General Court-Martial Order Number 675, 11 October 1988, shows, in the general court-martial case of the applicant, the sentence to a bad conduct discharge, confinement for 1 year and 1 day, forfeiture of \$500.00 pay per month for 12 months, and reduction in rank and grade to private/D-1, adjudged on 16 December 1987, was finally affirmed and the bad conduct discharge would be executed.

7. A DA Form 4187 (Personnel Action) shows the applicant's duty status was changed from confined by military authority to present for duty on 12 October 1988.

8. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was given a bad conduct discharge on 13 October 1988, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) chapter 3, as a result of court-martial, with corresponding Separation Code JJD. He was credited with 2 years, 10 months, and 13 days of net active service with lost time from 16 December 1987 through 11 October 1988.

9. The applicant previously applied to the ABCMR in February 2012, requesting upgrade of his bad conduct discharge in order to receive VA benefits as he was promised an upgraded characterization of service 6 months following his discharge.

10. On 11 August 2012, the Board denied the applicant's request, determining that the evidence presented did not demonstrate the existence of a probable error or injustice

and that the overall merits of his case were insufficient as a basis for correction of his records.

11. On 4 April 2025, the Army Review Boards Agency (ARBA) requested the applicant provide copies of any medical documents supporting his request, but he did not respond.

12. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration of an upgrade to his characterization of service from bad conduct discharge (BCD) to something more favorable. He contends he experienced an undiagnosed mental health condition, including PTSD, that mitigates his misconduct.

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:

- The applicant enlisted into the Regular Army on 30 January 1985.
- The applicant was arraigned and tried by general court-martial that convened at Hunter Army Air Field, GA, where he was found guilty of distribution of cocaine.
- The applicant was discharged on 13 October 1988 and was credited with 2 years, 10 months, and 13 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts after so many years, his discharge should be updated and corrected on the basis of physical, mental, and administrative policy amendments and updates. He indicated PTSD and "other mental health" as issues or conditions related to his request. The application was void of any mental health or medical records. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed no history of mental health related treatment or diagnoses. The applicant is ineligible for VA services, and community health summaries showed only a prescription for an anxiolytic in 2015.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. There were no mental health records from his time in service or post-discharge.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service, and there were no records available post-discharge. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. However, the applicant contends he had a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for 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 applicant was separated for conviction by court-martial for distribution of cocaine. The Board found no error or injustice in the separation proceedings. The Board concurred with the medical advisor's review finding insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct.

2. The applicant was given a bad conduct discharge pursuant to an approved sentence of a court-martial. The appellate review was completed and the affirmed sentence was ordered duly executed. All requirements of law and regulation were met with respect to the conduct of the court-martial and the appellate review process and the rights of the applicant were fully protected.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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. 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 Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), 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, on those conditions or experiences.

2. 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 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.

a. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs 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.

3. Title 10, U.S. Code, section 1552, provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the Uniform Code of Military Justice, action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the Uniform Code of Military Justice or action on the sentence of a court-martial for purposes of

clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

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 provides that an enlisted person would be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review is required to be completed and the affirmed sentence ordered duly executed.

5. 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.

6. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//