

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 November 2023

DOCKET NUMBER: AR20230000545

APPLICANT'S REQUEST: Reconsideration of his previous request for an upgrade of his bad conduct discharge (BCD).

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- Letter of recommendation
- Character reference letters (2)
- An article entitled "Second Chances – Company helps those starting anew"

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 AR20130007963 on 19 December 2013.

2. The applicant states, he has made mistakes and some bad choices during his life. He has also been given a chance to do better and he has taken advantage of his second chance opportunities. He is a productive member of society and displays responsible conduct. He has made the best of every new opportunity by having a "can do" mind set, a positive outlook, and being a positive influence on others. He has been blessed to be a good father, brother, husband, and friend to all. He is very career oriented and has consistently been in a professional field. Every job that he has had was in upper management. He is currently an Assistant Manager of Production Control for Kia Motors at the car manufacturing plant in West Point, GA. He was the first team member in Kia history to go from being a regular hourly team member (July 2009) to a Team Leader in less than 1 year (April 2010), to a Group Leader in a year from then (April 2011), to Assistant Manager in 18 months from then (October 2012). He currently controls a \$7,000,000.00 budget and has 180 team members who report directly to him. He has been the Head Deacon of his church with 450 members for four years. He is an active member of Narcotics Anonymous and Alcoholics Anonymous and has been clean and sober over 27 years. He demonstrates a high degree of integrity and impeccable honesty.

3. The applicant's service record is not available for review. Therefore, this case is being considered based upon the documents provided by the applicant and those that were included in his previous ABCMR case.

4. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was in the Delayed Entry Program from 29 May 1987 until 15 June 1987. He enlisted in the Regular Army on 16 June 1987. Upon completion of initial entry training, he was awarded military occupational specialty 55B (Ammunition Specialist). He was credited with 3 months and 15 days of prior active service and 9 years, 4 months, and 3 days of total prior inactive service. During his period of service, he was awarded or authorized the Army Service Ribbon.

5. General Court-Martial (GCM) Order Number 1, issued by Headquarters, U.S. Army Infantry Center and Fort Benning, Fort Benning, GA on 5 January 1989 shows the applicant was arraigned at Fort Benning, GA before a GCM empowered to adjudge a BCD.

a. The applicant pled guilty and was found guilty of the following offenses in violation of the Uniform Code of Military Justice (UCMJ):

- two specifications of wrongful distribution of cocaine on 18 and 19 July 1988
- one specification of wrongful use of cocaine between 14 and 24 August 1988
- two specifications of unauthorized absence from his unit from 31 August 1988 to 9 September 1988 and from 22 September 1988 to 24 September 1988

b. His sentence consisted of reduction from the rank/pay grade of private first class/E-3 to private/E-1; confinement for 18 months; forfeiture of \$400.00 pay per month for 18 months; and to be discharged from service with a BCD. The sentence was adjudged on 7 November 1988.

c. The sentence was approved and, except for the part of the sentence extending to the BCD, ordered to be executed. The applicant was credited with 2 days of confinement toward the sentence to confinement.

6. Orders and the applicant's DD Form 214 show he was discharged on 20 October 1989 under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 3, as a result of court-martial. His service was characterized as bad conduct. His Separation Program Designator code was "JJD," and his Reentry Eligibility code was "4." He was credited with 1 year, 4 months, and 5 days of net active service. He had lost time due to absence without leave from 31 August 1988 to 9 September 1988 and from 22 September 1988 to 24 September 1988; and

due to confinement from 26 September 1988 to 27 September 1988 and from 7 November 1988 to 19 October 1989.

7. In support of his petition, the applicant provides:

a. A letter of recommendation and two character reference letters wherein the authors provide favorable comments about the applicant's character, work ethic, loyalty, leadership skills, professionalism, and contributions to his church and community.

b. An article entitled "Second Chances – Company helps those starting anew," wherein the applicant's path from prison, through drug and alcohol programs, and into a successful career is described.

8. 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.

9. Army Regulation 635-200 provides that a Soldier would be given a BCD pursuant only to an approved sentence of a general or special court-martial and that the appellate review must be completed, and the affirmed sentence ordered duly executed.

10. The applicant petitioned the ABCMR for relief on 18 April 2013. On 30 December 2013, the applicant was informed that the ABCMR had considered his application under procedures established by the Secretary of the Army and had denied his request.

11. 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.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board found that relief was partially warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, applicable regulatory published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, record of service, the frequency and nature of the misconduct and the reason for separation. The Board found no clear or convincing evidence of an error or injustice and, and notwithstanding post-service accomplishments, agreed that

in the absence of any new or relevant information, concluded that the burden of proof had not been met. After due consideration of the applicant's request, the Board determined that the character of service the applicant received upon separation was not in error or unjust and a recommendation for relief is not warranted.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined 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 to amend the decision of the by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20130007963 on 19 December 2013.



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, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Court-martial convictions stand as adjudged or modified by appeal through the judicial process, 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.

2. Army Regulation 15-185 prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR, prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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. It is not an investigative body.

3. Army Regulation 635-200, 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.

b. A general discharge was a separation from the Army under honorable conditions. When authorized, separation authorities could issue a general discharge to Soldiers 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 for misconduct, fraudulent entry, homosexual conduct, security reasons, or in lieu of trial by court martial in the following circumstances.

(1) An under other than honorable conditions discharge will be directed only by a commander exercising general court-martial authority, a general officer in command who has a judge advocate or legal advisor available to his/her command, higher authority, or the commander exercising special court-martial convening authority over the Soldier who submitted a request for discharge in lieu of court-martial (see chapter 10) when delegated authority to approve such requests.

(2) When the reason for separation is based upon one or more acts or omissions that constitutes a significant departure from the conduct expected of Soldiers of the Army. Examples of factors that may be considered include the following:

- Use of force or violence to produce bodily injury or death
- Abuse of a position of trust

- Disregard by a superior of customary superior-subordinate relationships
- Acts or omissions that endanger the security of the United States or the health and welfare of other Soldiers of the Army
- Deliberate acts or omissions that seriously endanger the health and safety of other persons

d. A BCD will be given to a Soldier pursuant only to an approved sentence of a general or special court-martial. The appellate review had to have been completed and the affirmed sentence then ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing staff judge advocate.

4. 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/NR) 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//