

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 September 2023

DOCKET NUMBER: AR20230002530

APPLICANT REQUESTS:

- a. reconsideration of his previous request for an upgrade to his bad conduct discharge (BCD).
- b. A video teleconference before the Board.

APPLICANT'S SUPPORTING DOCUMENTS 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 AR20200000268, dated 22 February 2021.
2. The applicant states that most of the accusations that he was accused of were racially motivated and petty. He was injured in the military and should be able to apply for disabilities that he suffered while in the military.
3. The applicant does not provide any supporting documentation.
4. The applicant's record shows the following information:
 - a. On 1 August 1979, the applicant enlisted in the Regular Army.
 - b. On 1 October 1979, he received an Article 15, of the Uniform Code of Military Justice (UCMJ) for being absent from his appointed place of duty on 29 September 1979. He was found guilty and received a reduction in pay grade to E-1 (suspended), forfeitures of pay of \$97.00 per month for one month (suspended), and seven days at the Correctional Custody Facility.
 - c. Special Court Martial Order (SPCM) Number 66, dated 9 October 1980,

shows he received a SPCM for the following:

- Drunk and disorderly conduct
- 5 specifications of failing to obey a lawful order and disrespect
- Failing to obey a lawful order from a commissioned officer
- Additional Charge: Being absent from his appointed place of duty
- Additional Charge: Failing to obey a lawful order from a commissioned officer
- Additional Charge: two specifications of failing to obey a lawful order and disrespect
- Additional Charge: two specifications of disrespect
- Additional Charge: for being absent from his appointed place of duty

d. He was found guilty of Charge I, not guilty to specifications 1 thru 5 of Charge II, guilty of Charge III, guilty of the Additional Charge I, not guilty of the additional Charge II, guilty of the Additional Charge II (specifications 1 and 2), not guilty of specification 1 of the Additional Charge IV, guilty of specification 2 of the Additional Charge IV, guilty of the Additional Charge IV, and guilty of the Additional Charge V. On 12 September 1980, he was sentenced to a reduction to the pay grade of E-1, forfeitures of \$290.00 per month for four months, confinement at hard labor for three months, and to be discharged with a BCD.

e. The Court having found the approved findings of guilty and the sentence correct in law and fact and having determined on the basis of the entire record that they should be approved such findings of guilty, the sentence was affirmed.

f. Only so much of the sentence as provided for a BCD, confinement at hard labor for 3 months, forfeitures of \$225.00 of pay per month for three months (suspended for 6 months), and reduction to the grade of PVT/E-1 were approved.

g. SPCM Order Number 49, dated 24 April 1981 shows, in pertinent part, the applicant's sentence was affirmed and the BCD was ordered duly executed.

h. On 12 May 198, the applicant was discharged under the provisions of Army Regulation 635-200 (Personnel Separations –Enlisted Personnel), Chapter 11, as a result of court-martial. His DD Form 214 lists the applicant's character of service as a BCD. He completed 1 year, 6 months and 7 days of net active service this period with approximately 78 days of lost time.

5. Prior ABCMR Docket Number AR20200000268, dated 22 February 2021, reflects the applicant requested an upgrade to his BCD for benefits. The Board denied his request for an upgrade to his BCD. The Board applied the Office of

the Secretary of Defense standards of liberal consideration and clemency to the completed evidentiary record, including the applicant's statement and found insufficient evidence of error, injustice, or inequity.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance 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 before the Board is not necessary to serve the interest of equity and justice in this case.
2. After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents available for review and evidence in the records. The Board considered the frequency and nature of the misconduct, the reason for separation and whether to apply clemency. Based on the lack of documentation showing in-service mitigating factors to overcome the misconduct or evidence of post-service achievements or letters of reference to weigh in support of a clemency determination, the Board concluded that the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mr 1	Mr 2	Mr 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 to amend the decision of the ABCMR set forth in ABCMR Docket Number AR20200000268, dated 22 February 2021.



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 635-200 sets forth the basic authority for separation of enlisted personnel.
 - a. Paragraph 11-2 of this regulation states that a Soldier will be given a BCD pursuant only to an approved sentence of a general or SPCM. The appellate review must be completed and the affirmed sentence ordered duly executed.
 - b. Paragraph 3-7a states that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable

characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

c. Paragraph 3-7b states that a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

2. 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.

3. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

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 regarding equity, injustice or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence and BCMRs 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 discharge, which may be warranted on equity or relief from injustice grounds. The 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, an injustice, or clemency grounds, BCMRs shall consider the twelve stated principles in the guidance as well as eighteen individual factors related to an applicant. These factors include the severity of the misconduct and the length of time since the misconduct.

5. 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 ABCMR will decide cases on the evidence of record. It is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. 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//