

IN THE CASE OF: ██████████

BOARD DATE: 21 March 2024

DOCKET NUMBER: AR20230008642

APPLICANT REQUESTS:

- upgrade of his bad conduct discharge (BCD)
- change narrative reason for separation from court-martial conviction to voluntary release due to personal reasons, "Secretarial Authority" or some similar reason
- a favorable change of his separation and reentry eligibility (RE) codes

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

- DD Form 149 (Application for Correction of Military Record)
- Legal brief on behalf of the applicant
- In-service personnel documents
- Court-martial documents
- Congratulatory notes
- Memorandum from Under Secretary of Defense; subject: Guidance to Military Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCMR/NR) Regarding Equity, Injustice, or Clemency Determinations, dated 25 July 2018
- Memorandum from Secretary of Defense; subject: Stand-Down to Address Extremism in the Ranks, dated 5 February 2021

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 AC87-05315 on 27 April 1988.

2. Counsel states, in pertinent part:

a. This is a story which occurs all too often in the military, a black military member who suffered from racial injustice. This is the story of the applicant, a service member who was framed and unfairly punished for a crime he has avidly, from the beginning, claimed he is innocent of. He has insisted from the beginning that he was never in possession of drugs, never sold drugs, and never consumed drugs. Because the

applicant "dressed nice" he was the target of racism, and the only way he could have made the money to dress nice was if he sold drugs.

b. The applicant joined the Army in order to serve his country. His father served in World War II, and he wanted to follow in his footsteps. While in the Army, he was a good Soldier. He received a Letter of Commendation for "outstanding performance of duty during the Black Hawk IV Joint Training Exercise in Panama."

c. While stationed in Germany, the applicant began to experience racial discrimination. One example of such discrimination was during a barracks inspection when his Commanding Officer accused him of selling drugs. This accusation was based on nothing except that the applicant had multiple suits in his war locker. The applicant explained to his Commanding Officer that: 1. He has never sold drugs, 2. He never possessed drugs, and 3. He never ingested drugs. However, his Commanding Officer did not believe him.

d. The applicant was part of a G.I. party switching various pieces of furniture from the first floor to the second floor. On this day, a confidential informant (CI), entered the barracks attempting to purchase drugs. The applicant informed that individual that he was not allowed in the barracks and instead of reporting the incident he allowed the CI to leave. The following month, the applicant, along with seven other Soldiers, was accused by the CI of selling drugs in the barracks. The other seven cases were dismissed because of the CI's character of lying. The applicant faced court-martial.

e. During the pre-trial proceeding of his court-martial, the applicant insisted on his innocence. He even turned down multiple plea offers, offered by the prosecutor. Furthermore, the prosecutor did not reveal to the applicant's defense counsel credibility issues regarding the CI. In fact, the applicant was so sure about his innocence that he requested to take a polygraph test to demonstrate his credibility and innocence, he passed the polygraph.

f. After the Government finished putting on their witnesses, the applicant's defense counsel put on their own witnesses. Each and every Soldier who worked with the CI all testified that they would never believe him under oath, and that the CI has a reputation of lying. The applicant was convicted by an all-white panel. After his conviction, the Military Judge stated, "it's entirely possible that were this case tried judge alone, I would have ruled, or I would have found the accused not guilty."

g. The applicant was sentenced to hard labor with a dislocated shoulder, which he later received surgery for and was discharged with a characterization of Bad Conduct. After his discharge from the military, he received multiple post-service awards for his work as an Emergency Medical Technician (EMT) for 35 years, including induction into

the Thomas Jefferson Emergency Room Hall of Fame. If anyone deserves to have his military service corrected it is the applicant.

h. As a result of unfairness and racial discrimination, the applicant has suffered numerous instances of injustice resulting in error of legal process. He suffered an error and injustice when he was convicted after the evidence did not show that he committed the alleged crime beyond a reasonable doubt. He was also deprived of the following Constitutional rights: 1. The right to Due Process and fundamental fairness when the prosecutor for his special court-martial did not disclose *Brady* material under *Brady -v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). 2. The right to effective assistance of counsel when his defense counsel did not file for any pre-trial hearings or appeals in light of the damaging confession the confidential informant made. 3. The right to a fair trial when he was convicted of an all-white panel.

3. The applicant enlisted in the Regular Army on 17 July 1979 for 4 years. Upon completion of training, he was awarded military occupational specialty 16E (Hawk Fire Control Crewman).

4. Court-martial charges were preferred against the applicant on 1 March 1983 for violations of the Uniform Code of Military Justice. His DD Form 458 (Charge Sheet) shows he was charged with one specification of wrongfully possessing 2.53 grams, more or less, of marijuana in the hashish form; and one specification of wrongfully distributing 2.53 grams, more of less, of marijuana in the hashish form.

5. Before a special court-martial on 26 May 1983, at Schweinfurt, Germany, the applicant was found guilty of one specification of wrongfully distributing 2.53 grams, more or less, of marijuana in the hashish form. The specification of wrongfully possessing 2.53 grams, more of less, of marijuana in the hashish form was dismissed.

6. The court sentenced the applicant to reduction to the grade of E-1, forfeiture of \$382.00 pay per month for six months, confinement at hard labor for six months, and discharge from the service with a BCD. The sentence was approved on 1 September 1983 and the record of trial was forwarded for appellate review.

7. By sworn statement on 13 June 1983, the applicant's defense counsel attests he had a phone conversation with the government's CI (main witness). The defense counsel asked the CI why he had consistently identified his client as the one who sold the dope. The CI responded with "Because of the name. In court I did not recognize your client as the one who sold me dope. He did have the name that I remembered. That is the one reason I identified him."

8. On 28 October 1983, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
9. The applicant voluntarily waived a separation medical examination.
10. On 1 November 1983, the applicant was placed on excess leave.
11. The U.S. Army Court of Military Review affirmed the findings and sentence on 19 September 1984.
12. Special Court-Martial Order Number 40, issued by U.S. Army Correctional Activity, Fort Riley, KS on 1 March 1985, noted that the applicant's sentence had been affirmed and ordered the BCD to be duly executed.
13. The applicant was discharged on 18 March 1985. His DD Form 214 (Certificate of Release or Discharge from Active Duty) 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 5 years, 2 months, and 29 days of net active service this period with 153 days of lost time. His awards included the Army Commendation Medal.
14. The applicant petitioned the Army Discharge Review Board requesting upgrade of his BCD discharge. On 1 April 1987, the Board voted to deny relief and determined the applicant was both properly and equitably discharged.
15. The applicant petitioned the ABCMR requesting upgrade of his BCD discharge. On 27 April 1988, the Board voted to deny relief and determined the applicant failed to submit sufficient relevant evidence to demonstrate the existence of probable material error or injustice.
16. The applicant provides digital images of thank you cards and an article that highlights his hard work and service as an EMT. These images are provided in their entirety for the Board's review within the supporting documents.
17. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code (USC), 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.

19. 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. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered counsel's statement, the applicant's record of service, the frequency and nature of the applicant's misconduct, the reason for his separation, and whether to apply clemency.
  
2. A majority of the Board found sufficient evidence of in-service mitigating factors and found the evidence of applicant's post-service achievements support clemency. Based on a preponderance of the evidence, a majority of the Board determined the applicant's character of service should be changed to under honorable conditions (general) and the reason for his discharge should be changed to Secretarial authority with separation code "JFF" and reenlistment code "3."
  
3. The member in the minority concurred with the conclusion that the evidence supports relief in this case, but found the character of service should be changed to under other than honorable conditions.

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 is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 to show the following entries:

- Character of service – under honorable conditions (general)
- Separation authority – AR 635-200
- Separation code – JFF
- Reenlistment code – 3
- Narrative reason for separation – Secretarial authority

6/27/2024

X [REDACTED]

---

CHAIRPERSON  
[REDACTED]

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 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

2. Army Regulation 601-210 (Regular Army and Army Reserve Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-6 provides a list of RE codes.

- RE code "1" applies to Soldiers completing an initial term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment

- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable – they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. At the time, this regulation prescribed the separation code "JJD" as the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, as a result of court-martial. Additionally, the SPD/RE Eligibility Code Cross Reference Table established RE code "3" or "4" as the proper reentry codes to assign to Soldiers separated under this authority and for this reason.

4. Army Regulation 635-200 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, USC, 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. On 5 February 2021, the Secretary of Defense directed unit commanders and supervisors at all levels to conduct a leadership "stand down" within 60 days to address the issues of extremist ideology in the ranks. The Secretary directed commanding officers and supervisors at all levels to conduct a one-day "stand-down" on this issue

with their personnel. Leaders had the discretion to tailor discussions with their personnel as appropriate, but such discussions should include the importance of our oath of office; a description of impermissible behaviors; and procedures for reporting suspected, or actual, extremist behaviors in accordance with DoD Instruction 1325.06.

7. 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//