

(2) The court sentenced the applicant to a dishonorable discharge, 90-months' confinement (i.e., 7 years and 6 months), forfeiture of all pay and allowances, and reduction to private (PV1/E-1). The court immediately remanded the applicant to confinement, and, on 14 September 2020, orders reassigned him to the U.S. Army Personnel Control Facility (PCF) at Fort Sill, OK, with confinement at the Midwest Joint Regional Correctional Facility at Fort Leavenworth, KS; he arrived, on or about 24 September 2020.

(3) On 11 December 2020, the general court-martial convening authority approved the applicant's sentence and, except for the dishonorable discharge, directed its execution. On 14 December 2020, the military judge in the applicant's case entered the court's judgment into the Record of Trial, in accordance with the Rules for Courts-Martial, Post-Trial Procedure, rule number 1111 (Entry of Judgment).

c. On 14 January 2022, the U.S. Army Court of Criminal Appeals affirmed the findings of guilty and the sentence in the applicant's case; on 27 April 2022, the U.S. Court of Appeals for the Armed Forces denied the applicant's petition.

d. On 12 May 2022, the U.S. Army Court of Criminal Appeals advised the PCF, via memorandum, that the applicant's appellate review process was complete, and directed the supporting personnel office to prepare the applicant's final discharge order and separation certificate.

e. On 25 May 2022, the Army dishonorably discharged the applicant. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 3 years and 14 weeks of his 3-year, 22-week enlistment contract, with lost time from 20200717 through 20220525 (678 days). The report additionally reflected the following:

- Item 4a (Grade, Rate, or Rank) – PV1/E-1
- Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – National Defense Service Medal, Global War on Terrorism Service Medal, Army Service Ribbon, Overseas Service Ribbon
- Item 25 (Separation Authority) – Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations)
- Item 26 (Separation Code (SPD)) – "JJD"
- Item 27 (Reentry Code) – RE-4
- Item 28 (Narrative Reason for Separation) – Court-Martial (Other)

f. The applicant remains confined at the U.S. Disciplinary Barracks, Leavenworth, KS; his earliest possible release date is 4 August 2026, and his maximum detention date is 16 January 2028.

3. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. Per Title 10, U.S. Code, section 1552, the ABCMR is not empowered to set aside a conviction. Rather, the law only authorizes the Board 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.

4. The ABCMR does not grant requests for upgraded characters of service solely to make someone eligible for Veterans' benefits; however, in reaching its determination, the Board can consider the applicant's petition, his evidence and assertions, and his service record in accordance with the published equity, injustice, or clemency guidance.

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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence of mitigating factors to overcome the serious misconduct of rape. The applicant provided no character letters of support for the Board to weigh a clemency determination. ABCMR 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.

2. The Board determined the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of his dishonorable discharge to either a bad conduct discharge or a general discharge under honorable conditions. Therefore, the Board denied relief.

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.

5/6/2024

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. Title 10, USC, Section 1552(b), provides that, 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 a Secretary's Department may only extend 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.

2. AR 635-200, currently in effect, prescribes policies and procedures for enlisted administrative separations.

a. Paragraph 3-7b (General Discharge). 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.

b. Paragraph 3-10 (Dishonorable Discharge). A Soldier will be given a dishonorable discharge pursuant only to an approved sentence of a general court-martial. The appellate review must be completed and the affirmed sentence ordered duly executed.

c. Paragraph 3-11 (Bad Conduct Discharge). A Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed and the affirmed sentence ordered duly executed.

d. Chapter 15 (Secretarial Plenary Authority).

(1) Separation under this chapter is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and used when no other provision of this regulation applies.

(2) Separation under this chapter is limited to cases where the Soldier's separation is clearly in the best interest of the Army. Separations under this chapter are effective only if approved in writing by SECARMY or the Secretary's approved designee as announced in updated memoranda.

(3) The service of Soldiers separated under Secretarial plenary authority will be characterized as honorable or under honorable conditions as warranted by their military records. No Soldier will be awarded a character of service under honorable conditions in accordance with this chapter unless the Soldier is notified of the specific factors in his or her service record that warrant such a characterization, using the notification procedure.

3. AR 635-8 (Separation Processing and Documents), currently in effect, provides guidance for the preparation of the DD Form 214. The regulation states the narrative reason for separation is tied to the Soldier's regulatory separation authority; DD Form 214 preparers are to refer to AR 635-5-1 (SPD) for the appropriate entries for items 26 (SPD) and 28 (Narrative Reason for Separation). Concerning reentry codes, AR 601-210 determines reentry eligibility and provides regulatory guidance on reentry codes.

4. AR 635-5-1, currently in effect, shows that Soldiers separated as a result of trial by court-martial were to receive an SPD of "JJD" and have, "Court-Martial (Other)" entered in item 28 of their DD Form 214.

5. AR 601-210 (Regular Army and Reserve Components Enlistment Program), currently in effect, prescribes policies and procedures of Regular Army enlistments.

a. Table 3-1 (U.S. Army Reentry Eligibility Codes).

- RE-1 – Fully qualified for immediate reenlistment
- RE-3 – Not eligible for immediate reenlistment unless waiver consideration is granted
- RE-4 – Not eligible for reenlistment. Nonwaivable disqualification

b. Section II (Nonwaivable Disqualification). Included on the list of nonwaivable disqualifications are persons separated with a dishonorable discharge and those convicted of sexual offenses, to include rape and sexual assault.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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.

//NOTHING FOLLOWS//