

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 23 April 2024

DOCKET NUMBER: AR20230009513

APPLICANT REQUESTS: reconsideration of his previous requests to upgrade his bad conduct discharge.

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

- Reconsideration Request
- Letter of Support
- Record of Proceedings (ROP) for Army Board for Correction of Military Records (ABCMR) Docket Number AR20220009225 with applicant's commentary and ABCMR letter announcing Board results

FACTS:

1. Incorporated herein by reference are military records that were summarized in the previous considerations of the applicant's case by the ABCMR in the following Docket Numbers:

- AR20060000604, on 24 August 2006
- AR20070000915, on 25 July 2007
- AR20130002310, on 26 February 2013
- AR20220009225, on 12 April 2023

2. The applicant states, the Army went out of its way to court-martial him.

a. They went so far as to bring back a discharged Soldier named J\_\_ to testify against him, even though this individual had a "mental condition." Then they tried the applicant for possession of some marijuana that actually belonged to another Soldier named C\_\_ C\_\_; everyone in the unit knew this, as did Captain D\_\_ A\_\_, Sergeant F\_\_, and Lieutenant G\_\_. In effect, although the Army brought J\_\_ back, they did not require C\_\_ C\_\_ to come before the court and acknowledge the marijuana was his.

b. The applicant asks the Board to give him a chance and to do the right thing; he has kids, grandkids, and great-grandkids, and he contends the only thing he did wrong was that he refused to tell on another Soldier. Additionally, he did not "take any mess"

from his superiors, and he was unafraid of rank; he admits he was young and believed he had to defend himself the best way he knew how. "That was the problem I had and some of the ways officers talked to certain people...you call it racist; I call it disrespectful."

c. The applicant adds he has carried the burden of an adverse character of service for over 40 years, and he tried in every way he could to make up for his mistake; he asks, "you don't think that I have suffered enough(?)" He notes he has served his community and has also taken on a job after retiring to serve our Veterans.

d. In support of his request, the applicant submits a letter of support from his Senior Pastor, who affirms the applicant is a great leader within the church who participates in many of the church's various ministries. The applicant consistently displays dedication and is always willing to help others.

e. The applicant additionally provides an annotated copy of the ROP from his last ABCMR case; he has identified statements within the ROP that he contends are wrong or misleading, declaring, "I've been lied to and (lied) on enough by the military. I've only worked at the VA hospital for 16 months, not 22 years." He further highlighted a paragraph under "Board Discussion" where the Board mistakenly identified him as female; the ROP states the Board "executed a comprehensive and standard review...for liberal and clemency determinations requests for upgrade of her characterization of service."

3. The applicant's service records are unavailable for review; however, the ABCMR's prior considerations include copies of his special court-martial order, the U.S. Army Court of Military Review opinion, and his DD Form 214 (Certificate of Release or Discharge from Active Duty). With these documents, the Board can address the applicant's request.

4. The available service records show the following:

a. On 17 July 1979, the applicant enlisted into the Regular Army; he was 18 years old. Following the completion of initial entry training, the award of military occupational specialty 11B (Infantryman), and an overseas assignment, permanent change of station orders transferred him to an infantry battalion at Fort Stewart, GA. He arrived at his new unit in early 1981.

b. On 23 March 1982, a special court-martial empowered to adjudge a bad conduct discharge convicted the applicant for violating the Uniform Code of Military Justice (UCMJ).

(1) The applicant's command charged him under Article 134 (General Article – Drugs, Marijuana, wrongful possession, Sale, Transfer, or Introduction into a Military Base): one specification for wrongful sale of marijuana, and two specifications for wrongful possession. The applicant pleaded not guilty to all specifications.

(2) The court found the applicant guilty of selling and possessing marijuana, on 4 September 1981, but not guilty of possessing marijuana, on 3 November 1981. The military judge sentenced the applicant to 75-days' confinement, a forfeiture of \$200 per month for 3 months, reduction from specialist four (SP4)/E-4 to private (PV1)/E-1, and a bad conduct discharge.

c. On 26 May 1982, the special court-martial convening authority (SPCMA) approved the applicant's sentence and, except for the bad conduct discharge, ordered its execution; the SPCMA additionally noted the applicant had already completed the confinement portion of the sentence and would remain in the command until the completion of the appellate process.

d. On 22 July 1982, the U.S. Army Court of Military Review affirmed the findings and sentence in the applicant's case; on 1 October 1982, the Army separated the applicant with a bad conduct discharge.

(1) His DD Form 214 lists the regulatory separation authority as chapter 11 (Dishonorable and Bad Conduct Discharge), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel); additionally, it shows the Separation Code as JJD (As a Result of Court-Martial) and identifies three Reenlistment Codes: 3/3B/3C.

(2) He completed 3 years and 12 days of net creditable active duty service, with lost time from 19820323 through 19820524 (63 days). Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) lists the Army Service Ribbon, Overseas Service Ribbon, and a marksmanship qualification badge.

e. On 29 December 2005, the applicant petitioned the ABCMR, requesting an upgraded character of service.

(1) The applicant argued that, during trial, the military judge had told the prosecutor and the applicant's counsel that if he had to change the trial date again, he would move to dismiss the case. The applicant pointed those comments out to his counsel, but the counsel did nothing in response. At the conclusion of the trial, the applicant's counsel went over and shook the hand of a lieutenant in the applicant's company, and they talked about celebrating with some champagne.

(2) On 24 August 2006, the Board voted to deny relief, noting the gravity of the applicant's offenses warranted trial by court-martial, and the applicant's service record made it clear he did not meet the criteria for a general or an honorable discharge.

f. In January 2007, the applicant filed for the Board to reconsider its decision.

(1) He noted the ROP had contained errors; he acknowledged that we all make mistakes and, as such, questioned why the Board was holding his mistakes against him. He maintained, "You all do this all the time for white people (yes, I said it), (so) why not others?" He went on that state that he had not wanted to raise the "color card," but he simply wanted to be treated fairly.

(2) on 25 July 2007, the ABCMR administratively closed the applicant's request, stating that, although he had sent his request within the 1-year time limit for reconsiderations, he had offered no new evidence.

g. On or about 3 January 2012, the applicant resubmitted his request for a reconsideration.

(1) The applicant reiterated his claim that the judge had said he would declare a mistrial if there were further delays, but when the trial date actually changed, the judge failed to dismiss the case. Despite the applicant reminding his counsel of what the judge had said, his counsel did nothing about it. The applicant also repeated his assertion that a lieutenant from the company had come up to the applicant's counsel at the end of the trial and praised the applicant's counsel for doing a "good job," stating that "they were going to drink a bottle of wine together that night."

(2) Based on the foregoing, the applicant maintained, in effect, that his lawyer had not adequately defended him. He stated, "Check my records (since) leaving the Army and you will see I'm not a screw up. All I'm asking for is a fair chance." The applicant continued by recounting how, at one point and apparently during training, someone had punched him in the chest, kicked him in the rear, and, in 103 degree temperatures, made him lie on his back with his hand and feet in the air, declaring, "I'm a dying cockroach." Despite this mistreatment, he still did what he was told to do; he again asked the Board to "do the right thing."

(3) On 26 February 2013, the Army Review Boards Agency (ARBA) administratively closed the applicant's petition, stating:

(a) "The ABCMR records show that you have previously requested reconsideration of ABCMR Docket Number AR20060000604. Records show your previous request for reconsideration was acted upon in ABCMR Docket Number AR20070000915 on July 25, 2007." (The Board had not addressed the applicant's

request for reconsideration in AR20070000915; the application was administratively closed due to a lack of new evidence).

(b) ARBA continued, "This decision on the request for reconsideration was the final administrative action taken by the Secretary of the Army. There is no further action will be contemplated by the ABCMR since you are not eligible for further reconsideration by this Board."

h. On 12 May 2022, the applicant refiled his request for reconsideration.

(1) The applicant contended both his commander and counsel knew that the marijuana found in his car was not his; he had loaned his car earlier to Private (PVT) C\_\_ C\_\_, and PVT C\_\_ was the one who put the marijuana there. The military police later came to his room and apprehended the applicant. He suggested the Board review the court records, and he identified the court-martial's case number.

(a) The applicant continued, stating his counsel, not the applicant, had pleaded guilty, and he told the applicant he would "take care of everything...don't worry"; the applicant was young and knew nothing about defending himself in a courtroom. The applicant stated, at the end of the trial, his counsel left the courtroom and "high-fived" the lieutenant, with the lieutenant then proclaiming that "drinks were (on) him." This was the same lieutenant with whom he had had some words in the past, the result of the lieutenant's efforts to bully him; the applicant acknowledged he respected the rank, but he did not respect the lieutenant's racist attitude.

(b) The applicant concluded by stating he had his faith, his family, and his health, and that he had retired after working for 22 years and was now working at a VA hospital. In addition, he was married and served as an usher at this church. In effect, he just wanted the Board to treated him equitably.

(c) In support of his request, the applicant provided a VA letter, which stated the VA's determination that the applicant's military service as "dishonorable for VA purposes."

(2) On 12 April 2023, the Board denied the applicant's request, stating, " After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted." "Upon review of the applicant's petition and available military record, the Board determined there was insufficient evidence of in-service mitigating factors to overcome the misconduct."

5. 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.

BOARD DISCUSSION:

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 DoD guidance for liberal consideration of discharge upgrade requests. The applicant was convicted by a court-martial of violating the UCMJ (possession and sale of marijuana) and sentenced to a bad conduct discharge. The applicant's trial by a court-martial was warranted by the gravity of the offenses charged (possession and sale of marijuana). His conviction and discharge were conducted in accordance with applicable laws and regulations and the discharge appropriately characterizes the misconduct for which he was convicted. He 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. The Board found no error or injustice in the separation processing. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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 to amend the decision of the ABCMR set forth in Dockets Number:

- AR20060000604, on 24 August 2006
- AR20070000915, on 25 July 2007
- AR20130002310, on 26 February 2013
- AR20220009225, on 12 April 2023

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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, in effect at the time, prescribed policies and procedures for enlisted administrative separations.

a. Paragraph 1-13a (Honorable Discharge) stated an honorable discharge was a separation with honor. The honorable characterization was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and duty performance.

b. Paragraph 1-13b (General Discharge). A general discharge was a separation under honorable conditions and applied to those Soldiers whose military record was satisfactory, but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 5 (Separation for Convenience of the Government), Section II (Secretarial Authority). The separation of enlisted personnel for the convenience of the Government is the prerogative of the Secretary of the Army and will be accomplished only by his/her authority. Except as delegated by this regulation or by special Department of the Army directives, the separation of any enlisted member of the Army for the convenience of the Government will be at the Secretary's discretion with issuance of an honorable or under honorable conditions character of service as determined by him/her.

d. Paragraph 11-2 (DD Form 259A (Bad Conduct Discharge)). A member was to be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial, following the completion of appellate review and after such affirmed sentence had been ordered duly executed.

2. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in item 28 (Narrative Reason for Separation).



4. AR 635-5-1, in effect at the time, stated Soldiers separated as a result of trial by court-martial were to receive an SPD of "JJD" and have, "As a Result of Court-Martial, Other" entered in item 28 of their DD Form 214.

5. AR 601-280 (Army Reenlistment Program), in effect at the time, prescribed policies and procedures for the reenlistment of current and former Soldiers.

a. Paragraph 2-22f (Waivable Disqualification – Summary, Special, or General Courts-Martial) stated Personnel with a conviction of one or more summary, special or general courts-martial must obtain waiver from the Commanding General, U.S. Army Military Personnel Center (MILPERCEN).

b. Appendix D (Reenlistment Eligibility (RE) Codes) showed the following:

- RE-1 – Fully qualified for immediate reenlistment
- RE-3 – Not eligible for immediate reenlistment unless waiver consideration is permissible and is granted
- RE-3B – Not eligible for reenlistment unless waiver consideration is permissible and is granted; this code is applicable only to persons who have time lost during their last period of service
- RE-3C – Not eligible for reenlistment unless waiver consideration is permissible and is granted; this code is applicable only to persons who do not meet the grade requirement in basic eligibility criteria
- RE-4 – Not eligible for reenlistment. Nonwaivable disqualification

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//