

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 April 2024

DOCKET NUMBER: AR20230010402

APPLICANT REQUESTS: an upgrade of his bad conduct discharge (BCD), and correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty), to show a different narrative reason for separation, separation code, and reentry eligibility (RE) code.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), with self-authored statement
- DD Form 214, for the period ending 5 May 1994
- Statements of Support, dated 8 November 2022 to 5 December 2022 (22 pages)
- Official Military Personnel File (OMPF), 162 pages, dated 22 March 1983 to 5 May 1994
- Service Treatment Record, 90 pages, dated 2 February 1983 to 5 May 1994

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states he regrets his actions, and he apologizes. He understands the effect his actions had on good order, military discipline, the victim, and the lives of him and his family. He claims full responsibility. He considers himself a true professional who learns from his mistakes. He underwent intense behavioral counseling and has changed his life for the better. One incident does not reflect his life. His prior service record was stellar. He has learned to take the path that demonstrates true leadership. He strives to uphold values, fulfill obligations, and accept responsibility for his actions. He continues to fulfill his responsibilities as a Deacon in the ministry.

3. The applicant enlisted in the Regular Army on 22 March 1983. Upon completion of initial entry training, he was awarded military occupational specialty 11H (Heavy Anti-

Armor Weapons Infantryman). He reenlisted on 24 September 1985 and 21 November 1990. The highest rank he attained was sergeant/E-5.

4. Before a general court-martial, at Camp Casey, Republic of Korea, on 24 April 1992, the applicant pled not guilty to and was found guilty of larceny of several items with a total value of \$601.95 on 11 January 1992. He was sentenced to reduction to private/E-1, confinement for 12 months, and to be discharged from the Army with a BCD. The sentence was approved on 30 July 1992, and except for the portion extending to a BCD, was ordered executed. The record of trial was forwarded for appellate review.

5. On 24 August 1993, the U.S. Army Court of Military Review upheld and affirmed the findings of guilty and the sentence as approved by the convening authority.

6. General Court-Martial Order Number 82, issued by Headquarters, U.S. Army Armor Center, Fort Knox, KY, on 31 March 1994, noted the applicant's sentence was finally affirmed and ordered the BCD duly executed.

7. The applicant was discharged on 5 May 1994, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 3, by reason of court-martial – other. His DD Form 214 confirms his service was characterized as bad conduct, with separation code JJD and RE code RE-4. He was credited with 10 years, 4 months, and 8 days of net active service, with lost time from 25 April 1992 to 31 January 1993. He was awarded or authorized the following:

- Army Commendation Medal
- Army Achievement Medal
- National Defense Service Medal
- Army Service Ribbon
- Army Good Conduct Medal
- Noncommissioned Officer Professional Development Ribbon (2nd award)
- Overseas Service Ribbon
- Expert Infantryman Badge

8. The applicant provides:

a. 22 statements of support, dated between 8 November to 5 December 2022, wherein the authors attest to the applicant's leadership role in the community and as church Deacon. He is a dedicated, loyal family-man, who also serves as a mentor for many young men in the community. He supports the elderly and families in need. He leads by example and is always available to help others, asking nothing in return. He has matured as a man and is a well-respected asset to his community.

b. A copy of his OMPF, containing 162 pages of records which are summarized, in pertinent part, above.

c. A copy of his Service Treatment Record, containing 90 pages of medical documents, dated 2 February 1983 to 5 May 1994.

9. 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.

10. Regulatory guidance provides when an individual is discharged under the provisions of AR 635-200, Chapter 3, the applicable narrative reason is "court-martial - other," with separation code "JJD".

11. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination 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 the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. A majority of the Board found the evidence of the applicant's good post-service conduct within his community sufficient in support of a clemency determination. 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 condition (general).

2. The member in the minority found insufficient evidence of in-service mitigating factors and found the evidence of good post-service behavior insufficient in support of a clemency determination considering the nature of his misconduct. Based on a preponderance of the evidence, the member in the minority determined the character of service the applicant received upon separation was not in error or unjust.

3. The Board unanimously determined the separation and reentry codes associated with the reason for the applicant's discharge are not in error or unjust.

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:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial 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 his character of service as under honorable conditions (general).
2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any relief in excess of that described above.

8/27/2024

X   
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 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 applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. AR 601-210 (Active and Reserve Components 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 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their 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. AR 635-5-1 (Separation Program Designator [SPD] Codes) provides the specific authorities (regulatory or directive), narrative reasons for separating Soldiers from active duty, and the corresponding separation codes to be entered on the DD Form 214. It states that SPD Code "JJD" is the appropriate code to assign to Soldiers separated under the provisions of AR 635-200, Chapter 3, with the narrative reason for separation "court-martial – other."

4. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provided 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.

b. Paragraph 3-7b provided 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.

c. Chapter 3, Section IV provided that a member would be given a BCD pursuant only to an approved sentence of a general 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 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, 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//