

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 May 2024

DOCKET NUMBER: AR20230011312

APPLICANT REQUESTS: an upgrade of his bad conduct discharge (BCD) and a personal appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record), 30 May 2023
- self-authored statement
- character reference, from R.J.S., 14 March 2023
- character reference, from J.G.S., 30 March 2023
- character reference, from J.L.G., 14 April 2023
- character reference, from J.A.G., 13 July 2023

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, in effect, he had one punitive charge in a 28-month period and the rest of his service was honorable in nature. He did receive a letter of reprimand, but he also received the Army Good Conduct Medal.

a. He does take accountability because to do anything less would be inappropriate. It has taken a long time for him to admit this to himself, and it is harder to admit this to the Board who will consider his request for upgrade.

b. He was a young and confused man who did not care what happened to him. At the time of the incident, he was in the darkest space a person could be in, it was his lowest point in life where his self-esteem did not exist. Mental health conditions were not heard of, nor accepted in a 20-year-old Soldier, it was a suck it up and drive on world. Being in a place where he did not care if he lived or died, he began to self-medicate with alcohol and marijuana. This combination led him into making poor choices which

included the company he surrounded himself with and the actions he did while with this company.

c. He has since found ways to deal with his demons, which are still not gone but they are quiet for the most part. He has punished himself by destroying his life dream of being a Soldier. He had feelings of guilt and disappointment and had to forgive himself for his actions. He works daily on being a better human, husband, father, and grandfather, with 3 daughters and 6 grandchildren. He wants his family to be proud of who he has become. He has been employed as an information technology (IT) specialist, and works with the Department of Veterans Affairs, being entrusted in protecting and securing the protected data of those who have served.

d. It has been 20+ years since the infractions that led to his BCD. Of all his titles he has held in life, Veteran is the most important one and he is hopeful the Board will upgrade his discharge, to reflect what the word Veteran means to him. He understands he may never be eligible for an honorable discharge but requests a discharge that does not over-shadow his years of honorable service.

e. The applicant notes other mental health as a condition related to his request.

3. The applicant enlisted in the Army National Guard on 12 July 1988. He was awarded the military occupational specialty (MOS) of 31K (Combat Signaler). He was released from active-duty training (ADT) on 16 September 1988. His DD Form 214 (Certificate of Release or Discharge from Active) confirms he received an uncharacterized character of service with separation code LBK. He served 2 months and 5 days of net active service for this period.

4. The applicant enlisted in the Regular Army on 5 July 1990, for a 4-year period. He subsequently reenlisted on 24 February 1994 for an additional 4-year period. The highest rank he attained was specialist/E-4.

5. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on or about 2 October 1991 for failing to go to his prescribed place of duty on or about 17 August 1991 due to the result of wrongful overindulgence in intoxicating liquor or drugs, which incapacitated him for the proper performance of his duties. His punishment imposed was reduction to the grade of E-1, forfeiture of \$376.00 pay for one month, and extra duty and restriction for 45 days.

6. Before a special court-martial adjudged on 30 September 1994, at Fort Carson, Colorado, the applicant pled guilty to and was found guilty of two specifications of wrongful distribution of marijuana on or about 25 March 1994 and one specification of willfully and wrongfully damaging private property of a value in excess of \$100.00, on or

about 18 July 1994. He was sentenced to a BCD, confinement for 6 months, fined a payment of \$900.00, and reduction to the grade of E-1.

7. The sentence was approved on 1 December 1994, except for the part of the sentence extending to a BCD. The record of trial was forwarded to the U.S. Army Court of Review for appellate review.

8. On 14 March 1995 the U.S. Army Court of Criminal Appeals determined the findings of guilty and the sentence were correct in law and fact. The findings of guilty and the sentence were affirmed.

9. Special Court-Martial Order Number 32, Headquarters, U.S. Army Field Artillery Center and Fort Sill, Fort Sill, Oklahoma on 21 July 1995, shows the sentence was finally affirmed, the provisions of Article 71(c) had been complied with, and the sentence of BCD was ordered to be executed. Additionally stating, the part of the sentence extending to confinement had been served.

10. The applicant was discharged on 13 September 1995, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 3, by reason of court-martial, in the rank of private/E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his service was characterized as bad conduct with separation code JJD and reentry code 4. He was credited with 4 years, 9 months, and 19 days of net active service with lost time from 30 September 1994 to 16 February 1995. He was awarded or authorized the following:

- Army Good Conduct Medal
- National Defense Service Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Expert Marksmanship Qualification Badge with Grenade Bar
- Marksman Marksmanship Qualification Badge with Rifle Bar

11. The applicant provides 4-character reference letters which summarize the applicant as highly knowledgeable in the IT field, trustworthy, mission focused, with superior worth ethic, customer service, and attention to detail. He is reliable, professional, and always shows respect. He has received multiple accolades throughout his IT career, he is dedicated in his career field, and they were honored to write letters on the applicant's behalf and praised the person he is.

12. The applicant applied to the Army Discharge Review Board (ADRB) for upgrade of his character and/or reason of discharge. The ADRB reviewed his application, military records, and all other available evidence and they determined he was properly and equitably discharged and denied his request.

13. 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.

14. Regulatory guidance provides a Soldier will receive a BCD 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.

15. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

16. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his bad conduct discharge (BCD). On his DD Form 149, the applicant notes other mental health (OMH) issues as related to his request.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- Applicant enlisted in the RA on 5 July 1990 and reenlisted on 24 February 1994.
- Applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on or about 2 October 1991 for failing to go to his prescribed place of duty on or about 17 August 1991 due to the result of wrongful overindulgence in intoxicating liquor or drugs, which incapacitated him for the proper performance of his duties.
- Before a special court-martial adjudged on 30 September 1994, at Fort Carson, Colorado, the applicant pled guilty to and was found guilty of two specifications of wrongful distribution of marijuana on or about 25 March 1994 and one specification of willfully and wrongfully damaging private property of a value in excess of \$100.00, on or about 18 July 1994. He was sentenced to a BCD, confinement for 6 months, fined a payment of \$900.00, and reduction to the grade of E-1.
- Applicant was discharged on 13 September 1995, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 3, by reason of court-martial, in the rank of private/E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his service was characterized as bad conduct with separation code JJD and reentry code 4.

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, DD Form 214, self-authored statement, character reference letters, his ABCMR Record of Proceedings (ROP), and documents from his service record and separation packet. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant states he had one punitive charge in a 28-month period and the rest of his service was honorable in nature. He did receive a letter of reprimand, but he also received the Army Good Conduct Medal. He was a young and confused man who did not care what happened to him. At the time of the incident, he was in the darkest space a person could be in, it was his lowest point in life where his self-esteem did not exist. Mental health conditions were not heard of, nor accepted in a 20-year-old Soldier, it was a suck it up and drive on world. Being in a place where he did not care if he lived or died, he began to self-medicate with alcohol and marijuana. This combination led him into making poor choices which included the company he surrounded himself with and the actions he did while with this company. He has since found ways to deal with his demons, which are still not gone but they are quiet for the most part. He has punished himself by destroying his life dream of being a Soldier. He had feelings of guilt and disappointment and had to forgive himself for his actions. He works daily on being a better human, husband, father, and grandfather, with 3 daughters and 6 grandchildren. He wants his family to be proud of who he has become. He has been employed as an information technology (IT) specialist, and works with the Department of Veterans Affairs, being entrusted in protecting and securing the protected data of those who have served. It has been 20+ years since the infractions that led to his BCD. Of all his titles he has held in life, Veteran is the most important one and he is hopeful the Board will upgrade his discharge, to reflect what the word Veteran means to him. He understands he may never be eligible for an honorable discharge but requests a discharge that does not over-shadow his years of honorable service.

e. Due to the period of service, no active-duty electronic medical records were available for review. No VA electronic medical records were available for review and the applicant is not service connected for any BH condition. The applicant has not provided any medical documentation indicating he engaged in any behavioral health care services or has been diagnosed with a BH condition.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition/diagnosis during his time in military service. However, regardless of diagnosis, the applicant's misconduct is unlikely to be mitigated by a BH condition.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant self-asserts OMH.

(2) Did the condition exist or experience occur during military service? No. The applicant provided no medical documentation substantiating his contention.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant did not provide any medical documentation evidencing a BH condition or diagnosis. However, regardless of diagnosis, the record indicates the applicant was discharged for two specifications of wrongful distribution of marijuana. This misconduct is not part of the natural history or sequelae of any behavioral health condition. And, even if OMH symptoms were present at the time of his misconduct, they do not affect one's ability to distinguish right from wrong and act in accordance with the right.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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, available military records and the medical review, the Board concurred with the advising official finding insufficient evidence to support the applicant had a behavioral health condition/diagnosis during his time in military service.

2. The Board commends the applicant on his post service accomplishments and his untiring commitment to assisting veterans in his role as an IT specialist and recognizes the numerous character letters of support attesting to his character, integrity, commitment to his community and work ethic as a key asset to the Department of Veteran affairs. However, 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. Under liberal consideration, the Board noted his periods of honorable service, however despite his post service achievements, they did not mitigate his misconduct for drugs.

3.. During deliberation the Board noted the applicant completed a period of initial ADT. Evidence shows he was awarded a MOS at the completion of training and was transferred back to the Army National Guard. Regulatory guidance AR 635-200 provides that when a Reserve Component Soldier successfully completes initial ADT, the characterization of service is Honorable unless directed otherwise by the separation authority. Based on this, the Board granted partial relief to correct the applicant's DD Form 214 to show his characterization of service as honorable for the period ending 16 September 1988.

4. The applicant's request for a personal appearance hearing 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 hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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 re-issuing the applicant's DD Form 214 for the period ending 16 September 1988 to show his characterization of service as honorable.

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 an upgrade of his bad conduct discharge (BCD)



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.

ADMINISTRATIVE NOTE(S): N/A

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. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office

recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. AR 15-185 (ABCMR), the regulation governing this Board, states applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

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 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

7. 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//