

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 June 2024

DOCKET NUMBER: AR20230012514

APPLICANT REQUESTS: reconsideration of a previous request to upgrade his bad conduct discharge (BCD) to a more favorable one.

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)
- Army Board for Correction of Military Records (ABCMR) Docket Number AC98-06609, dated 1 April 1998

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 AC98-06609 on 1 April 1998.
2. The applicant states it has been 20 years since he tried to upgrade his discharge. Since he is now a deacon in his church and a grandfather of three children, a fellow veteran and church member informed him that he can resubmit his request.
3. The applicant is authorized an additional award and foreign service credit not currently listed on his DD Form 214. These changes will be administratively corrected in the "Administrative Notes" section of this document without the need for Board action.
4. The applicant's service record reflects the following:
  - a. DD Form 4 (Enlistment/Reenlistment Document-Armed Forces of The United States) shows he enlisted in the Regular Army on 3 October 1984 for, followed by two reenlistments on 29 October 1987 and 9 May 1991
  - b. DA Form 2-1 (Personnel Qualification Record) shows in item 5 (Overseas Service) he served in Korea from 20 June 1989 to 15 June 1990 and completed his 12 month tour.

c. DA Forms 4187 (Personnel Action Form) reflect the following actions:

- On 20 February 1992, he was reduced in grade from sergeant E-5 (SGT) to specialist (SPC)/E-4
- On 4 May 1992, he was reduced in grade from SPC/E-4 to private E-1 (PVT)
- On 27 October 1992, his duty status changed from present for duty (PDY) to absent without leave (AWOL)
- On 6 November 1992, his duty status changed from AWOL to PDY

d. DA Form 4430-R (Department of the Army Report of Result of Trial) shows he was tried by general court-martial on 20 January 1993 at Fort Bliss, TX. He was sentenced to forfeit all pay and allowances, to be confined for six months and to be discharged with a BCD. Plea and finding of charge II, specification 2 were by exceptions and substitutions, and to the lesser included offence of wrongful appropriation of private property. He pled guilty and was found guilty of all charges, as follows:

- Charge I: Violation of the UCMJ, Article 108, two specifications of wrongful sale of government property
- Charge II: Violation of the UCMJ, Article 121, one specification of larceny of government property and one specification of larceny of private property

e. General Court-Martial Order Number 7, dated 25 February 1993 reflects the sentence was approved and except for the part of the sentence extending to a BCD, will be executed.

f. DA Form 4187 reflects the following change in the applicant's duty status on 25 July 1993, from AWOL to PDY. This document further states that he was AWOL from 14 June 1993 to 25 July 1993.

g. General court-martial order number 26, dated 10 November 1993 shows the applicant's sentence to a BCD, forfeit all pay and allowances and confinement of six months, that was adjudicated on 20 January 1993, as promulgated in General court-martial order number 7, has been finally affirmed. Article 71(c) having been complied with; the BCD will be executed.

h. His DD Form 214 shows he was discharged from active duty on 13 April 1995 pursuant to Army Regulation 635-200 (Personnel Separations Enlisted Personnel), Chapter 3, Section IV. His DD Form 214 shows he was discharged with a BCD, due to a Court-Martial, Other. He received a separation code of "JJD" (as a result of court-martial, other) and a reentry code of "4". He completed 9 years, 11 months, and 27 days of net active service and was awarded the Army Achievement Medal (AAM) 2nd award

and the Army Good Conduct Medal (AGCM) 2nd award during this period. This document also provides dates of time lost during this period:

- 27 October 1992 to 5 November 1993
- 20 January 1993 to 13 June 1993
- 14 June 1993 to 24 July 1993

5. The applicant's DD Form 214, item 18 will be administratively amended in the "Administrative Notes" section to his document to add "continuous honorable service"

6. In a prior ABCMR Docket Number AC98-06609, dated 1 April 1998, after reviewing the application and all supporting documents, the Board denied the applicant's request for a re-characterization of service. The Board found that the reason for his discharge and the characterization were both proper and equitable.

#### BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. Discharge Upgrade: Deny. The applicant's trial by a court-martial was warranted by the gravity of the offenses charged (wrongful sale of government property, larceny of government property and private property). 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.

b. Continuous Honorable Service: Grant. The Board noted that the applicant's service from first date of enlistment to the date before his last reenlistment was honorable. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, in addition to listing immediate reenlistment(s), an entry is required for continuous honorable service from first day of service for which DD Form 214 was not issued until date before commencement of current enlistment.

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 partial amendment of the ABCMR's decision in Docket Number AC98-06609 on 1 April 1998. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by adding the following additional statement to block 18 (Remarks) of his DD Form 214 ending on 13 April 1995:

- item 13 (Awards): Korea Defense Service Medal (KDSM)
- item 18 (cont.): "Continuous Honorable Active Service from 3 October 1984 to 8 May 1991"
- item 18 (con.): Member Completed First Term of Service

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 upgrading the characterization of his discharge.

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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. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

2. Army Regulation AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, MSO, or period for which called or ordered to active duty.

c. A discharge under other than honorable conditions is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

d. Chapter 3, Section IV provides that a Soldier will be given 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. Questions concerning the finality of appellate review should be referred to the servicing staff judge advocate.

3. Army Regulation 635-8 (Separation Processing and Documents). The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of REFRAD, retirement, or discharge. The DD Form 214 is not intended to have any legal effect on termination of a Soldier's service.

a. Enter list of reenlistment periods for which a DD Form 214 was not issued,

Soldiers who have previously reenlisted without being issued a DD Form 214 and who are being separated with any characterization of service except "Honorable," the following statement will appear as the first entry in block 18, "Continuous Honorable Active Service From (first day of service for which a DD Form was not issued, until (date before commencement of current enlistment.

b. Enter the total amount of foreign service completed during the period covered in block 18. Obtain the foreign service listed in Sec 1, DA Form 4037 (ORB) for officers or Item 5, DA Form 2-1 for enlisted soldiers to compute this entry.

4. Army Regulation 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-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

5. Army Regulation 635-5-1 (Separation Program Designator Codes) states that the Separation Program Designator (SPD) codes are three-character alphabetic combinations which identify reasons for, and types of, separation from active duty. SPD code "JJD" is the appropriate code to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200, Chapter 3, based on Court Martial.

6. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

7. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health

conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

8. 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/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. 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 based on 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. 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.

9. Title 10, U.S. Code, section 1552, the authority under which this Board acts, provides that 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 modify the severity of the punishment imposed.

//NOTHING FOLLOWS//