

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 June 2024

DOCKET NUMBER: AR20230012828

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his bad conduct character of service to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 15 December 1988
- letter, Internal Revenue Service (IRS), dated 18 September 2009
- Business Certificate, American Maintenance Company, 18 September 2009
- business card, letterhead, and advertisement, American Maintenance Company, undated
- Social Security card, undated
- Identification Card, New York State, issued on 9 November 2009
- letter, City of New York Fire Department, dated 11 December 2009
- three Certificates of Completion, Fire Safety Director Course, dated 26 August 2011 to 18 October 2012
- five Certificates of Training, dated 6 May 2013 to 6 April 2019
- letter, Radiant Training and Consulting, LLC, dated 26 September 2018
- letter, Alliance Protective Group, dated 1 October 2018
- letter, City of New York Fire Department, dated 17 May 2019
- Acting/Modeling Experience
- Resume

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 AC92-09924 on 24 February 1993.

2. The applicant states he was wrongfully discharged for doing what the Army told him to do. He was just following orders. He was told his character of service would be automatically upgraded in a couple of years.

3. The applicant enlisted in the Regular Army on 2 April 1986 for a 2-year period. Upon completion of initial entry training, he was awarded military occupational specialty 13F (Fire Support Specialist). The highest rank he attained was specialist/E-4.
4. Before a general court-martial on 6 January 1988, at Fort Ord, CA, contrary to his plea of not guilty, the applicant was found guilty of wrongfully distributing .315 grams of cocaine, on or about 2 September 1987. His sentence consisted of reduction to the lowest enlisted grade, forfeiture of all pay and allowances, confinement for 10 months, and to be discharged from the service with a bad conduct discharge (BCD).
5. The record of trial was forwarded to the U.S. Army Court of Military Review for appellate review. The findings of guilty and the sentence were affirmed on 27 June 1988.
6. The applicant underwent a mental status evaluation on 30 June 1988. The examining provider determined the applicant was mentally responsible and had the mental capacity to understand and participate in proceedings.
7. On that same date, the applicant signed a statement of option regarding the election of a pre-separation medical examination. However, there is no indication of his election. His medical records were reviewed, and the reviewing authority determined a further medical examination was not required.
8. General Court-Martial Order Number 823, issued by the U.S. Army Correctional Activity, Fort Riley, KS, dated 5 December 1988, noted that the applicant's sentence to a BCD, forfeiture of all pay and allowances, confinement for 10 months, and reduction to the lowest enlisted grade, was finally affirmed. The portion of the sentence extending to confinement was served, and the BCD was ordered executed.
9. The applicant was discharged on 15 December 1988, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 3, as a result of court-martial, in the rank/grade of private/E-1. His DD Form 214 confirms his service was characterized as bad conduct, with separation code JJD and reentry code RE-4. He was credited with 1 year, 11 months, and 26 days of net active service, with lost time from 6 January 1988 to 1 April 1988 and 2 April 1988 to 19 September 1988.
10. The ABCMR reviewed his request for an upgrade of his BCD on 24 February 1993. After careful consideration, the Board determined the applicant failed to submit sufficient evidence to demonstrate the existence of probable error or injustice. The Board denied his request for relief.
11. As new evidence, the applicant provides the following:

a. A letter from the IRS and business certificate, dated 18 September 2009, and an undated business card, letterhead, and advertisement show the applicant established a business named the American Maintenance Company.

b. An undated Social Security card and New York State Identification card, issued on 9 November 2009, presumably belonging to the applicant.

c. A letter from the City of New York Fire Department, dated 11 December 2009, three Certificates of Completion, dated 26 August 2011 to 18 October 2012, five Certificates of Training, dated 6 May 2013 to 6 April 2019, and three additional letters, dated 26 September 2018 to 17 May 2019, show the applicant's training, certification, and employment as a Fire Safety Director.

d. A resume and list of his acting/modeling experience further highlight his post-service accomplishments.

12. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code (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.

13. The Board should consider the applicant's requests, in accordance with the published equity, injustice, or clemency determination guidance.

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's trial by a court-martial was warranted by the gravity of the offenses charged (drug distribution). 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 evidence of post-service achievements or letters of reference in support of a clemency

determination; however, the Board determined such evidence did not outweigh his serious misconduct. Therefore, the 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:

<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:

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 Docket Number AC92-09924 on 24 February 1993.

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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 635-200 set forth the basic authority for the separation of enlisted personnel:

a. Paragraph 3-7a provides 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 provides 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. Paragraph 3, Section IV of the version in effect at the time provided that a Soldier would be given a BCD pursuant only to an approved sentence of a general or special court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed.

2. 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.

3. 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, Boards 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//