

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 September 2024

DOCKET NUMBER: AR20230013874

APPLICANT REQUESTS: reconsideration of his previous request for:

- an upgrade of his bad conduct discharge
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record), 16 November 2023
- Honorable Discharge Certificate (Another Soldier), 26 January 1946
- Six Certificates of Training and Achievement
- Bachelor of Science (BS) Diploma, 18 December 2004
- Notary Public Certificate, 12 December 2022
- Character letter, WTII, 26 Oct 2023

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 AR20090003188 on 25 August 2009.

2. The applicant states he is requesting an upgrade of his discharge. As a new argument, the applicant states during his service he received two Red Cross emergency messages that two family members passed away. He was experiencing hardship, grief, and suffering from mental anguish at that time. He marked other mental health on his DD Form 149, as a condition related to his request.

3. The applicant provides:

a. Six certificates of training and achievement showing he completed:

- Staff Orientation Workbook and Examination, 2 March 1998
- Debt Collection Orientation Training, 30 August 2002
- Private Security Officer Training, 10 March 2013
- Community Alternatives Medication Assistance Training, 20 August 1998

- Intermediate Student Workshop (Mandt System), 31 January 2001
- Tractor Trailer Driving Certificate, 6 April 2001

b. A BS diploma shows the applicant completed his degree on 18 December 2004.

c. A Notary Public certificate shows the applicant was qualified to serve as notary through 30 September 2026.

d. A character reference letter from the neighbor's son, Mr. WT II, which states the applicant was a neighbor of his father's, a war Veteran. He was very helpful with daily tasks such as maintenance of the home and assisting with medications for his father. He spoke highly of the applicant and noted he has been an asset in the community and a great neighbor.

4. A review of the applicant's service records shows:

a. On 10 September 1993, he enlisted in the Regular Army for 3 years. He was awarded military occupational specialty 92G (Food Service Specialist). He attained the grade/pay grade private first class (PFC)/E-3.

b. On 21 November 1995, his status was changed from present for duty to confined by military authorities.

c. On 21 November 1995, he was convicted by a general court-martial of the below listed offense. His sentence included reduction to the grade of private (E-1), forfeiture of \$600.00 pay per month for 11 months, and a bad conduct discharge.

(1) Charge I: (dismissed);

(2) Charge II: Article 121; Specification 1, Specification 2, Specification 3, and Specification 4: each of which, larceny of \$150.00 of checks on or between 1 April 1995 and 31 May 1995; plea: guilty; finding: guilty;

(3) Charge III: Article 123; Specification 1, Specification 2, Specification 3, and Specification 4: each of which, forgery of \$150.00 of checks on or between 1 April 1995 and 31 May 1995; plea to Specifications 1 through 3: plea: guilty; finding: guilty; Specification 4: plea: not guilty; finding: guilty;

(4) Charge IV: Article 134; Speciation 1: false swearing on 23 May 1995; plea: not guilty; finding: guilty; Specification 2: false swearing on 1 June 1995; plea: guilty; finding: guilty;

(5) Additional Charge, Charge I: Article 107; Specification: false statement on or about 21 August 1995; plea: guilty; finding: guilty;

(6) Additional Charge, Charge II: Article 121; Specification 1: wrongful appropriation of a U.S. Armed Forces identification card; plea: guilty; finding: guilty; Specification 2: larceny of AFEES property of a value of more than \$100.00 on or about 5 May 1995; plea: guilty; finding: guilty;

(7) Additional Charge, Charge III: Article 123; Specification: forgery of a signature on an AAFES DPP document on or about 5 May 1995; plea: guilty; finding: guilty.

d. On 16 January 1996, the convening authority approved so much of the sentence as provides for reduction to the grade of E1; forfeiture of \$600.00 pay per month for 11 months; and except for the bad conduct discharge, ordered it executed. The record of trial was forwarded to the Judge Advocate General of the Army for appellate review.

e. General Court-Martial Order Number 81 dated 22 May 1997, after Article 71(c) was complied with and the sentence was affirmed, ordered the bad conduct discharge executed.

f. On 16 July 1997, he was discharged from active duty with a bad conduct characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged in accordance with chapter 3 of Army Regulation 635-200 (Personnel Separations). He completed 3 years, 1 month, and 2 days of active service with 330 days of lost time. He was assigned separation code JJD and the narrative reason for separation listed as "Court-Martial, Other," with reentry code 4. It also shows he was awarded or authorized:

- National Defense Service Medal
- Army Service Ribbon
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)

5. On 25 August 2009, the ABCMR rendered a decision in Docket Number AR20090003118. The Board found the applicant was convicted by a general court-martial of four specifications of larceny, three specifications of forgery, and two specifications of false swearing. He was also found guilty of additional charges of making a false official statement, wrongful appropriation of a U.S. Armed Forces identification card, larceny, and forgery. Based on the seriousness of the misconduct for which the applicant was convicted, his service clearly did not meet the standards of acceptable conduct and performance of duty for Army personnel. Therefore, there was no basis for granting the applicant's requested relief.

6. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

7. By regulation (AR 635-200), a member will be given a bad conduct discharge 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.

8. In reaching its determination, the Board can consider the applicant's petition and her service record in accordance with the published equity, injustice, or clemency determination guidance.

9. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant applying to the ABCMR requesting an upgrade of his 16 July 1997 bad conduct discharge (BCD). On his Dd 149, he has indicated that Other Mental Health conditions is an issue related to his request. He states:

“During the time of my service, I received two Red Cross emergency messages informing me that I lost two family members to premature death. I was experiencing hardship and bereavement and suffering from mental anguish at that time.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the Regular Army on 10 September 1993 and was discharged on 16 July 1997 under the separation authority provided by Section IV chapter 3 of AR 635-200, Personnel Separations – Enlisted Personnel (26 June 1996): Dishonorable and Bad Conduct Discharge. The separation code JJD denotes “Court Martial (Other).”

d. General Court-Martial Order number 5, dated 16 February 1996, shows the applicant pled guilty to and was found guilty of multiple specifications of both larceny and forgery, as well as false swearing, forgery, and making a false official statement.

e. No medical documentation was submitted with the application and there are no encounters or diagnoses in the EMR. JLV shows he is not registered with the VA.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? The applicant asserts he had a mental health condition.

(2) Did the condition exist or experience occur during military service? The applicant asserts he had a mental health condition while in the Army

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant has submitted no medical documentation indicating a diagnosis of PTSD and/or other mental health conditions. Review of the EMR and VA medical records indicates that the applicant has not been diagnosed with either a service connected or nonservice connected BH condition.

g. In the event the applicant was to have a potentially mitigating diagnosis, it could not mitigate the numerous UCMJ violation of which he was convicted as these conditions do not adversely affect one's abilities to differentiate right from wrong and adhere to the right.

BOARD DISCUSSION:

1. The Board determined 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.

2. 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.

a. The evidence shows the applicant was convicted by a court-martial that sentenced him to a bad conduct discharge. The applicant's trial by a court-martial was warranted by the gravity of the offenses charged (forgery, larceny, false swearing, wrongful appropriation, and other violations). The applicant's 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 his separation processing.

b. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding insufficient evidence to support that the applicant had a mental health condition while on active service. Also, the applicant provided some evidence of post-service achievements or letters of reference in support of a clemency determination (6 certificates of training/achievement, Bachelor of Science (BS) Diploma, Notary Public Certificate, and character letter); however, the Board determined his submission does not outweigh the serious misconduct he committed and led to his conviction and ultimate discharge. Based on a preponderance of available 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 Docket Number AR20090003188 on 25 August 2009.

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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 (ABCMR) 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, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable discharge) states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of the 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 (General discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-7c (Under Other Than Honorable Conditions) states 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, homosexuality, security reasons, or for the good of the service.

d. Paragraph 3-11 (DD Form 259A (Bad Conduct Discharge Certificate) states a member will be given a bad conduct discharge 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.

3. Title 10, U.S. Code, section 1552, provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

4. 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 post-traumatic stress disorder (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.

5. 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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. 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. The guidance further describes evidence sources and criteria and requires boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

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/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 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.

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.

7. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.

//NOTHING FOLLOWS//