

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 July 2024

DOCKET NUMBER: AR20230014024

APPLICANT REQUESTS: reconsideration of his prior request for an upgrade of his bad conduct discharge to at least a general, under honorable conditions.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- Character References (7)

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 AR20170017822 on 15 December 2020.

2. The applicant states he is requesting reconsideration of his prior request for an upgrade of his bad conduct discharge to at least general, under honorable conditions. In a self-authored letter, the applicant acknowledges that he struggled with alcoholism during his military service. The military environment of the 1980s was heavily influenced by alcohol consumption and he frequently consumed large amounts of alcohol after duty hours and on weekends. He was unaware of the negative impact an alcohol-related discharge would have on his life and noted he should have addressed his substance abuse and other mental health issues before they began to affect his military duties. Following his discharge, he enrolled in a technical college and earned a certification as a heating, ventilation, and air conditioning (HVAC) technician. Since leaving the military, he has made significant improvements in his drinking habits and personal life, a 180-degree turnaround. His commitment extends beyond self-improvement, as he is also dedicated to assisting others in need.

3. The applicant provides seven-character references that describe him as a very reliable and responsible individual with good character. He currently serves as a Trustee at the Mount Pleasant Baptist Church, where he consistently models integrity and faithfulness in his assigned tasks. His responsibilities include protecting church

property and ensuring the overall governance and strategic direction of the church. Both the pastor and fellow church members appreciate his efficiency, competence, thoughtfulness, and willingness to assist anyone who asks. Additionally, he utilizes his HVAC technician skills to provide repairs when needed and actively volunteers for church programs and community service. The character references are available for review by the Board.

- Retired Sergeant First Class D.R., U.S. Army, 29 July 2022
- Dr. L.D.G., Associate Pastor, 10 August 2022
- Ms. N.J.B., 18 August 2022
- Mr. C.K.D., Deacon, 29 August 2022
- Dr. A.W.B., Senior Pastor, 14 September 2022
- Retired Major M.L.M., U.S. Army, 23 October 2022
- Dr. H.A.B., Psychologist

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

a. He enlisted in the Regular Army on 28 March 1978.

b. He accepted nonjudicial punishment (NJP) on 10 January 1979 for:

- one specification of using disrespectful language towards a staff sergeant, his superior, by saying to him "you're a m__f__ too", or words to that effect on or about 5 December 1978
- one specification of using disrespectful language towards a first sergeant, his superior, by saying to him "you m__f__", or words to effect on or about 5 December 1978
- one specification of resisting lawful apprehension by Air Force security policemen on or about 5 December 1978
- his punishment included a suspended reduction to private/E-1

c. He accepted NJP on 1 March 1979 for:

- one specification of failure to be at his appointed place of duty, morning formation on or about 23 February 1979
- one specification of willfully damaging a pool table, property of the U.S. Army on or about 22 February 1979
- one specification of improper performance of his duties due to being intoxicated on or about 23 February 1979

d. He accepted NJP on 2 October 1979 for knowingly disobeying a lawful order by failing to return from pass at the designated time on or about 29 September 1979.

e. The DA Form 4187 (Personnel Action) shows the applicant's status changed from present for duty to confined civil authorities on 1 February 1980. It also noted that the applicant was in the El Paso County jail pending trial.

f. A second DA Form 4187 shows the applicant's status changed from present for duty to military confinement on 15 February 1980 for pre-trial confinement at Fort Carson, CO.

g. On 19 March 1980, he was convicted by a special court-martial for the following charges:

- one specification of slapping Private First Class K.L.P. on the head with his hand on or about 30 January 1980
- one specification of assaulting Sergeant V.F., by pushing him in the chest with his hands on or about 30 January 1980
- one specification of wrongfully communicating to Second Lieutenant D.A.W. a threat to injure him by saying, "I'm going to kill you", or words to that effect on or about 30 January 1980
- one specification of striking Private R.A.V. in the chest with his fist on or about 15 February 1980
- one specification of striking Private R.A.V. on the side of the neck with his fist on or about 15 February 1980
- one specification of choking Private R.A.V. around the throat with his hands on or about 15 February 1980
- his sentence included confinement at hard labor for 4 months, forfeiture of \$298.00 of pay per month for 4 months, and a bad conduct discharge

h. On 16 May 1980, the convening authority approved so much of the sentence, but execution of those portions thereof in excess of confinement at hard labor for 3 months and forfeiture of \$298.00 per pay month for 3 months was suspended for 6 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.

i. Special Court-Martial Order Number 14, dated 28 January 1981, after the provisions of Article 71(c) was compiled with and the sentence was affirmed, ordered the bad conduct discharge executed.

j. On 11 February 1981, 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 completed 2 years, 5 months, and 23 days of active service with 143 days of lost time. He was assigned separation code JJD and the narrative reason for separation is listed as "As a Result of Court-Martial" with reentry codes 3 and 3B. It also shows he was awarded or authorized the:

- Marksman Badge M-16
- Expert Badge Hand Grenade

5. On 15 December 2020, the ABCMR rendered a decision in Docket Number AR20170017822. Based upon the lengthy pattern of misconduct including some of a violent nature against others, as well as the findings and recommendation of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice which would warrant a change to the applicant's characterization of service and/or narrative reason for separation. The Board determined relief was not warranted.

6. 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, after completion of appellate review and after such affirmed sentence has been executed.

7. 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.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his prior request for an upgrade of his bad conduct discharge. He contends he experienced mental health conditions that mitigates his misconduct. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 28 March 1978; 2) On 19 March 1980, he was convicted by a special court-martial for multiple specifications of physical violence towards another Soldier and an NCO and communicating threats of violence towards a commissioned officer; 3) The applicant was discharged on 11 February 1981 (Court-Martial) with a bad conduct characterization of service; 4) On 15 December 2020, the ABCMR reviewed and denied the applicant's request for an upgrade.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documents were provided by the applicant.

c. The applicant asserts he was experiencing mental health conditions while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with any mental health condition while on active service.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a mental health condition, and he does not receive any service-connected disability.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor there is insufficient evidence the applicant's misconduct is mitigatable by a mental health condition or an experience while on active service.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant reported experiencing mental health conditions while on active service, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes. The applicant reported experiencing mental health conditions while on active service, which mitigates his misconduct.

(3) Does the condition experience actually excuse or mitigate the discharge? No. There is insufficient evidence beyond self-report the applicant was experiencing a mental health condition while on active service. In addition, there is no nexus between his reported mental health conditions and his misconduct of physical violence and threat of violence in that: 1) this type of misconduct is not a part of the natural history or sequelae of the applicant's reported mental health condition; 2) the applicant's reported mental health condition does not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that 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 medical review, the Board considered the advising official finding insufficient evidence the applicant's misconduct is mitigatable by a mental health condition or an experience while on active service. The opine noted there is insufficient evidence the applicant reported or was diagnosed with any mental health condition while on active service.

2. The ABCMR 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. The Board found sufficient evidence of in-service mitigating factors for the misconduct to weigh a clemency determination. The Board agreed the applicant's post service accomplishments over the past 40 years and his numerous character letters of support from various community leaders and former servicemembers warrants an upgrade of his discharge. Therefore, the Board granted relief and determined that the discharge characterization was mitigated and should be upgraded to general under honorable conditions.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by re-issuing the applicant a DD Form 214 for the period ending 11 February 1981 to show a characterization of general under honorable conditions.

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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 (Personnel Separations – Enlisted Personnel), in effect at the time, sets the criteria governing the issuance of honorable, General, and Under Other Than Honorable Conditions Discharge Certificates.

a. An honorable discharge is a separation with honor. Issuance of an Honorable Discharge Certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or current period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude.

b. A general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. An under other than honorable conditions discharge is an administrative separation from the service under conditions other than honorable. It may be used for misconduct, for homosexuality, for security reasons, or for the good of the service.

d. A member will be given a bad conduct discharge 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 executed.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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//