

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 July 2024

DOCKET NUMBER: AR20230014142

APPLICANT REQUESTS:

- a DD Form 214 (Certificate of Release or Discharge from Active Duty) for his active service period from 1 November 1977 to 24 July 1980
- an upgrade of his bad conduct discharge to honorable for the service period ending 14 September 1984
- a personal appearance before the board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 4 (Enlistment/Reenlistment Document - Armed Forces of the United States) dated 25 July 1980 (pages 4/1 and 4/4)
- Reenlistment Orders 207-226 dated 15 July 1980
- Honorable Discharge Certificate dated 24 July 1980
- Department of Veterans Affairs (VA) Benefit Letter dated 13 January 2023
- DD Form 214 for the period ending 14 September 1984

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 he is requesting a DD Form 214 that reflects only his honorable service period of 1 November 1977 through 24 July 1980. He served two periods of service; the first period from 1 November 1977 through 24 July 1980 was classified as honorable and he then reenlisted for his second period of service. During his second period of service from 25 July 1980 through 14 September 1984, he was given a bad conduct discharge as the result of a special court-martial. On 23 September 2022, he went to a military facility to attempt to obtain a base access card; due to him being 100% service connected and was informed by the military staff that he may be entitled

to be issued a new DD Form 214 reflecting his honorable period of service. He is available to appear before the Board, if needed.

3. The applicant provides:

a. Page 4/1 and 4/4 of the DD Form 4 dated 25 July 1980, indicating he reenlisted for 3 years in the Army and his previous total active military service of 2 years 8 months and 24 days.

b. An Honorable Discharge Certificate dated 24 July 1980 signed by the reenlisting officer.

c. A VA summary of benefits letter dated 13 January 2023 shows the applicant is rated at 100% and his disabilities are service connected. He is considered to be totally and permanently disabled due to his service-connected disabilities.

d. Orders 207-226 dated 25 June 1980 and DD Form 214, to be referenced in the service record.

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

a. He enlisted in the Regular Army on 1 November 1977 for 3 years.

b. He reenlisted in the Regular Army on 25 July 1980 for 3 years. At the time of his reenlistment, he was issued Orders 207-226 indicating his discharge from his first term in the Army on 24 July 1980 and reenlisting him for his second term of service. Orders 207-226 detailed his active-duty commitment for reenlisting and instructions of his current and further assignment to Fort Gordon with a reporting date of 25 July 1980.

c. On 18 July 1980, he accepted nonjudicial punishment for larceny/stealing. His punishment included a reduction to private first class (PFC)/E-3 which was suspended for 60 days.

d. A Letter of Reprimand dated 8 June 1981 was issued to the applicant for acts of misconduct; he two worthless checks to government facilities that were returned for insufficient funds. His check cashing privileges were revoked for one year. This letter was imposed as an administrative measure and not as punishment under Article 15. A copy of the letter was filed in his Military Personnel Records Jacket (MPRJ) for a period of one year.

e. On 14 December 1981, he was convicted by a special court-martial of four specifications of violating a lawful general order, by wrongfully and unlawfully showing undue attention to a female Soldier in training and by wrongfully and unlawfully, engaging in social fraternization with a female Soldier in training. He was also convicted of one specification of wrongfully communicating a threat to injure. He was sentenced on 15 December 1981, his sentence included reduction to the private (E-1) and a bad conduct discharge.

f. On 5 March 1982, the convening authority approved the sentence 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.

g. Special Court-Martial Order Number 25 dated 7 November 1983, after Article 71(c) was complied with and the sentence was affirmed, ordered the bad conduct discharge executed.

h. On 14 September 1984, he was discharged from active duty with a bad conduct discharge characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 6 years, 10 months, and 14 days of net active service with 920 days of excess leave. He was assigned separation code JJD and the narrative reason for separation listed as "As a result of court-martial, other", with reentry code of 3 & 3C. It also shows he was awarded or authorized:

- Army Service Ribbon
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar

5. A review of the applicant's service record confirms an administrative entry was omitted from his DD Form 214. The entry will be added to his DD Form 214 as an administrative correction and will not be considered by the Board.

6. There is no evidence the applicant has applied to the Army Discharge Review Board for review of her discharge within that board's 15-year statute of limitations.

7. 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.

8. 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.

9. By regulation (AR 635-8), 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 release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

10. 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.

11. 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/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 14 September 1984 bad conduct discharge.

c. The Record of Proceedings outlines the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the regular Army on 1 November 1977 and was discharged on 14 September 1984 under the provisions provided in Section IV of Chapter 3 of AR 635-200, Personnel Management – Enlisted Personnel (1 October 1982): Dishonorable and Bad Conduct Discharge.

d. The applicant received an Article 15 on 2 July 1980 for stealing from a fellow Soldier. On 8 June 1981, he received a letter of reprimand from his company commander for issuing "two worthless checks to government facilities that were returned for insufficient funds."

e. A 5 March 1982 Special Court-Marital Order published at Fort Gordon, GA shows the applicant was found guilty of fraternization and wrongful communication of a threat.

f. No medical documentation was submitted with the application and his service predates the EMR. JLV shows he has a VA service-connected disability rating for PTSD.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: PTSD

(2) Did the condition exist or experience occur during military service? YES

(3) Does the condition or experience actually excuse or mitigate the discharge? NO: PTSD does not interfere with one's abilities to differentiate right from wrong and adhere to the right so cannot mitigate the multiple violations which led to his bad conduct discharge.

### BOARD DISCUSSION:

1. 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 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 that PTSD does not interfere with one's abilities to differentiate right from wrong and adhere to the right so cannot mitigate the multiple violations.

2. The Board determined, there is insufficient evidence of in-service mitigating factors to overcome the misconduct of stealing and fraternization. The Board agreed, the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief. 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. During deliberation, the Board determined the applicant had a prior period of honorable service which is not currently reflected on his DD Form 214 and recommended that change be completed to more accurately show his period of honorable service by granting a partial relief .

3. 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 amending the applicant's DD Form 214 for the period ending 14 September 1984 to show the following entries in item 18 (Remarks): "Continuous Honorable Active Service from 19771007 to 19800724."

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 the applicant's bad conduct discharge to honorable.

█

█

█

---

█

█

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, U.S. Code, 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. 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.

3. 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. 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. 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. 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. Bad Conduct Discharge 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.

4. Army Regulation 635-8 (Separations Processing and Documents), currently in effect, provides for the preparation and distribution of the DD Form 214.

a. 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 release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

b. It states for item 18 (Remarks) to Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable", enter "Continuous Honorable Active Service from" (first day of service for which DD Form 214 was not issued) Until (date before commencement of current enlistment).

5. 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.

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//