

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 August 2024

DOCKET NUMBER: AR20230014729

APPLICANT REQUESTS: an upgrade of his characterization of service, and a different, presumably more favorable separation code.

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), 5 October 2023
- medical record report, from 21 January 1986 to 13 March 1986
- DA Form 3647 (Inpatient Treatment Record Cover Sheet), 13 March 1986

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 needs to upgrade his discharge in order to obtain Department of Veterans Affairs (VA) benefits. He knows he had gotten into a little trouble; however, his injury happened before he was in trouble. He asked his doctor for a medical discharge and was told no; he still does not understand as to why a medical discharge was denied. He additionally cannot walk properly and has ongoing health problems due to his injury.
3. On his DD Form 293, he annotates post-traumatic stress disorder (PTSD) and other mental health are related to his request.
4. The applicant enlisted in the Regular Army on 3 October 1985, for a period of 3 years. He was awarded the military occupational specialty 11M (Mechanized Infantryman) and the highest rank he attained was private/E-2.
5. The applicant accepted nonjudicial punishment on 28 May 1986, under the provisions of Article 15, of the Uniform Code of Military Justice, for willfully and

wrongfully damaging a privately owned vehicle and being drunk and disorderly on or about 15 May 1986.

6. Special Court-Martial Order Number 6, dated 21 January 1987, at Schweinfurt, Germany, shows the applicant was found guilty of the following offense(s) and specification(s):

a. Charge I, Article 121, guilty of the following:

Specification: on or about 19 June 1986, wrongfully appropriated three pairs of coveralls, one leather jacket, and one windbreaker jacket, in the total value of about \$180.00, the property of H.J.E.

b. Charge II, Article 130, guilty of the following:

Specification: on or about 19 June 1986, unlawfully entered a store, the property of H.J.E., with intent to commit a criminal offense, to wit: wrongful appropriation.

c. Charge III, Article 134, guilty of the following:

Specification: on or about 6 September 1986, being drunk and disorderly at W___ Training Area.

7. The court sentenced him to reduction to the grade of E-1, forfeiture of \$426.00 pay per month for six months, confinement for two months, and discharge from the service with a bad conduct discharge (BCD). The sentence was adjudged on 11 December 1986.

8. The sentence was approved, and the record of trial was forwarded for appellate review. The findings of guilty and sentence were affirmed on 31 March 1987.

9. Special Court-Martial Order Number 113, issued by Headquarters U.S. Army Armor Center and Fort Knox, Fort Knox, KY on 15 July 1987, ordered the bad-conduct discharge to be duly executed.

10. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 3 September 1987, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 3, by reason of court-martial, other, in the grade of E-1. His service was characterized as bad conduct, with a separation code of JJD and reenlistment code 3. He was credited with 1 year, 9 months, and 12 days of active service, with time lost from 11 December 1986 to 29 January 1987.

11. He additionally provides medical documentation showing he was admitted on 21 January 1986 and discharged on 13 March 1986, due to closed comminuted fracture, right navicular (tarsus of ankle and foot). Stating in effect, the applicant was jumping off a wall from one parking lot to another when he bumped into his friend who caused him to lose his balance and land on his right foot. He received x-rays showing a comminuted displaced fracture of the right navicular with confirmed approximately five major fragments, he was admitted and informed his injury was very severe and that arthritis with long term stiffness, pain and swelling of the foot would most likely occur. He was operated on and left the operating room in satisfactory condition. He received a cast and was placed on convalescent leave.

12. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, 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. Regulatory guidance provides a Soldier will receive 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.

14. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

15. 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 3 September 1987 bad conduct discharge so he may have access to VA benefits. On his DD 293, he has asserted the PTSD and Other Mental Health concerns are issues related to his request.

c. The Record of Proceedings details 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 3 October 1985 and discharged with a Bad Conduct characterization of service on 3 September 1987 under the provisions provided in Section IV of chapter 3 of AR 635-200, Personnel Management – Enlisted Personnel (15 September 1986): Dishonorable and Bad Conduct Discharge. His separation code of JJD denotes this separation was the result of court martial. The DD 214 shows no periods of Service in a hazardous duty pay area.

d. A discharge summary and operative note show the applicant was surgically treated for a closed right navicular fracture of his right foot and was admitted from 12 Janaury thru 13 March 1986. He was injured by "jumping off a wall from one parking lot to another when he bumped into his friend who caused him to lose his balance and land on the right foot."

e. He received an article 15 on 28 May 1986 for damaging the front headlight on a privately owned vehicle and for being drunk and disorderly.

f. At a 6 January 1987 Special-Court Martial, the applicant was found guilty of stealing, larceny, and being drunk and disorderly.

g. Because of the period of Service under consideration, there are no clinical encounters in in the EMR. JLV shows the applicant is not registered with the VA.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant asserts PTSD and other mental health conditions.

(2) Did the condition exist or experience occur during military service? Applicant asserts these were incurred while he was 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 or other mental health condition(s). 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. However, under liberal consideration, his self-assertion of PTSD and other mental health conditions merits consideration by the board.

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for conviction by court-martial for larceny and being drunk and disorderly. The Board found no error or injustice in the separation proceedings. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.
2. The applicant was given a bad conduct discharge pursuant to an approved sentence of a special 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.
3. Additionally, the applicant requested amendment of his separation code. The Board concluded the separation code "JJD" is the corresponding separation code associated with the narrative reason for separation and discharge processing as a result of court-martial. Therefore, the Board found no error or injustice and denied relief.

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 for correction of the records of the individual concerned.

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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. 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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.
3. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, 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.
4. AR 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), narrative reasons for separating Soldiers from active duty, and the corresponding separation codes to be entered on the DD Form 214. It states that SPD Code "JJD" is the appropriate code to assign to Soldiers separated under the provisions of AR 635-200, Chapter 3, with the narrative reason for separation "court-martial – other."
5. AR 635-200, in effect at the time, provides for the orderly administrative separation of Soldiers in a variety of circumstances.
 - a. Paragraph 3-7a provided 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 provided 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. Chapter 3 provided that an enlisted person 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.

d. Paragraph 3-10, states a member will be given a dishonorable discharge pursuant only to an approved sentence of a general court-martial.

6. 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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) 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. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 on the basis of 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.

//NOTHING FOLLOWS//