

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 August 2024

DOCKET NUMBER: AR20230015130

APPLICANT REQUESTS: reconsideration of his previous request to

- an upgrade his bad conduct discharge to under honorable conditions (General)
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Letter from Clinical Supervisor

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 AR20220011775 on 26 July 2023.

2. The applicant states he would like the character of his discharge changed from dishonorable [bad conduct] to an under honorable conditions (general) discharge. The events that occurred leading to his incident and discharge lead to severe mental problems. Prior to his transgression his father passed away. He had not seen his father for over two years. He was raped by a senior noncommissioned officer (NCO) at Camp Casey, South Korea. The rape was hushed and ignored when he reported it. When he saw the reaction of his chain of command to the rape, he felt as if he was doing something wrong. He suppressed the memories and pain thinking further action would ruin his career. It only now resurfaced, while he is in treatment for the problems it caused. Once the rape was reported, the NCO was moved from the unit and the rape was hushed, which lead to various mental health problems and to his court-martial.

3. The applicant provides a letter from a clinical supervisor, 20 October 2023, which states he was receiving mental health outpatient services with renewal treatment for major depressive disorder, recurrent episode, in partial remission; alcohol use disorder,

severe, in early or sustained remission; cannabis use disorders, severe; and amphetamine-type substance use disorder, severe.

4. The applicant's service record shows:

a. DD Form 4, shows he enlisted in the Regular Army and entered active duty on 17 May 2002.

b. DA Form 4187, shows is duty status changed from present for duty to confined by military authorities on 8 January 2004. He was sentenced to confinement.

c. Special Court-Martial Order Number 6, published by Headquarters, 2d Infantry Division, 16 March 2004, shows he was tried by Special Court-Martial, in the rank of private first class, on 8 January 2004 and found guilty of making a false official statement on or about 26 October 2003 and for wrongfully punching a public dog in the head which caused its death. He was sentenced to reduction to private (PVT)/E-1, to be confined for four months, and to be discharged from the service with a bad conduct discharge.

d. Special Court-Martial Order Number 26, published by 2d Infantry Division, 21 December 2004 states the sentence to reduction to PVT/E-1, confinement for 4 months, and a bad conduct discharge had been finally affirmed and the bad-conduct discharge would be executed. The portion of the sentence extending to confinement had been served.

e. His DD Form 214 shows he was discharged from the Army on 18 March 2005, in the rank of PVT. He completed 2 years, 5 months, and 21 days of active service. He had not completed his first full term of service. He had lost time from 8 January 2004 through 17 April 2004. He was discharged for court-martial and received a bad conduct characterization of service. His separation code was JJD and his reentry code was 4. He was awarded or authorized the National Defense Service Medal and Army Service Ribbon.

f. His service record was void of documentation showing he had been raped.

5. On 26 July 2023, the Board made a decision regarding the applicant's request to upgrade his bad-conduct discharge in AR20220011775, stating:

a. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found 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 consideration and clemency determinations requests for upgrade of his characterization of service.

b. Upon review of the applicant's petition, available military records and the medical advisory, the Board concurred with the advising official finding insufficient evidence beyond self-report that the applicant has ever experienced a mitigating condition. No mental health records were in his supporting documents or electronic health record, and the applicant did not supply any records to support his assertion. Of note, the applicant's misconduct is not considered behaviors consistent with the natural history and sequelae of anxiety or depression. There is no nexus between violence toward, and/or killing an animal, nor lying about it, and anxiety or depression.

c. Liberal consideration was given, however, the Board found insufficient evidence of in-service mitigating factors to overcome the misconduct. The applicant provided no post-service achievement or character letters of support to weigh a clemency determination. 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. 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. Therefore, relief was denied.

#### 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 making a false official statement and punching a public dog in the head and causing its death. The Board found no error or injustice in the separation proceedings. The Board noted the applicant's contention of military sexual trauma; however, reviewed and concurred with the previous medical advisor's review finding insufficient evidence to support the applicant had a condition or experience at the time of service that would mitigate his discharge. 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. 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:

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 amendment of the ABCMR decision rendered in Docket Number AR20220011775 on 26 July 2023.

█

█ █

---

█

█

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 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. Title 10, USC, section 1552(b), provides, with respect to 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 actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. The Secretary of the Army shall make such corrections by acting through boards of civilians within the executive part of the Army.

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

a. An honorable discharge was separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty, or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish Soldiers an honorable discharge Soldiers when subsequent honest and faithful service over a greater period outweighed any disqualifying entries in the Soldier's military record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. A general discharge was a separation from the Army under honorable conditions. When authorized, separation authorities issued general discharges to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. A discharge under other than honorable conditions is an administrative separation from the Service under conditions other than honorable. It may be issued in lieu of trial by court martial.

d. A Soldier could receive a bad conduct discharge pursuant only to the approved sentence of a general or special court-martial, and, following the completion of an appellate review, such affirmed sentence had been ordered duly executed.

4. Army Regulation 635-5-1 (Separation Program Designators (SPD)) in effect at the time states the SPD as a result of Court-Martial, other would be JJD.

5. AR 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

6. 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 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.

7. 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 (TBI); 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. 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.

8. 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 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//