

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 September 2024

DOCKET NUMBER: AR20240000913

APPLICANT REQUESTS: Reconsideration of his previous request for his bad conduct discharge (BCD) to be upgraded to honorable.

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

- DD Form 293 (Application for the Review of Discharge)
- General Court-Martial Order (GCMO) Number 451
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- National Personnel Records Center (NPRC) Letter

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 AR20130019253 on 1 July 2014.
2. The applicant states his general court-martial order states that all rights, privileges, and property of the accused has been deprived by virtue of the findings of guilty so set aside, will be restored. Therefore, he should be granted a change.
3. The applicant enlisted in the Regular Army on 23 November 1982. His military occupational specialty was 11B (Infantryman).
4. He reenlisted on 28 May 1985 and again on 12 October 1989, for 6 years.
5. The applicant served in the following locations:
  - Germany from 3 May 1984 through 13 November 1985
  - Korea from 17 February 1987 through 16 February 1988
  - Panama from 20 December 1989 to 31 January 1990
6. A review of the applicant's service record contains sufficient evidence to support he is eligible for an award that is not annotated on his DD Form 214 for the period ending 21 January 1994. This award will be added to his DD Form 214 as administrative

corrections and will not be considered by the Board, to show award of the Korea Defense Service Medal (KDSM).

7. The applicant was absent without leave (AWOL) on 20 November 1991 and present for duty on 26 November 1991. He was apprehended and confined by civilian authorities on 28 December 1991.

8. Before a general court-martial on 3 April 1992, at Fort Ord, CA the applicant was found guilty of:

- wrongful possession of cocaine on 18 December 1991
- without authority, absents himself from his unit on 10 December 1991 until 11 December 1991
- being absent from his unit from 20 November to 26 November 1991
- larceny of personal property of \$100.00 on 17 December 1991 and 13 December 1991
- burglary in the nighttime with intent to commit larceny on 17 December 1991 on and on 13 December 1991
- willful destruction of personal property of a value more than \$100.00 on 26 December 1991
- wrongful possession of cocaine on 26 December 1991
- wrongful use of cocaine between 19 October 1991 and 19 November 1991
- failure to pay just debts between 30 September 1991 and 27 December 1991

9. The court sentenced him to a BCD, confinement for 3 years, forfeiture of all pay and allowances, and reduction to the pay grade of E-1. The convening authority approved only so much of the sentence as provided for BCD, confinement for 32 months, forfeiture of all pay and allowances, and reduction to the pay grade of E-1. The applicant was confined by military authorities on 3 April 1992.

10. General Court-Martial Order Number 451, dated 22 December 1993, issued by the U.S. Army Combined Arms Command Fort Leavenworth, KS, set aside the finding of guilty of specification I of Charge II (failure to go to place of duty). The remainder of the guilty findings and BCD were affirmed. Article 71 (c) having been complied with the BCD was ordered to be duly executed. All rights, privileges, and property of which the applicant had been deprived as a result of the findings of guilty of specification I of Charge II be restored to the applicant.

11. The applicant was discharged on 21 January 1994. His DD Form 214 shows he was discharged under the provisions of Army Regulation (Personnel Separations – Enlisted Personnel) 635-200, paragraph 3-11, as a result of court-martial with Separation Code JJD and Reentry Code 4. He completed 8 years, 11 months, and

29 days of net active service. He lost time from 20 November 1991 to 25 November 1991 and 28 November 1991 to 21 January 1994. His awards include the:

- Army Good Conduct Medal (2nd award)
- National Defense Service Medal
- Army Achievement Medal
- Army Commendation Medal (oak leaf cluster)
- Armed Forces Expeditionary Medal
- Noncommissioned Officer Professional Development Ribbon (level 2)
- Army Service Ribbon
- Overseas Service Ribbon
- Expert Infantryman Badge
- Combat Infantryman Badge
- Air Assault Badge

12. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

13. The applicant provides a copy of his DD Form 214 and GCMO Number 451 as discussed above.

14. On 1 July 2014, the ABCMR determined the evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of the case were insufficient as a basis for correction of the applicant's records.

15. On 8 December 2015, the applicant's request for reconsideration was returned without action.

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

### 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 counsel's statement, 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 and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of cocaine possession, burglary and AWOL. The Board noted the applicant provided no post service accomplishments or character letters of support for the Board to weigh a clemency determination.

2. The Board considered the applicant's prior period of honorable service; however the applicant's egregious misconduct could not be mitigated. The Board agreed, the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of his bad conduct discharge to honorable. Furthermore, 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 the preponderance of evidence, the Board found relief is not warranted.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

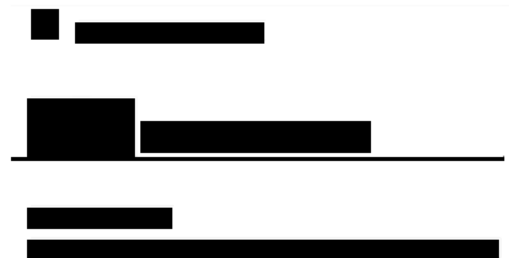
BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, the Board found 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.



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 NOTES:

A review of the applicant's records shows he is authorized additional awards not annotated on his DD Form 214 for the period ending 21 January 1994. As a result, amend his DD Form 214 by adding: Korea Defense Service Medal.

REFERENCES:

1. Title 10, U.S. Code (USC), 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 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
  - a. 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. 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.

3. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, 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. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records (BCM/NR) on 25 July 2018 [Wilkie Memorandum], 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, Boards 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//