

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 October 2024

DOCKET NUMBER: AR20240000980

APPLICANT REQUESTS: reconsideration of his previous requests for an upgrade of his characterization of service from "Bad Conduct" to "Honorable."

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Marriage License
- Certificate of Appreciation
- Certificate of Recognition
- Transcript
- Diploma
- Character reference letters (3)

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 AR20080003602 on 17 June 2008 and in Docket Number AR20220000153 on 3 May 2022.
2. The applicant states his request for reconsideration is based on the statute of limitations and the documents he provides with his application. Prior to the discharge, he had reenlisted three times, all with an Honorable Discharge. His full desire since he graduated high school was to make the military a career, but his bad choices prevented him from doing so. Since his discharge, he has worked diligently to be a positive influence in his community. He and his wife serve as pastors in their church and have been there for the past 23 years. In 2019, he obtained a bachelor's degree. He has been with his current employer for 20 years, and his current job title is "Site General Manager." He is in charge of the restaurant, store, and truck service departments, which have a total of thirty-five employees.
3. On 5 September 1990, the applicant enlisted into the Regular Army for a period of 3 years in the rank/pay grade of private (PV1)/E-1.

4. On 17 June 1992, the applicant extended his enlistment period by 9 months in order to meet the service remaining requirement for a "with Dependents" tour in Germany.
5. The applicant reenlisted for a period of 3 years on 31 January 1994 and again on 13 February 1996 for a period of 2 years.
6. He was promoted to the rank/grade of sergeant (SGT)/E-5 on 1 September 1996.
7. On 13 February 1997, the applicant reenlisted for a period of 4 years.
8. On 26 April 1997, the applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for two counts of willfully disobeying a lawful command issued by a superior commissioned officer, unlawfully striking a female Soldier on the arm with his hand and smothering her mouth while twisting her neck, wrongfully communicating to this Soldier a threat to kill her by snapping her neck, and unlawfully entering the dwelling of this Soldier. His punishment included: reduction from SGT/E-5 to specialist (SPC)/E-4, forfeiture of \$697.00 per month for 2 months, both suspended to be automatically remitted if not vacated on 26 October 1997; and 45 days extra duty.
9. On 19 May 1997, the suspended punishments of reduction to SPC/E-4 and forfeiture of \$697.00 per month for 2 months were vacated as a result of him willfully disobeying a lawful command issued by a superior commissioned officer on or about 5 May 1997.
10. Special Court-Martial Order Number 16 issued by Headquarters, U.S. Army Air Defense Artillery Center and Fort Bliss, Fort Bliss, TX on 3 October 1997 shows he was arraigned at Fort Bliss, TX at a Special Court-Martial convened by Commander, U.S. Army Air Defense Artillery Center and Fort Bliss.
 - a. He pled guilty and was found guilty of the following charges and specifications in violation of the Uniform Code of Military Justice (UCMJ).
 - (1) Charge I, Article 90, UCMJ: Specification 1: On or about 19 May 1997, willfully disobeyed a lawful command.
 - (2) Charge I, Article 90, UCMJ: Specification 2: Between on or about 1 May 1997 and 21 May 1997, willfully disobeyed a lawful command.
 - (3) Charge III, Article 128, UCMJ: Specification: On or about 19 May 1997, unlawfully struck another Soldier.
 - (4) Charge V, Article 134, UCMJ: Specification: On or about 19 May 1997, wrongfully communicated a threat to another Soldier.

b. The applicant's sentence consisted of reduction from SPC/E-4 to PV1/E-1, to be confined for 6 months, and a Bad Conduct Discharge. The sentence was adjudged on 5 August 1997 and subsequently approved.

11. Special Court-Martial Order Number 22 issued by Headquarters, U.S. Army Field Artillery Center and Fort Sill, Fort Sill, OK on 22 April 1999 shows the sentence had been finally affirmed, the part extending to confinement had been served, and was ordered to be duly executed.

12. Orders and his DD Form 214 (Certificate of Release from Active Duty) show the applicant was discharged in the rank/pay grade of PV1/E-1 on 10 May 1999 under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 3, as a result of "Court-Martial (Other)." His service was characterized as "Bad Conduct." He was credited with completion of 8 years, 4 months, and 15 days of net active service. He lost time from 20 May 1997 until 4 August 1997 and from 5 August 1997 until 7 September 1997. He completed his first full term of service. He was credited with continuous honorable active service from 5 September 1990 until 30 January 1994.

13. The applicant provides:

a. A Marriage License which shows he was married on [REDACTED].

b. A Certificate of Appreciation presented to the applicant in recognition of 15 years of service at a Petro Stopping Center on 18 August 2018.

c. A Certificate of Recognition presented to the applicant in recognition of 20 years of dedicated service with Travel Centers of America on 18 August 2023.

d. A transcript and diploma which show he was conferred a Bachelor of Arts degree in Christian Studies on 13 October 2019.

e. Three colleagues rendered letters wherein they expressed favorable comments about his character, work ethic, values, and contributions at work, in his church, and in his community.

14. 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.

15. Army Regulation 635-200 provides that a Soldier would be given a BCD pursuant only to an approved sentence of a general or special court-martial and that the appellate review must be completed, and the affirmed sentence ordered duly executed.

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

BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors. Considering the serious nature of the misconduct that led to his court-martial conviction, the Board found the character letters and evidence of post-service achievements he provided insufficient to support clemency. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

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.

3/31/2025

X

CHAIRPERSON

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 (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. 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. Title 10, USC, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Court-martial convictions stand as adjudged or modified by appeal through the judicial process, 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. 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. prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity.

The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body.

5. 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 an honorable discharge when subsequent honest and faithful service over a greater period outweighed 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 could issue a general discharge to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. A discharge under other than honorable conditions (UOTHC) is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, homosexual conduct, security reasons, or in lieu of trial by court martial in the following circumstances.

(1) An under-other-than-honorable-conditions discharge will be directed only by a commander exercising general court-martial authority, a general officer in command who has a judge advocate or legal advisor available to his/her command, higher authority, or the commander exercising special court-martial convening authority over the Soldier who submitted a request for discharge in lieu of court-martial (see chapter 10) when delegated authority to approve such requests.

(2) When the reason for separation is based upon one or more acts or omissions that constitutes a significant departure from the conduct expected of Soldiers of the Army. Examples of factors that may be considered include the following:

- Use of force or violence to produce bodily injury or death
- Abuse of a position of trust
- Disregard by a superior of customary superior-subordinate relationships

- Acts or omissions that endanger the security of the United States or the health and welfare of other Soldiers of the Army
- Deliberate acts or omissions that seriously endanger the health and safety of other persons

d. A bad conduct discharge will be given to a Soldier pursuant only to an approved sentence of a general or special court-martial. The appellate review had to have been completed and the affirmed sentence then ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing staff judge advocate.

e. A dishonorable discharge will be given to a Soldier pursuant only to an approved sentence of a general court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing staff judge advocate.

f. Chapter 5, paragraph 5-3 states separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums.

6. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) implements the specific authorities and reasons for separating Soldiers from active duty. It also prescribes when to enter SPD codes on the DD Form 214.

a. Paragraph 2-1 provides that SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of Department of Defense and the Military Services to assist in the collection and analysis of separation data. This analysis may, in turn, influence changes in separation policy. SPD codes are not intended to stigmatize an individual in any manner.

b. Table 2-3 provides the SPDs and narrative reasons for separation that are applicable to enlisted personnel. It shows, in part, SPD JJD is the appropriate code to assign to an enlisted Soldier who is involuntarily separated under the provisions of Army Regulation 635-200, Chapter 3, as a result of trial by court-martial. Additionally, the SPD/RE Code Cross Reference Table established RE code "4" as the proper reentry code to assign to Soldiers separated under this authority and for this reason. JFF is the

appropriate SPD to assign to enlisted Soldiers who are voluntarily discharged under Secretarial authority.

7. 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/NR) 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//