

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 October 2024

DOCKET NUMBER: AR20240000992

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his bad conduct discharge (BCD).

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record)

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 AR20140014673 on 9 April 2015.
2. As a new argument, the applicant states his overall military career was not so bad that he deserved a BCD. Although he was wrong for his involvement, he believes an under honorable conditions (general) discharge would be appreciated.
3. The applicant enlisted in the Regular Army on 21 July 1993, for a 6-year period. Upon completion of initial entry training, he was awarded military occupational specialty 13F (Fire Support Specialist). He reenlisted on 5 August 1998.
4. The applicant was reported absent without leave (AWOL) on 27 March 2002 and was subsequently dropped from the rolls on 27 April 2002.
5. He surrendered to military authorities and was returned to military control on 4 June 2002.
6. Before a general court-martial at Fort Bragg, NC, on 17 December 2002, contrary to his pleas of not guilty, the applicant was found guilty of one specification each of the following:
  - being AWOL, on or about 27 March 2002 until on or about 27 May 2002
  - stealing military property of a value of more than \$500.00, between on or about 1 April 2001 and 1 October 2001
  - wrongfully using marijuana, between on or about 18 May 2002 and 18 June 2002

- and unlawfully grabbing and pulling Q.D.J., on her body with his hands, on or about 16 July 2002

7. The court sentenced him to forfeit all pay and allowances, reduction to private/E-1, confinement for 36 months, and a BCD. The convening authority approved the sentence on 5 June 2003, and except for the portion extending to a BCD, was ordered executed. The affirmation of the finding and the sentence is not available for review in his service record.

8. General Court-Martial Order Number 14, issued by Headquarters, 82nd Airborne Division, Fort Bragg, NC, on 9 September 2004, shows the convening authority approved the sentence and ordered the BCD executed.

9. The applicant was discharged on 16 August 2006, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 3, by reason of court-martial, other. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his service was characterized as bad conduct, with separation code JJD and reentry code RE-4. He completed 9 years, 10 months, and 25 days of net active service, with lost time from 27 March 2002 to 27 May 2002, 19 July 2002 to 20 September 2004, and 21 September 2004 to 18 July 2005.

a. He was awarded or authorized the National Defense Service Medal and the Army Service Ribbon.

b. The Remarks, block listed his immediate reenlistment but did not list his continuous honorable service or whether he completed his first term of service.

10. The ABCMR reviewed the applicant's request for an upgrade of his BCD on 9 April 2015. The Board determined the evidence of record did not indicate the actions taken to separate the applicant were in error or unjust. Therefore, there was no basis for granting the applicant's request. The Board denied his request for relief.

11. 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.

12. 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.

13. The Board should consider the applicant's overall military service and statement in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. Discharge upgrade: Deny. The evidence shows the applicant's trial by a court-martial was warranted by the gravity of the offense charged (AWOL, stealing military property, wrongfully using marijuana, and unlawfully grabbing and pulling [Name] on her body with his hands). The applicant's conviction and discharge were conducted in accordance with applicable laws and regulations and the discharge appropriately characterizes the misconduct for which he was convicted. He was given a bad conduct discharge pursuant to an approved sentence of a 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. The Board found no error or injustice in his separation processing. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. 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.

b. Continuous Honorable Service: Grant. The Board noted that the applicant's service from first date of enlistment to the date before his last reenlistment was honorable. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, in addition to listing immediate reenlistment(s), an entry is required for continuous honorable service from first day of service for which DD Form 214 was not issued until date before commencement of current enlistment.

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 his DD Form 214 for the period ending on 16 August 2006 to show:

- Continuous Honorable Service from 19930721 UNTIL 19980804"
- Member Completed First Full Term of Service

2. 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 to amend the decision of the ABCMR set forth in Docket Number AR20140014673 on 9 April 2015 regarding the upgrade of his bad conduct discharge.

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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. Army Regulation 635-5 (Personnel Separations) provides for an additional entry on the DD Form 214 for continuous honorable active service when a Soldier who previously reenlisted without being issued a DD Form 214 was discharged with any characterization of service except honorable.

2. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), provides for the separation of enlisted Soldiers from the Army.

a. Chapter 3 provides that an enlisted person will be given a bad conduct discharge 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.

b. 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.

c. 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.

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. 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//