

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 August 2024

DOCKET NUMBER: AR20240001172

APPLICANT REQUESTS: an upgrade of his bad conduct discharge (BCD) to under honorable conditions (general).

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 from the Armed Forces of the United States)
- self-authored statement, dated 25 October 2023
- cover letter, Department of Veterans Affairs (VA), dated 31 October 2023
- statements of support (3)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 suffered from constant joint pain and insomnia during his service. Despite being informed multiple times, his leadership ignored his pain and lack of sleep. He used marijuana to self-medicate and was caught in possession of a small personal amount. It was a mistake. He went about correcting his situation the wrong way. Since his discharge, he has had no interaction with law enforcement. He has bettered himself by graduating from a Network Engineer course and became a certified HVAC [Heating Vacuum and Air Conditioning] technician. He still has problems with his physical ailments. He apologizes to the people he served with. A change in discharge would assist him with the furtherance of his health and quality of life.

3. The applicant enlisted in the Regular Army on 21 May 1991 for a 4-year period. Upon completion of initial entry training, he was awarded military occupational specialty 92G (Food Service Specialist). He reenlisted on 21 September 1994. The highest rank he attained was specialist/E-4.

4. Before a general court-martial on 22 May 1997, at Mannheim, Germany, the applicant pled guilty to and was found guilty of three specifications of wrongfully distributing marijuana, on or about 14 February, 21 February, and 12 March 1997, and for the wrongful possession of marijuana, on or about 12 March 1997. His sentence consisted of confinement for 200 days, forfeiture of all pay and allowances, reduction to private/E-1 and to be discharged from the service with a BCD. The sentence was approved, and except for the BCD, ordered executed on 6 August 1997.

5. The record of trial was forwarded to the U.S. Army Court of Criminal Appeals for appellate review. On 16 October 1997, the General Court-Martial Order was corrected to insert the words "with the intent to distribute" following the words "wrongful possession" to specification 5 of the charges.

6. General Court-Martial Order Number 32, issued by Headquarters, U.S. Army Armor Center, Fort Knox, KY, dated 2 February 1999, noted the sentence was finally affirmed; the portion of the sentence extending to confinement was served; and the BCD was ordered duly executed.

7. The applicant was discharged on 1 October 1999, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 3, as a result of court-martial - other, in the rank/grade of private/E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his service was characterized as bad conduct, with separation code JJD and reentry code RE-4. He was credited with 7 years, 11 months, and 7 days of net active service, with lost time from 22 May 1997 to 22 October 1997. He was awarded or authorized the:

- Army Good Conduct Medal
- National Defense Service Medal
- Army Service Ribbon
- Overseas Service Ribbon

8. The applicant provides three statements of support wherein the authors state, in effect, the applicant was an avid athlete all through high school. Post-service, he was not anything like he was prior to entering the Army. It was apparent he was dealing with anxiety and post-traumatic stress disorder (PTSD). Pain contributed to his emotional state. He enrolled in the Goodwill Industries Veteran Services Program. Since that time, he has demonstrated a genuine commitment to professional and personal growth. He actively engages in treatment recommendations and has taken advantage of every opportunity to improve himself and contribute to his community. His BCD remains an issue in him fully realizing his potential.

9. 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.

10. Regulatory guidance provides a Soldier will receive a bad conduct discharge 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.

11. 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 the Interactive Personnel Electronic Records Management System (iPERMS).

b. The ARBA Medical Advisor made the following findings and recommendations:

c. The applicant applying to the ABCMR requesting an upgrade of his 1 October 1999 bad conduct discharge (BCD). He states:

“I was given a BCD for possession of .7 grams of hashish. I believe the error has been made because I was in constant body joint pains and suffered from insomnia therefore, I was in possession of the hash for self-mediation. The pain and lack of sleep was ignored by my leadership when brought to their attention.”

d. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the Regular Army on 21 May 1991 and was discharged on 1 October 1999 under the separation authority provided by Section IV chapter 3 of AR 635-200, Personnel Separations – Enlisted Personnel (26 June 1996): Dishonorable and Bad Conduct Discharge. The separation code JJD denotes “Court Martial (Other).

e. General Court-Martial Order number 14, dated 6 August 1997, shows the applicant pled guilty to and was found guilty of multiple specifications of both possession and distribution of marijuana.

f. No medical documentation was submitted with the application and there are no encounters or diagnoses in the EMR. JLV shows he receives humanitarian emergency care as a non-service-connected veteran and there are no diagnoses on his medical problems list.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the multiple UCMJ violations leading to the applicant's separation and the lack of mitigation found in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

3/6/2025

  
XCHAIRPERSON  


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, 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. Section 1556 of Title 10, USC, 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. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.
3. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.
  - a. Chapter 3 provided that an enlisted person would 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.

4. 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.

5. 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.

6. 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//