

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 October 2024

DOCKET NUMBER: AR20240004591

APPLICANT REQUESTS:

- upgrade of his dishonorable discharge to under honorable conditions (general)
- in effect, issuance of a DD Form 214 to show his honorable service
- personal appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- Certificate of Service
- Inmate Work and Training Evaluations
- Letter from Member of Congress
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Letter of Reference
- Notifications of Personnel Action
- Work Process Schedule
- Certificates of Completion
- Department of Veterans Affairs (VA) Letter of Employment
- Certificates/Letters of Appreciation
- Pictures of Coins received
- Newspaper Article Mali Attack
- Pictures of Dining Facility (DFAC) Personnel
- Letters of Recommendation
- 59 Minute Rule Award
- VISA Exemption Certificate
- Achievement of Prince2 Foundation Examination
- University of InterAmerican Certificate
- Certificates of Achievement

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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, in effect:

a. He is respectfully seeking a discharge status reevaluation. He wishes to highlight that despite past mistakes, they should not overshadow an individual's present circumstances. This includes noteworthy post-service achievements, extensive community service, and a dedicated five year tenure as a federal employee with the VA. Additionally, he brings to the Board's attention extensive experience of over eight years as a civilian contractor in Afghanistan and Africa collaborating seamlessly with the U.S. Military and allied forces, yielding superb results.

b. He served with pride in the U.S. Army from 25 June 1998 through 29 September 2005, demonstrating unwavering commitment and continuous honorable active service. Regrettably, from 30 September 2005 through 5 August 2008, his military journey led to court-martial proceedings, culminating in his discharge. It is with utmost respect that he sincerely approaches the Board to request a comprehensive review and the potential upgrade of his military discharge status.

c. His tenure in the Army was transformative, instilling in him essential values of discipline, leadership, and an unwavering sense of duty. These attributes have significantly influenced his post-military life. Following his separation, he actively sought opportunities to extend his service, working alongside the military and allied forces as a civilian contractor in challenging environments, including Afghanistan and Africa from 2009 to 2017.

d. Over the past five years, he has been a federal employee, holding several positions with outstanding results. During this period, he has consistently contributed his skills and expertise to align with mission objective, reinforcing his steadfast commitment to service.

e. In his recent roles at the VA, [REDACTED] Regional Office, he has played a crucial part in assisting fellow veterans, ensuring they receive the benefits they rightfully deserve and upholding the values of service and dedication. He takes great pride in contributing to the well-being of our nation's veterans.

f. Despite the circumstances leading to his court-martial, he has utilized these experiences as a catalyst for positive change and personal growth. Proactively

addressing and overcoming past mistakes, he has actively participated in rehabilitation programs and sought opportunities for continuous personal development.

g. Moreover, he has been deeply involved in community service, specifically supporting veterans at risk, demonstrating a commitment to helping them overcome challenges and providing access to essential resources for their well-being. Witnessing positive transformations in the lives of veterans facing difficulties has further deepened his commitment to service.

h. Enclosed with this letter, the Board will find letters of recommendation affirming the positive changes and growth he has undergone since his separation. Additionally, he has included copies of awards that reflect the person he has become, illustrating his commitment to learning from past mistakes and contributing positively to society.

i. He is fully aware that the discharge upgrade requests following a court-martial undergo meticulous consideration. He firmly believes that his dedication to rectifying past mistakes is evident in his actions, since his separation. Recognizing the paramount importance of maintaining the integrity and reputation of the U.S. Army, he is resolute in upholding these values in all aspects of his life. He sincerely believes that an upgrade of his discharge status to under honorable conditions (general) would serve as a testament to the substantial growth and positive changes he has undergone since his separation.

j. Concurrently, he is actively working towards obtaining a separate DD Form 214 (Certificate of Release or Discharge from Active Duty) to facilitate the buyback of his honorable service with the federal government. Collaborating with Human Resource specialists at the VA, steps are being taken to address this matter, and he is committed to completing the necessary procedures to ensure the accurate representation of his military service.

k. He thanks the Board for their time and consideration of his request. He is available to provide any additional information or attend a hearing if deemed necessary. The Board's dedication to this matter is genuinely appreciated.

3. The applicant provides the following documents:

a. Certificate of Service for meritorious service during operation Iraqi Freedom from January through July 2003.

b. Inmate Work and Training Evaluations from 24 May 2007 through 15 January 2009, which show he was consistently rated as 4 or 5 in every category which indicates above average or outstanding ratings. The forms are available for the Board's review.

c. Letter from a Congressman, 17 March 2008, states thank you for contacting the Congressman regarding his desire to be retained in the U.S. Army after he had served his prison sentence. The Congressman regretted to learn of his situation. The Congressman wanted to make sure his concerns were reviewed. The Congressman was pleased to contact the appropriate officials in the U.S. Army.

d. Letter of reference, 9 December 2017, from [REDACTED] who had worked with the applicant for six years in Afghanistan and Africa. The applicant was always a well liked and respected member of the team. The author recommended him for a position in project management. The letter is available for the Board's review.

e. Notifications of Personnel Action show the applicant was hired as a legal administration specialist with the VA as of 5 January 2019. On 27 February 2022 he was moved from a legal administration specialist to a veterans service representative at the VA. On 2 July 2023, he was upgraded to a GS 10 step 1 at the VA.

f. Certificates of Completion show he completed the Cook (Hotel and Restaurant) Apprenticeship, the Employee Learning Inspires True Excellence Instruction Course, and Virtual Aspiring Supervisory Program.

g. Letter from the VA, 5 February 2024, states had had been employed with the VA at [REDACTED] since 6 January 2019.

h. Certificates of Appreciation from the different DFACs he worked at while overseas. They are available for the Board's review.

i. Letters of recommendation from supervisors who worked with him at the DFAC while overseas. They are available for the Board's review.

j. [REDACTED] National Cemetery February Safety Hero, 59 Minutes Off Award, for providing first aid to a visitor who lost a small portion of an extremity, always maintaining a professional and calm appearance, during the emergency.

k. Certificates of Achievement, which show he received monthly productivity awards, and he was recognized for completing the Legal Administrative Specialist/Public Contact Representative Training. The certificates are available for the Board's review.

4. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the Regular Army and entered active duty on 25 June 1998. He remained in the Regular Army through immediate reenlistments.

b. General Court-Martial Order 37, published by Headquarters, Fort Stewart, 18 October 2007 shows he, in the rank of staff sergeant, was convicted at a General Court-Martial on 20 April 2007 of:

- On divers occasions between on or about 1 September 2004 and 30 November 2004 commit the offense of carnal knowledge with a child who had attained the age of 12 but was under the age of 16
- On divers occasions between on or about 1 September 2004 and 30 November 2004 commit sodomy with a child who had attained the age of 12 but was under the age of 16

His sentence included reduction to the grade of private (PVT), to be confined for 44 months, and be discharged from the service with a dishonorable discharge. On 18 October 2007, the convening authority approved only so much of the sentence as provided for reduction to PVT, confinement for 30 months, and a dishonorable discharge, and except for that part of the sentence extending to a dishonorable discharge ordered it executed.

c. On 7 December 2007, the United States Army Court of Criminal Appeals stated on consideration of the entire record, including consideration of the issues personally specified by the applicant, they held the findings of guilty and the sentence as approved by the convening authority correct in law and fact. Accordingly, those findings of guilty and the sentence were affirmed.

d. General Court-Martial Order Number 72, published by Headquarters, United States Army Armor Center and Fort Know, 8 April 2008 states the sentence to a dishonorable discharge, confinement for 30 months, and reduction to PVT had been finally affirmed and the dishonorable discharge would be executed.

e. The applicant was discharged from the Army, in the rank of PVT, on 6 August 2008. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he had completed 8 years, 9 months, and 25 days of active duty service. He had continuous honorable service from 25 June 1998 through 29 September 2005. He had immediate reenlistments this period from 10 March 2001 through 29 September 2005 and from 30 September 2005 through 6 August 2008. He had service in Iraq from 14 January 2003 through 31 August 2003 and from 5 January 2005 to 8 January 2006. He had completed his first full term of service. He was discharged by reason of court-martial, and his character of service was dishonorable. He was awarded or authorized the:

- Army Commendation Medal (4th Award)
- Army Achievement Medal (3rd Award)

- Presidential Unit Citation
- Army Good Conduct Medal (2nd Award)
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal with Campaign Star
- Army Service Ribbon
- Overseas Service Ribbon (2nd Award)
- Drive and Mechanic Badge

5. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. 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.

6. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. 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.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. 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 and, considering the nature of the misconduct that led to his court-martial conviction, the Board found the evidence of post-service achievements or letters of reference the applicant provided insufficient in support of a clemency determination. 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.
3. The applicant's period of continuous honorable active service was documented in the remarks block on his DD Form 214 in accordance with the governing regulation. The Board determined there is no basis for issuing the applicant a DD Form 214 that only covers his period of honorable 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.

4/1/2025

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, 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 (Active Duty Enlisted Administrative Separation) sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. Paragraph 3-7b provides that 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. 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. Chapter 3 provided that an enlisted person would be given a bad conduct discharge or dishonorable discharge pursuant only to an approved sentence of a general court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed.

3. 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.

4. 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.

5. 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.

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.

9. Army Regulation 635-8 (Separation Processing and Documents) governs the preparation of the DD Form 214. It states for Soldiers discharged for immediate reenlistment do not issue a DD Form 214. This same regulation states when completing Item 18 (Remarks) –

a. for Soldiers with more than one enlistment period during the time covered by the DD Form 214, enter "IMMEDIATE REENLISTMENTS THIS PERIOD" and specify inclusive dates for each period of reenlistment.

b. for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable," enter "Continuous Honorable Active Service From" (first day of service for which DD Form 214 was not issued) until (date before commencement of current enlistment).

10. 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.

//NOTHING FOLLOWS//