

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 January 2025

DOCKET NUMBER: AR20240004666

APPLICANT REQUESTS: reconsideration of her previous request for an upgrade of her bad conduct discharge (BCD) to under honorable conditions (General).

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

- DD Form 293 (Application for the Review of Discharge), 6 March 2024
- character reference statement, from [REDACTED] 6 March 2024
- Bachelor of Arts degree
- In-service awards
- request for clemency 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 AR20230008633 on 1 March 2024.

2. The applicant states she has had 19 years to think about the series of events that took place in 2005 while she was serving. She is remorseful for her actions and regrets her decisions every day, she loved the military and if given another chance she would join again without a doubt. This has taught her so much in her personal life, despite losing her military career she has earned a bachelor's degree in business, worked in other government and municipality entities. What led to her discharge was not in any way a representation for her true character, she loves and cares for others and the fact her integrity was questioned hurts the most. She has since strived to be an ideal citizen, loves her country, and requests the Board consider upgrading her discharge.

3. The applicant enlisted in the Regular Army on 19 June 2001, for a 4-year period. She reenlisted on 1 July 2004, for an additional 3-year period. She was awarded the military occupational specialty 42A (Human Resources Specialist). The highest rank she attained was specialist/E-4.

4. Before a general court-martial on 22 June 2005, at Headquarters, U.S. Army Infantry Center and Fort Benning, Fort Benning, GA, the applicant was found guilty of the following:

- one specification of stealing deposit account funds of a value of \$141.15, from another Soldier;
- one specification of wrongfully stealing a letter enclosed with a debit card from the mail room, which was addressed to another Soldier;
- one specification of conspiring with two other Soldiers to steal basic trainee debit cards, mail and deposit account funds;
- and three specifications of making false statements, with the intent to deceive.

5. The court sentenced her to reduction in grade to private/E-1, forfeiture of \$1,235.00 pay per month for 24 months, confinement for two years, and to be discharged with a BCD. The sentence was approved on 10 February 2006; however, except for the part of the sentence extending to the BCD would be executed. The adjudged forfeiture of \$800.00 pay per month was deferred and the record of trial was forwarded for appellate review.

6. On 26 June 2008, the U.S. Army Court of Criminal Appeals affirmed the findings of guilty of the Specification of Charge III and Charge III, as amended, and the remaining findings of guilty. The sentence was affirmed.

7. General Court-Martial Order Number 255, issued by Headquarters, U.S. Army Fires Center of Excellence and Fort Sill, Fort Sill, OK dated 22 December 2009, noted that the applicant's sentence had been affirmed and ordered the BCD duly executed.

8. The applicant was discharged on 15 April 2010. Her DD Form 214 (Certificate of Release from Active Duty) shows she was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 3, as a result of court-martial. Her service was characterized as bad conduct with separation code JJD and reentry code 4. She completed 6 years, 9 months, and 28 days of active service this period with time lost from 23 June 2005 to 21 June 2007. She was awarded the following decorations, medals, badges, citations, and campaign ribbons:

- Army Achievement Medal (2nd award)
- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon

9. The ABCMR reviewed the applicant's request for an upgrade of her BCD on 1 March 2024. After careful consideration of the applicable Army Regulations, statutory guidance, and the published Department of Defense guidance for consideration of discharge upgrade requests based upon clemency, the Board found relief was not warranted and denied her request.

10. The applicant provides:

a. A character reference statement from [REDACTED] dated 6 March 2024, wherein [REDACTED] states the applicant shows unwavering integrity, and compassion, she is responsible, shows high moral character, and displays honesty and truthfulness. She is respectful, treats others with dignity and kindness, she is dependable, and has a strong work ethic. [REDACTED] believes the applicant's charges against her are uncharacteristic of her true nature, he believes she made a mistake and is deeply remorseful for the consequences it has caused, and requests the applicant be granted clemency for her overall character and contributions to society.

b. Her Bachelor of Arts degree, awarded to her on 17 March 2014, additional awards received while in service to include two Army Achievement Medals, and her letter requesting clemency dated 23 June 2005. In her letter for clemency, she requested upgrade of her BCD in the hopes to return to active duty and to return home to better her life.

10. 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.

11. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

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 the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and

record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for conviction by court-martial for stealing from another Soldier, conspiring to steal basic trainee debit cards, and making false statements. The Board found no error or injustice in the separation proceedings. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. The applicant 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.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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| : | : | : | 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 amendment of the ABCMR decision rendered in Docket Number AR20230008633 on 1 March 2024.

4/8/2025

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. Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) 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, Section IV provided that a member would be given a bad conduct discharge (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.

2. 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.

3. 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. 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//