

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 February 2025

DOCKET NUMBER: AR20240005576

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his bad conduct discharge.

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 AR20080019247 on 2 June 2009.

2. The applicant states:

a. He requests service and discharge record be corrected based on the honorable service time period information from his DD Form 214 (Certificate of Release or Discharge from Active Duty). He had continuous honorable service from 20 November 1984 to 16 August 1994 and had service time from 17 August 1994 to 4 October 1996. He would like this record fixed and reflect correctly on the Department of Veterans Affairs (VA) for VA benefits.

b. The record should be corrected because it is in error and does not reflect the accuracy of his honorable period of service. He served his country, incorrectly the reported time is incorrectly reported as a longer period. It excludes him from VA benefits. He is entitled to this extended period and makes his character come into question as a Soldier who ran across one issue in the military. This should be updated because it is the "right thing" to do based on the actual honorable period of time.

3. The applicant's service record shows:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) reflects the applicant enlisted in the Regular Army on 20 November 1984.

b. He reenlisted on 23 June 1987 and 27 October 1989.

c. His DA Form 2-1 (Personnel Qualification Record) shows in item 5 (Oversea Service) he served in Saudi Arabia from 25 December 1990 through 3 April 1991.

d. Before a special court martial on 17 August 1994, the applicant was found guilty of larceny of \$29,325.00, personal property, on or about 15 October 1993. The court sentenced him to be reduced to private/E-1, confinement for one year, and to be discharged from the U.S. Army with a bad conduct discharge. The sentence was approved and, except for the bad conduct discharge, will be executed.

e. The applicant was confined by military authorities on 17 August 1994.

f. General Court Martial Number 63, 3 June 1996, U.S. Army Combined Arms Center, Fort Leavenworth, KS shows the sentence having been affirmed and the provisions of Article 71 (c), Uniform Code of Military Justice, having been complied with, the bad conduct discharge will be executed.

g. The applicant was discharged on 4 October 1996. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), Paragraph 3, as a result of court-martial, other with separation Code JJD and reentry code 4. His service was characterized as bad conduct. He completed 10 years, 10 months, and 15 days net active service. He had lost time from 17 August 1994 to 16 August 1995. He was awarded or authorized the:

- Army Good Conduct Medal (3rd award)
- National Defense Service Medal
- Army Achievement Medal (7th oak leaf clusters(OLC))
- Army Commendation Medal (2nd OLC)
- Humanitarian Service Medal
- Southwest Asia Service Medal with bronze service stars
- Kuwait Liberation Medal (Saudi Arabia)
- Kuwait Liberation Medal (Kuwait)
- Bronze Star Medal
- Noncommissioned Officer Professional Development Ribbon (level 2)
- Army Service Ribbon
- Overseas Service Ribbon (1)
- Expert Infantryman Badge
- Combat Infantryman Badge

4. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

5. In a prior ABCMR Docket Number AR20080019247, on 2 June 2009, the Board determined 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 applicant's records and denied his application.

6. In a prior ABCMR Docket Number AR20140020014, on 21 September 2015, the applicant requested a reconsideration of his prior case; however, his request was not received within one year of the ABCMRs original decision. As a result, his request for reconsideration did not meet the criteria outlined above and returned his request without action.

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

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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence to support the applicant's contentions for an upgrade of his bad conduct discharge.

2. The Board found the applicant was convicted by special court-martial for larceny of \$29,325.00 in personal property, a serious offense that resulted in confinement and a punitive discharge. While the applicant's record reflects commendable service prior to the offense including multiple awards and overseas deployment these achievements do not mitigate the gravity of his misconduct. Furthermore, the applicant has not provided any new evidence of post-service achievements, character references, or documentation that would support clemency or demonstrate rehabilitation. Clemency is a discretionary act of mercy, and without compelling justification, the Board cannot recommend leniency. The Board agreed, the applicant's prior requests were thoroughly adjudicated, and his current submission did to meet the threshold for reconsideration. Therefore, the Board denied relief finding no error or injustice that warrants reversal of the previous Board determination.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 AR20080019247 on 2 June 2009.

X //SIGNED//

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-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The regulation in effect at the time of the applicant's discharge provided in:

a. Paragraph 3-7a, an honorable discharge is a separation with honor. 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, 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. Paragraph 3-11, 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 had been ordered duly executed.

2. 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.

3. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, 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.

4. Army Regulation 635-5 (Separation Documents), states, the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The separation code JJD (is to be used for Soldiers discharged for bad conduct).

6. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table shows the SPD code as "JJD" for bad conduct.

7. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

//NOTHING FOLLOWS//