

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 October 2024

DOCKET NUMBER: AR20240005681

APPLICANT REQUESTS:

- an upgrade of his bad conduct discharge (BCD)
- amendment of his re-entry eligibility (RE) code from 4 to an immediately eligible to enlist code

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- A self-authored letter, 25 January 2024

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 he is asking for an to upgrade to his RE code for reenlistment purposes, and in doing so he hopes to receive an honorable discharge and benefits for himself and his family. He served honorably for four years, he deployed to Iraq twice, in support of Operation Iraqi Freedom, and although he did not make selection, he did attend training to become a Green Beret, as a Special Forces candidate, twice. After his discharge from the Army, he now owns a construction business, he volunteers with the local religious and community events. He is asking the Board to upgrade his RE code so he may re-enter the Army. Since the pandemic, it has become increasingly difficult for him to provide for his family. He intends to enlist as an Army Infantryman and attend the Ranger Assessment and Selection Program. He has learned from his mistakes and is ready to move forward, he asks for a chance to earn an honorable discharge and benefits so he may take better care of his family.
3. The applicant's service record reflects the following:

- a. He enlisted in the Regular Army on 20 October 2005.
- b. Service in Iraq from 15 May 2006 to 5 December 2006 (7 months).
- c. Service in Iraq from 18 April 2008 to 23 July 2009 (15 months).
- d. DA Form 4187 (Personnel Action), reflects the applicant's duty status change on 27 September 2010, from present for duty (PDY) to confined by military authorities.
- e. DD Form 2707 (Confinement Order) dated 27 September 2010, shows he was placed in confinement as a result of a General Court-Martial (GCM), for wrongful distribution and possession of lysergic acid diethylamide (acid) with the intent to distribute.
- f. Orders 272-004, 29 September 2010, show he was reassigned to the Personnel Control Facility, Fort Sill, Oklahoma (OK), with a report date of 14 October 2010.
- g. GCM Order 4, 16 June 2011, shows the applicant was charged with a violation of Article 112a (wrongful possession, use, manufacture, import, or distribution of certain controlled substances). This document further provides:
 - (1) Specification 1: id, at or near Fort Hood, Texas, on or about 5 August 2010, wrongfully distribute an unknown amount of lysergic acid diethylamide. Plea: Guilty. Finding: Guilty.
 - (2) Specification 2: Did, at or near Fort Hood, Texas, on or about 6 August 2010, wrongfully possess an unknown amount of lysergic acid diethylamide, with the intent to distribute the said controlled substance. Plea: Guilty. Finding: Guilty.
 - (3) Sentence: Sentence was adjudged on 27 September 2010. Forfeiture of all pay and allowances, to be reduced to the grade of private (PVT) E-1, to be confined for 21 months, and to be discharged from the service with a bad conduct discharge.
 - (4) Action: The sentence is approved and, except for that portion of the sentence pertaining to a BCD, will be executed. The accused will be credited with 2 days of confinement against the sentence to confinement.
- h. DD Form 2718 (Inmate's Release Order), 23 January 2012, shows the applicant would be released on 23 January 2012, and delivered to his organization.
- i. DA Form 4187, reflects the applicant's duty status change on 4 February 2012, from confined by military authorities to PDY.

j. GCM Order 27, 24 February 2012, shows the sentence to reduction to the grade of PVT/E-1, forfeiture of all pay and allowances, confinement for 21 months, and a bad conduct discharge, adjudicated on 27 September 2010, as promulgated in GCM Order Number 4, dated 16 June 2011, has been finally affirmed. The accused will be credited with 2 days confinement against the sentence of confinement. Article 71(c) having been complied with, the BCD will be executed.

k. His DD Form 214 for the period ending 27 July 2012, shows he was discharged pursuant to Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 3, with a bad conduct discharge, as a result of Court-Martial-other. He received a separation code of "JJD" and a RE code of "4". He completed 5 years, 5 months, 1 day of active service and 1 year, 9 months, 27 days of foreign service. His grade at the time of discharge was PVT/E-1. He was awarded or authorized:

- Army Commendation Medal
- Army Achievement Medal (fourth award)
- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal with one bronze service star
- Army Service Ribbon
- Overseas Service Ribbon (second award)
- Driver and Mechanic Badge
- Driver-W Badge (for wheeled vehicles)

BOARD DISCUSSION:

1. 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 general court-martial for possessing and distributing lysergic acid diethylamide. The Board found no error or injustice in the separation proceedings. The Board noted the applicant provided no evidence of post-service achievements or evidence in support of clemency consideration. 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 general 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.

3. The Board considered the applicant's request to amend his re-entry eligibility code from 4 to an immediately eligible to enlist code; however found no evidence to support the request. The Board determined the code assigned is the corresponding code pursuant to regulatory guidance for the narrative reason for separation assigned for court-martial, other and separation code JJD; therefore, the Board denied relief.

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.

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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. Title 10 (Armed Forces), 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 Separations), in effect at the time, sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

a. Honorable discharge. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. General discharge. 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

c. Under other than honorable conditions discharge. A discharge under other than honorable conditions is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial. When the reason for separation is based upon a pattern of behavior that constitutes a significant departure from the conduct expected of Soldiers of the Army. When the reason for separation is based upon one or more acts or omissions that constitutes a significant departure from the conduct expected of Soldiers of the Army.

d. Bad conduct discharge. A Soldier will be given 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. Questions concerning the finality of appellate review should be referred to the servicing staff judge advocate.

3. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. By law, Title 10 (Armed Forces), U.S. Code, section 1552, this Board 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. The ABCMR does not have authority to set aside a conviction by a court-martial.

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

5. Army Regulation 635-5 (Personnel Separations - Separation Documents), in effect at the time, provides 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 REFRAD, retirement, or discharge. The DD Form 214 is not intended to have any legal effect on termination of a Soldier's service.

6. 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 code "1" applies to personnel who have completed their obligated term of active service and are considered qualified to reenter the U.S. Army if all other criteria are met
- RE code "2" Applies to persons not eligible for immediate reenlistment
- RE code "3" applies to personnel who are not considered fully qualified for reentry or continuous service at time of separation, but whose disqualification is waivable. They are ineligible unless a waiver is granted
- RE code "4" applies to personnel separated from last period of active-duty service with a nonwaivable disqualification

7. Army Regulation 635-5-1 (Separation Program Designator Codes) states that the Separation Program Designator (SPD) codes are three-character alphabetic combinations which identify reasons for, and types of, separation from active duty. SPD code "JJD" is the appropriate code to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200, Chapter 3, based on Court-Martial. RE code of "4" is the appropriate corresponding RE code for SPD code "JJD".

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. 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 based on 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. 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//