

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 February 2025

DOCKET NUMBER: AR20240005963

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

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)

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 AR20230008997 on 6 March 2024.

2. The applicant states he made some terrible choices that have since haunted him and his family for a very long time. Had he been given the chance to rehabilitate, he strongly believes he would still be serving today. He never wanted out of the Army. He used drugs because it is how he was taught to cope. He is trying to right the wrong and set a good example for his two sons.

3. The applicant enlisted in the Regular Army on 5 March 2003, for 3 years. He completed basic combat and advanced individual training, and he was awarded military occupational specialty (MOS) 77F (Petroleum Supply Specialist).

a. Following completion of MOS training, the applicant was assigned to 2nd Battalion, 3rd Aviation, 3rd Infantry Division, Fort Stewart, GA.

b. On 30 December 2003, the applicant was reported in an absent without leave (AWOL) status, and on 30 January 2004, he was dropped from the rolls as a deserter. He returned to military control on 12 February 2004. He was placed in confinement.

c. On 25 March 2004, before a special court-martial that convened at Fort Stewart, GA, the applicant was convicted of:

(1) Charge I. Article 86. Plea: Guilty. Finding: Guilty. The Specification: Without authority absent himself from his unit on or about 30 December 2003 and did remain so absent until on or about 12 February 2004. Plea: Guilty. Finding: Guilty.

(2) Charge II. Article 112a. Plea: Guilty. Finding: Guilty.

- Specification 1: Wrongfully use marijuana a Schedule I controlled substance between on or about 13 October 2003 and on or about 14 November 2003. Plea: Guilty. Finding: Guilty.
- Specification 2: Wrongfully use marijuana, a Schedule I controlled substance between on or about 17 October 2003 and on or about 18 November 2003. Plea: Guilty. Finding: Guilty.
- Specification 3: Wrongfully use marijuana, a Schedule I controlled substance between on or about 3 November 2003 and on or about 4 December 2003. Plea: Guilty. Finding: Guilty.
- Specification 4: Wrongfully use cocaine, a Schedule II controlled substance between on or about 11 November 2003 and on or about 14 November 2003. Plea: Guilty. Finding: Guilty.
- Specification 5: Wrongfully use cocaine, a Schedule II controlled substance between on or about 14 November 2003 and on or about 18 November 2003. Plea: Not Guilty. Finding: Not Guilty.

d. The court sentenced the applicant to reduction to the grade of E-1, confinement for seven months, and to be separated from service with a bad conduct discharge.

e. On 1 October 2004, the convening authority approved the sentence; and, except for that part of the sentence extending to a bad conduct discharge, will be executed but the execution of that part of the sentence adjudging confinement in excess of four months is suspended for four months at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action. The accused will be credited with 62 days of confinement against the sentence to confinement. The record of trial was forwarded for appellate review.

f. On 30 November 2004, the U.S. Army Court Criminal Appeals affirmed the findings and sentence.

g. Special Court-Martial Order Number 59, issued by Headquarters, U.S. Army Armor Center, Fort Knox, KY on 25 March 2005, noted that the applicant's sentence had been affirmed and ordered the bad conduct discharge would be executed.

h. The applicant was discharged on 10 June 2005. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative

Separations), Chapter 3, Section IV, by reason of court-martial. His service was characterized as bad conduct. He was assigned Separation Code JJD and Reentry Code 4. He was credited with 1 year, 11 months, and 1 day of net active service this period with 125 days of lost time (30 December 2003 to 11 February 2004 and 12 February 2004 to 2 May 2004) and 404 days of excess leave (3 May 2004 to 10 June 2005).

4. There is no indication the applicant petitioned the Army Discharge Review Board for review of his discharge processing within that board's 15-year statute of limitations.
5. On 6 March 2004, the ABCMR considered his request for an upgrade of his discharge and denied it.

- a. Prior to adjudicating the applicant's case, the Army Review Boards Agency medical advisory reviewed the applicant's case and determined that there is insufficient evidence that the applicant had an experience or condition during his time in service that mitigated his misconduct. The applicant contends his misconduct was related to PTSD. A review of the records was void of any behavioral health diagnosis or treatment history for the applicant during or after service and he provided no documentation supporting his assertion of PTSD. In absence of documentation supporting his assertion, there is insufficient evidence to establish that his misconduct was related to or mitigated by PTSD and insufficient evidence to support an upgrade of his discharge characterization.

- b. 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 DOD guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and the medical review, the Board concurred with the advising official finding insufficient evidence that the applicant had an experience or condition during his time in service that mitigated his misconduct. The Board found insufficient evidence of in-service mitigating factors to overcome the misconduct of AWOL and multiple drug use. The Board noted the applicant's service record exhibits numerous instances of misconduct during his enlistment period for 1 year 11 months and 1 day of net service for this period. Furthermore, the Board found the applicant's record is absent any behavioral health diagnosis or treatment history for the applicant during or after service and he provided no documentation supporting his assertion of PTSD. ABCMR 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. The applicant provided no post service achievements or character letters of support attesting

to his honorable conduct for the Board to weigh as a clemency determination. Based on the preponderance of evidence, the Board denied relief.

6. 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.

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

#### BOARD DISCUSSION

After reviewing the Record of Proceedings and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. Based upon the short term of honorable service completed prior to a pattern of misconduct leading to the applicant's separation, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

#### BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:X	:X	:X	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.

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 (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 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 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. 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, 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. 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. (Optional as applicable.)

//NOTHING FOLLOWS//