

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 February 2025

DOCKET NUMBER: AR20240005985

APPLICANT REQUESTS: reconsideration of an upgrade of his characterization of service from bad conduct to general, under honorable conditions.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Applicant Statement, 23 April 2024
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 28 December 1982
- Character Letter A_R_, 3 April 2024
- Character Letter J_H_, undated
- Character Letter J_H_, undated
- Character Letter T_R_, 17 April 2024

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 AR20060009698 on 30 January 2007.

2. The applicant states he enlisted in the Army to serve his country and do his part as a young man to make the country safe for his children and the ones he loves. He admires the ones that serve, and he is thankful for each one of them for their service. He was young and there was a lot he did not understand at that time. His father was a pastor for 48 years, serving God. His father instilled in his children to always do the right thing and to always be loyal. During the time he served, he was married, leaving his wife home with their children. He was informed by his wife that she had been diagnosed with a brain tumor and he needed to be home. He had no leave time available, so he went absent without leave (AWOL) to be with his family that needed him. He believed at the time that what was told to him was true and he had no other choice but to do what he felt was the right thing. He found out later that it was not true but then it was too late to change the course of his actions. He is asking that the Board understands that he

regrets what he did. Thinking that there was nothing he could do to change the outcome of his choices, that he will have to live his remaining years with what he thought was the right decision at the time.

3. The applicant provides four-character letters which state he is a devoted family man. He is an honest, polite, and hardworking man, who is a valuable asset to our society. He is always willing to help and do anything for anybody when needed.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 22 August 1979. The highest rank/grade he held was private first class (PFC)/E-3.

b. On 17 July 1981, he accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for on or about 16 June 1981, failing to go at the time prescribed to his appointed place of duty. His punishment included forfeiture of \$135.00, 14 days extra duty, and 14 days restriction.

c. On 29 July 1981, he accepted NJP, under the provisions of Article 15, UCMJ, for being AWOL from on or about 4 July 1981 to on or about 14 July 1981. His punishment included reduction to private (PV2)/E-2, forfeiture of \$130.00, and extra duty for 14 days.

d. On 14 October 1981, he accepted NJP, under the provisions of Article 15, UCMJ, for on or about 15 August 1981, wrongfully having in his possession some amount of marihuana. His punishment included forfeiture of \$100.00 per month for two months and 30 days restriction.

e. On 15 December 1981, he accepted NJP, under the provisions of Article 15, UCMJ, for being AWOL from on or about 29 November 1981 to on or about 15 December 1981. His punishment included reduction to the grade of private (PV1)/E-1 (suspended for 90 days), forfeiture of \$144.00, 14 days extra duty, and 14 days restriction. The suspension of the punishment of reduction to the grade of E-1 was vacated and the unexecuted portions of the punishment was ordered duty executed.

f. Special Court-Martial Order Number 67, issued by Headquarters, U.S. Army Infantry Center and Fort Benning, Fort Benning, GA on 13 May 1982 shows the applicant was found guilty of:

- Charge I, one specification of being AWOL from on or about 18 December 1981 to on or about 26 January 1982
- Charge II, one specification of breaking restriction on or about 18 December 1981

- Additional Charge, one specification of being AWOL from on or about 17 February 1982 to on or about 27 March 1982

g. The court sentenced the applicant to be discharged from the service with a bad conduct discharge, to forfeit \$367.00 pay per month for a term of six months, and to be confined at hard labor for a term of three months and 23 days.

h. The sentence was approved on 13 May 1982, and the record of trial was forwarded to the Judge Advocate General of the Army for appellate review.

i. A Statement of Medical Condition, dated 31 August 1982, shows the applicant underwent a separation medical examination more than three working days prior to his departure from place of separation and to the best of his knowledge, since his last separation examination, there had been no change in his medical condition.

j. Special Court-Martial Order Number 189, issued by Headquarters, U.S. Army Infantry Center and Fort Benning, Fort Benning, GA on 15 December 1982, shows the sentence had been affirmed. The provisions of Article 71(c) had been complied with; the sentence would be duly executed. The portion of the sentence to confinement had been served.

k. The applicant was discharged on 28 December 1982. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), chapter 3, as a result of court-martial, other, in the rank/grade of private (PV1)/E-1, and his service was characterized as bad conduct. He completed 2 years, 8 months, and 21 days of net active service during the covered period. This form also shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Expert Marksmanship Qualification Badge (M-16), First Class Qualification Badge (hand grenade), Army Service Ribbon, and the Overseas Service Ribbon
- Item 26 (Separation Code): JJD
- Item 27 (Reentry Code): RE-3, 3B
- Item 29 (Dates of Time Lost During This Period): 4 July 1981 – 13 July 1981; 29 November 1981 – 14 December 1981; 18 December 1981 – 25 January 1982; 17 February 1982 – 26 March 1982; 17 March 1982 – 27 July 1982

5. The ABCMR considered the applicant's request in ABCMR Docket Number AR20060009698 on 30 January 2007. The Board denied the applicant's request and determined the evidence presented did not demonstrate the existence of a probable error or injustice.

6. By regulation AR 635-200, 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.
7. 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.
8. The Board should consider the applicant's overall 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 recognized the applicants four-character reference letters submitted in support of his petition. While the letters describe the applicant as a devoted family man and a respectful, honest, and hardworking individual who contributes positively to his community, the Board found that, while the post-service character references reflect positively on the applicant's current conduct, they do not present sufficiently persuasive evidence to outweigh the seriousness and repeated nature of the applicant's misconduct during military service.
2. The Board determined the applicant's service record reflects a pattern of indiscipline, including multiple instances of unauthorized absences, failure to report, possession of an illegal substance, and violation of restriction orders. These offenses resulted in four nonjudicial punishments and a conviction by a special court-martial, culminating in a bad conduct discharge. The Board found no evidence of procedural error, injustice, or mitigating circumstances that would warrant a change in the characterization of service. Based on the nature of the offenses and the absence of new, material evidence demonstrating error or injustice, the Board determined that the applicant has not provided a sufficient basis to support an upgrade of his discharge. Therefore, relief is denied.

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 AR20060009698 on 30 January 2007.

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.

a. Chapter 3 states a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or a special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

b. 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.

c. 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.

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. 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 Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification

4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, chapter 3, court-martial, other, would receive a separation code of "JJD."

5. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

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//