

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 November 2024

DOCKET NUMBER: AR20240006692

APPLICANT REQUESTS: amendment of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show in:

- item 24 (Character of Service): honorable
- item 25 (Separation Authority): Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-3
- item 26 (Separation Code): JFF
- item 28 (Narrative Reason for Separation): Secretarial Authority

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

- Two DD Form 149s (Application for Correction of Military Record), 23 January 2017 and 26 February 2024
- DD Form 214, for the period ending 22 April 2013
- Counsel Statement
- General Court Martial Order Number 9, 16 October 2008
- DA Form 4430 (Department of the Army Report of Result of Trial)
- DD Form 2707 (Confinement Order), 24 September 2008
- General Court Martial Order Number 123, 23 July 2009
- AR20170010215, ABCMR letter to applicant, 23 August 2019
- Seven Letters of Support

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 the ongoing stigma of his discharge has surely satisfied the punitive purpose of the bad conduct discharge and considering his hard work, his years of honorable service, and his dedication to his family, it would be inherently unjust to let the stigma continue for the rest of his life.

3. Counsel states pursuant to 10 U.S.C. § 1552, P.L. 101-189 and Department of Defense Directive 1332.4, codified at 32 C.F.R. §581.3 et seq., the applicant respectfully submits this application to change his type of separation from bad conduct discharge to honorable, and to change his narrative reason for separation from Court-Martial (Other) to Secretarial Authority with corresponding separation code. This request is premised on clemency and is a request for reconsideration of new and material evidence not previously heard by this Honorable Board.

a. Counsel states the facts of the applicant's service, by stating he commenced service on 18 November 2004. During his service he was awarded an Army Commendation Medal, National Defense Service Medal, Global War on Terrorism Service Medal, an Iraq Campaign Medal with campaign star, an Army Service Ribbon, and an Overseas Service Ribbon. He served in Iraq from 7 October 2005 to 2 September 2006.

b. On 24 September 2008, the applicant was tried by General Court-Martial where he pled guilty to, and was found guilty of three specifications of violating Article 112a, Uniform Code of Military Justice (UCMJ). He violated Article 112a, UCMJ, on 18 January 2008, by wrongfully distributing 10 milliliters (ml) of Dianabol and 10 ml of testosterone; he violated Article 112a, UCMJ on 15 February 2008, by wrongfully distributing 10 ml of Dianabol and 20 ml (2 vials) of testosterone; and he violated Article 112a, UCMJ, on 4 April 2008 by wrongfully distributing 50 ml (5 vials) of testosterone. The applicant was sentenced to a reduction in rank to private (PVT)/E-1, confinement for 10 months, and a bad conduct discharge. His sentence was approved except for the period of confinement, which was reduced to 90 days. The court-martial order was affirmed on 23 July 2009. The applicant was separated on 22 April 2013 with a bad conduct discharge. The narrative reason for separation was Court-Martial, Other.

c. On 23 January 2017, the applicant applied to this honorable Board and requested that his first enlistment period be separated from his second enlistment period to reflect an honorable discharge. The Board denied his request citing regulatory guidance which prohibits the issuance of a separate DD Form 214.

d. Counsel argues injustice, due to more than a decade has elapsed since the applicant's discharge, and in that time, he has worked hard to overcome his mistakes and become a productive member of society. His mother, who wrote a letter in support of his upgrade requests states, [the applicant] went through major obstacles trying to pick up the pieces and continue to provide for his family, he has done an amazing job ... He has persevered despite the circumstances. She also shares that the applicant is married with two children, and despite his successes, the discharge is "a cloud that has always been over him and has hindered him" from pursuing other goals in his life. She also states that the applicant has had no other incidences other than those that led to his discharge, and that he has "more than proven himself over the years ...".

e. Counsel states the applicant's sister, E.C.M., also wrote a letter of support. In her letter, describes the applicant as "a genuine, loving and caring brother" who is devoted to his family and someone who is "always willing to give the shirt off his back for anyone." She also states that the applicant has "always been driven by the desire to help others." She respectfully asks that this Honorable Board reconsider the applicant's discharge request and writes, "I ask that this be reconsidered due to his change behaviors over the years and this crime being the only one that has been committed by him. The applicant has set goals in his life not only for himself but for his family ...".

f. L.S., the applicant's mother-in-law, wrote in support of the applicant's upgrade request as well. L.S. shares that the applicant wanted to discard the steroids but that he was coerced into selling the steroids by a fellow Solider, who turned out to be an informant so that the applicant had a little extra money to give to his wife, who had just had their first baby. She acknowledges that the applicant made a poor decision, but states he is "far from a drug dealer, drug use or a dishonest human" and that the applicant's incarceration was unjust. She states the applicant worked for her family's plumbing business and that he was well-loved by customers who described him as "helpful, respectful and kind." She also shares:

"I understand life choices have consequences ... but my heart believes that this was unfair and that the United States Army failed themselves by forcing this hardworking, kind and loving, dedicated man out of this amazing branch of our military."

g. W.S. the applicant's father-in-law wrote a letter speaking to the applicant's character. He states:

"I am grateful to have had him work for me in my plumbing company and have only the best to say about those years while he was employed with me ...I don't think in almost twenty years of owning and operating this company, I have had a harder more dedicated employee. You may think that having family work in your company would come with some issues, but that was definitely not an issue with [the applicant] ... I am not a gusher kind of guy, but I do think [the applicant] is a top-notch, stand-up guy. I am proud to call him my son in law, and enjoy every minute we get to spend with him and our family."

h. J.A.T. the applicant's lifelong friend, wrote a letter in support of the applicant's upgrade request. He states that the applicant is someone who can be depended upon for "moral support" and protection, and that he is an "honorable friend." J.A.T. shares:

[The applicant's] integrity and loyalty is unquestionable ... If you were to sum up his values and qualities, Strength, Leadership, Integrity, Grit, Loyalty, Family man

and honorable are definitely how many perceive him ... If there is ever a man who deserves Greatness, Forgiveness and Honor it is him."

i. Additionally, P.M., a friend of the applicant and business colleague, wrote a letter in support of the applicant's character despite recent challenges. He stated:

"I have found [the applicant] to be very honest and someone that does what he says he is going to do ... During the past couple of months things have been difficult as the economy negatively impacted our business. During this time, [the applicant] has worked diligently to make things better, and improve both our business. During this period, I believe that I have seen the man that [the applicant] has become [since discharge]."

j. Lastly, the applicant's wife, J.E.C., wrote a letter on behalf of the applicant attesting to his qualities as a husband, father, man, and as a Soldier of the US Army, which she also herself served in. She shares that they were married in February 2008, just before their first child A.M.C. was born. Jessica explains how the applicant always selflessly put her wants and needs above his own, as shown by the applicant's support of his wife's decision to continue serving in the US Army, even after he could no longer serve himself. The applicant was again supportive when she had their second child, C.C. IV, and desired to end her active-duty career, move closer to family in Texas, and stay home to raise their kids. This required the applicant to support their family in his occupation as a GNC employee, which she states he went "above and beyond" in doing by earning promotions to store manager and then regional manager, as well as dedicating his extra hours to overtime. When the applicant's wife then wanted to move from Texas to Washington state to be close to her family and return to school, the applicant was again supportive, and even took a plumbing apprenticeship with her father, which the applicant "excelled at." Her schooling eventually required them to move back to Texas, which the applicant again selflessly supported both emotionally and financially.

(1) As a father, J.E.C. shares that the applicant is "caring, fun-loving, adventurous, devoted, but also stern and disciplinarian."

"I could not have asked for a better father for my children ... Even when he is dog tired from work or a long day of knocking out my 'honey-do' list, whatever either kid asks to do with him he does it. And not just for 30 mins ... He will play whatever they want till they are done, which to me shows his loyalty and respect for them... When asking the kids their favorite memory of their dad, A__a said 'that's so hard to pick just one ... but I'd say, go kart racing'. She is a child of few words, but it was amazing to hear her talk and laugh about all our trips to different racetracks and how much she enjoys seeing her dad fly around the track belly laughing Q said 'throwing the football and making routs

to run' every day he gets home from school, that's the first thing he wants to do. As I sit here writing this letter I look outside to see [the applicant] shadow boxing with Q in between teaching him how to fry some wings on the patio ... [The applicant] has always gone above and beyond what's needed to make sure they are provided for physically, emotionally, and financially."

(2) Moreover, as a man, she states the applicant is selfless in his care for others, and not just his loved ones. "Regarding their elderly neighbors, "[the applicant] checks in with them from time to time to make sure they don't need anything. He has gone for the past few years to help them and others that are unable to put up Christmas lights, despite the fact that despises putting lights on the second story." She adds that he is always showing respect, paying it forward, and stops "to help people push cars that are stuck in the road no matter how hot or rainy it is." On one occasion, the applicant even pulled over to help a man in a wheelchair who fell in a ditch when no one else was stopping to help. "When he sees homeless, often will go out of his way to get them something to eat. Asking what they would like from whatever restaurant or store is near."

(3) Finally, as a Soldier, she adds that the applicant was the "epitome of an amazing soldier" who has been paying for his career changing mistake for 16 years. She stated:

"It took a lot of honor, integrity, and personal courage to face his family and let them know what had happened. It took even more of these values for him to call my mom himself to let her know and take responsibility for his actions. These are all traits sought after in the armed forces, our code of ethics. During [the applicant's] first enlistment he had a clean record, deployment to Iraq, attended the NCO academy, and received metals/awards from not only his unit but mine as well while pulling multiple duties in my place so I didn't have to while pregnant. As a soldier he had always gone above and beyond to accomplish whatever mission was at hand, I can say this from experience as we soldiered together prior to dating. The loyalty this man showed to his country even after getting set up and having his career torn away was and is astonishing."

(4) She concluded her letter with an explanation of the events that contributed to the applicant's discharge:

"[The applicant] has paid a tremendous debt for something he never intended to do, and said multiple times he did not want to do. Eventually, he gave in after his "best friend" at the time kept urging him to do it. Knowing it was wrong but not fully understanding how wrong, or the consequences he could face. This ridiculously stupid mistake changed not only his life and career, but

the course of our family's life. Please reconsider the discharge of [the applicant] to allow him to have this black cloud that's been weighing on him for 16 years to be lifted once and for all."

k. Counsel states further myriad courts have recognized that veterans like the applicant are improperly stigmatized and harmed by similar discharges throughout their lives. "Since the vast majority of discharges from the armed forces are honorable, the issuance of any other type of discharge stigmatizes the ex-serviceman. It robs him of his good name. It injures his economic and social potential as a member of the general community." *Sofranoff v. United States*, 165 Ct. Cl. 470 (Ct. Cl. 1964).

l. Counsel concludes stating considering the facts and clemency matters presented herein, the applicant respectfully requests that his Bad Conduct Discharge is changed to Honorable, and his narrative reason for separation and separation code are changed to reflect Secretarial Authority. The ongoing stigma of his discharge as surely satisfied the punitive purposes of the BCD, and considering his hard work, his years of honorable service, and his dedication to his friends and family, it would be inherently unjust to let the stigma continue for the rest of the applicant's life.

4. The applicant enlisted in the Regular Army on 18 November 2004. He served in Iraq from 7 October 2005 to 21 September 2006. He reenlisted on 31 October 2006.

5. On 23 September 2008, he was convicted by a general court-martial (GCM) for the charge of wrongful use, possession of controlled substances and its three specifications of:

- On or about 18 January 2008, wrongfully distribute 10 ml of Dianabol and 10 ml of Testosterone, a schedule III controlled substance
- On or about 15 February 2008, wrongfully distribute 10 ml of Dianabol and 20 ml (2 vials) of Testosterone, a schedule III controlled substance
- On or about 4 April 2008, wrongfully distribute 50ml (5 vials) of Testosterone, a schedule III controlled substance
- He was sentenced to be reduced to the grade of E-1; to be confined for ten months; and to be discharged from the service with a bad conduct discharge

6. His duty status was changed from present for duty (PDY) to confined to military authorities (CMA) on 24 September 2008.

7. General Court-Martial Order Number 9, Headquarters, 25th Infantry Division, Schofield Barracks, Hawaii 96857, dated 16 October 2008, states only so much of the sentence as provides for reduction in grade to PVT/E-1, confinement for 90 days, and a bad conduct discharge was approved and, except for that part of the sentence extending to a bad conduct discharge, will be executed.

8. His duty status was again changed from CMA to PDY on 5 December 2008.
9. On 23 December 2008, the U.S. Army Court of Criminal Appeals, corrected GCM Order Number 9, Headquarters, 25th Infantry Division, Schofield Barracks, HI, dated 16 October 2008, to reflect the date of the promulgating order as 16 October 2008.
10. He was placed on excess leave on 26 June 2009.
11. GCM Order Number 123, issued by Headquarters, US Army Armor Center, Fort Knox, KY on 23 July 2009, shows the sentence to a bad conduct discharge, reduction to the grade of PVT/E-1, and confinement for 90 days, adjudged on 23 September 2008, as promulgated in GCM Order Number 9, Headquarters, 25th Infantry Division, Schofield Barracks, Hawaii 96857, dated 16 October 2008, as corrected by US Army Court of Criminal Appeals, Notice of Court Martial Order Correction, dated 23 December 2008, has been finally affirmed. The sentence to confinement has been served. Article 71(c) having been complied with; the bad conduct discharge will be executed.
12. Accordingly, he was discharged on 22 April 2013 with a bad conduct discharge. He completed 8 years, 2 months, and 24 days of active service. He was awarded or authorized the Army Commendation Medal, National Defense Service Medal, Global War or Terrorism Service Medal, Iraq Campaign Medal with campaign star, Army Service Ribbon, and Overseas Service Ribbon. His DD Form 214 also shows in:
 - Item 25 (Separation Authority): AR 635-200, Chapter 3
 - Item 26 (Separation Code): JJD
 - Item 27 (Reenlistment Code): 4
 - Item 28 (Narrative Reason for Separation): Court-Martial, Other
 - Item 29 (Dates of Time Lost During This Period): 20080924-20081204
13. The applicant provides:
 - DA Form 4430 (Department of the Army Report of Result of Trial) showing a summarization of the trial by court-martial
 - DD Form 2707 (Confinement Order) showing the applicant was confined by GCM for distribution of a controlled substance on 24 September 2008
 - Previous application to separate honorable service from entire service period
 - AR20170010215, ABCMR letter to applicant, 23 August 2019, explaining his DD Form 214 accurately reflects his continuous honorable service in remarks
 - Seven support letters which were summarized by counsel in his brief
14. He did not qualify to have his case considered by the Army Discharge Review Board, because his conviction was by a general court-martial.

15. 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.

16. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, United States Code, section 1552, the authority under which this Board acts, the Army Board for Correction of Military Records 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.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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 wrongful use, possession of a controlled substance, and intent to distribute. The Board determined the sentence issued at the time was harsh based on the circumstances of the conviction and as a matter of clemency granted relief to upgrade the applicant's characterization of service from bad conduct to other than honorable.

2. Additionally, the applicant requested amendment of the separation authority, separation code, and narrative reason for separation. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and determined relief for the portion of his request was not warranted and denied this portion of his request.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

█ █ █ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 22 April 2013, to show his characterization of service as other than honorable conditions.

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any additional amendments of his DD Form 214 in excess of the above.

█

█ █

█
█

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, 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 (AR) 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for 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. Paragraph 3-7 states 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.

c. Paragraph 3-7b provides that 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.

d. Paragraph 3-11 states 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.

3. AR 635-5-1 (Separation Program Designator Codes) prescribes the specific authorities (regulatory, statutory, or other directives), the reasons for the separation of members from active military service, and the separation program designators to be used for these stated reasons:

- Separation Code JJD applies to enlisted Soldiers who were separated due court-martial, other under the provisions of AR 635-200, chapter 3
- Separation Code JFF applies to Secretarial Authority under the provisions of AR 635-200, paragraph 5-3

4. 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.

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 (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 on the basis of 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//