

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 February 2025

DOCKET NUMBER: AR20240007164

APPLICANT REQUESTS: upgrade of his bad conduct discharge to a general discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Statement
- Certificate of Training Raining – Cabinet maker and Millworker
- Multiple Support Statements to the State Parole Board (2011)
- Copy of Business License for 2024 and for 2013

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 an upgrade to character of service is requested.

a. He feels confident that he has been rehabilitated, and his life in the last 20 years reflects an enduring change. He is asking to be upgraded to general / under honorable conditions. He made a mistake when he was 25 years old, by hanging out with the wrong people when he should have been focused on his military career. Since that time, he has built a beautiful family with five grandchildren and one on the way. He also owns [Business Name], which is a successful bathroom remodel business. He is asking for this upgrade so he can move forward and try to remove this scar from his record.

b. He appreciates the Board taking the time to look over his case and request for an upgraded discharge. He realizes the seriousness of the charges that resulted in his discharge and has worked very hard over the past 20 years to amend for the stain he placed on his life at such a young age. His military career was cut short because of stupid decisions made on his part and he can never get that back. He hopes that the Board will take the time to look at the documents and character reference letters and

notice the changes he has made in his life since that time. He owns a pretty successful bathroom remodeling business in the Montgomery area, and his wife runs the city gymnastics program. As grandparents, they want to set the best example, and he feels that this discharge upgrade will be a step in that direction.

3. The applicant enlisted in the Regular Army on 21 September 2000. He held military occupational specialty 77F, Petroleum Supply Specialist.

a. On 30 July 2002, before a general court-martial that convened at Fort Hood, TX, the applicant was found guilty and convicted of the Charges and their specifications below:

(1) Charge I: Article 112a. Plea: Guilty. Finding: Guilty.

- Specification 1: At or near Fort Hood, TX, between on or about 3 December 2001 and 2 January 2002, wrongfully used marijuana, a controlled substance. Plea: Guilty. Finding: Guilty.
- Specification 2: At or near Fort Hood, TX, between on or about 3 December 2001 and 2 January 2002, wrongfully used cocaine, a controlled substance. Plea: Guilty. Finding: Guilty.
- Specification 3: At or near Fort Hood, TX, between on or about 26 January 2002 and 25 February 2002, wrongfully used cocaine, a controlled substance. Plea: Guilty. Finding: Guilty.
- Specification 4: At or near Fort Hood, TX, between on or about 26 January 2002 and 25 February 2002, wrongfully used marijuana, a controlled substance. Plea: Guilty. Finding: Guilty.
- Specification 5: At or near Fort Hood, TX, between on or about 26 January 2002 and 25 February 2002, wrongfully used 3,4 methylenedioxy-methamphetamine, MDMA, commonly known as "ecstasy," a Schedule I controlled substance. Plea: Guilty. Finding: Guilty.
- Specification 6: At or near Fort Hood, TX, on or about 16 March 2002, wrongfully used marijuana, a controlled substance, while on duty as a sentinel or lookout. Plea: Guilty. Finding: Guilty.
- Specification 7: At or near Fort Hood, TX, between on or about 26 February 2002 and 17 March 2002, wrongfully used cocaine, a controlled substance. Plea: Guilty. Finding: Guilty.
- Specification 8: At or near Fort Hood, TX, between on or about 26 February 2002 and 17 March 2002, wrongfully used 3,4 methylenedioxy-methamphetamine, MOMA, commonly known as "ecstasy," a Schedule I controlled substance. Plea: Guilty. Finding: Guilty.
- Specification 9: At or near Fort Hood, TX, on or about 17 March 2002, wrongfully possessed less than 30 grams of marijuana, a controlled substance. Plea: Guilty. Finding: Guilty.

(2) Additional Charge: Article 112a. Plea: Guilty. Finding: Guilty. Specification: At or near Killeen, TX, on or about 16 March 2002, wrongfully distributed four tablets of 3,4 methylenedioxymethamphetamine, MOMA, commonly known as "ecstasy," a Schedule I controlled substance. Plea: Guilty. Finding: Guilty.

b. The court sentenced him to be discharged from the service with a bad conduct discharge, confinement for 28 months, and forfeiture of \$250 pay per month for 28 months.

c. The convening authority approved only so much of the sentence as provides for forfeiture of \$250.00 pay per month for 28 months, confinement for 23 months, and a bad-conduct discharge, and, except for the part of the sentence extending to bad-conduct discharge, ordered the sentence executed. The record of trial was forwarded to the appellate authority for appellate review.

d. The U.S. Army Court of Military Review affirmed the findings of guilty and the sentence.

e. General Court-Martial Order 71, issued by Headquarters, U.S. Army Field Artillery Center, Fort Sill, OK on 1 April 2004, noted that the applicant's sentence had been finally affirmed. Article 71(c) having been complied with, and the bad conduct discharge would be executed.

f. The applicant was discharged on 14 December 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, as a result of court-martial. His service was characterized as bad conduct (Separation Code JJD, Reentry Code 4). He was credited with 3 years, 10 months, and 15 days of net active service this period, with lost time from 30 July 2002 to 8 December 2003.

- He was awarded or authorized: Army Service Ribbon.
- The Remarks block listed his continuous honorable service from 21 September 2000 to 29 July 2002.
- He had excess leave from 8 December 2003 to 23 February 2004 (78 days).

5. The applicant did not qualify to have his discharge reviewed by the Army Discharge Review Board (ADRB). By regulation (AR 15-180 (Army Discharge Review Board (ADRB))), service members convicted by a general court-martial are not eligible to apply to the ADRB. They may apply to the ABCMR.

6. The applicant provides a certificate of training in cabinet making and millworker, dated December 2003. He also provides copies of a Business License. Additionally, he

provides statements, letters, and/or emails, dated in 2011, addressed to the State Parole Board in relation to what appears to be a gun license.

a. One couple, friends of the applicant, state in a letter on 14 November 2011, the applicant has proved himself to me as a pillar of the community. He takes care of his family and friends, has an extremely strong religious connection and is a positive influence on those around him. In his personal and business life, the applicant has shown to be responsible, focused on detail, and quality oriented. His actions speak for someone who has truly changed their life and is an asset to our community.

b. Another person states in a letter on 11 November 2011 she supports the applicant's request to regain his rights to own and use a firearm, and she also supports the applicant's efforts to seek a full pardon for the crime he was convicted of.

c. One person states he has known the applicant since the third grade, and they are best friends. Although the applicant made some mistakes in his young adult life, he is a good guy. He has learned from his mistakes and grown from them as well.

d. A lady states in an email on 14 November 2011, she has known the applicant for many years, and she knows him to be a responsible person. He made a few mistakes in his past but has turned his life around. He has a great marriage, beautiful children and is the owner of two successful businesses. He is a family man and active in his church.

e. Another person states in a letter on 11 November 2011, he has known the applicant for 5 years and they live next door to each other. He is a remarkable neighbor and is always available to help.

7. 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.

8. 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.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. One potential outcome discussed was to deny relief based upon the multiple drug offenses, including distribution to others. However, based upon the nonviolent nature of the misconduct, the post-service character evidence provided and the guidance on liberal consideration, the Board concluded there was sufficient evidence to grant clemency by upgrade the characterization of service to General, Under Honorable Conditions.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Under Honorable Conditions (General)
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

X      //signed//  
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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. 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 635-200 (Active Duty Enlisted Administrative Separations) provides for the separation of enlisted personnel:

a. Paragraph 3-7a provides that 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. 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.

c. Paragraph 3-7c states, 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 for the good of service in selected circumstances.

d. Paragraph 3-11 states a member 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. Title 10, U.S. Code, section 1552, provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the Uniform Code of Military Justice, action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the Uniform Code of Military Justice or action on the sentence of a court-martial for purposes of clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

4. 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//