

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 March 2025

DOCKET NUMBER: AR20240007913

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his dishonorable discharge to honorable. As new contentions he requests change in:

- Narrative Reason for Separation from as a result of court-martial/other to Secretarial Authority
- Separation Authority from Chapter 11, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) to coincide with Secretarial Authority
- Separation Code from JJD to coincide with Secretarial Authority
- Reenlistment Code from RE-4 to coincide with Secretarial Authority

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

- DD Form 149 (Application for Correction of Military Record)
- Exhibit list showing all items and sub-items submitted with application
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Counsel brief (9 pages) addressed below
- Exhibit A: Personal statement (3 pages) addressed below
- Exhibit B: Service Record (130 pages) in support of his claim available in supporting documents for the Boards review
- Exhibit C: (4) Character Statement Letters from residents where he was the superintendent speaking of his service; veteran who knew him growing up as well as a supervisor from a previous job (all letters are available in supporting documents for the Boards review)
- Exhibit D: Post Service Records (14 pages) from 1993 – 2005 of courses he has completed and achievements he has accomplished in support of his claim
- Exhibit E: Memos, Regulations, Studies, and Decisions, etc. (25 pages) in support of his claim

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 AC88-09218 on 15 February 1989.

2. The applicant states he deserves clemency because he has paid for his misconduct, because of his long and well-demonstrated history of rehabilitation, because he sincerely atones for his misconduct, and because this relief is necessary for him in his old age. In his three-page personal statement (which is available in supporting documents for the Board's review) he describes:

- His upbringing in South Bronx
- How and why, he got demoted
- His personal life with his son and wife
- Drinking problems
- Being drunk and getting into an altercation to include firing a gun
- Fighting with the military police
- Escaping custody to see his son
- Addiction to alcohol
- Post service employment and citizenship for the past 30 years

3. Counsel states a summary of the applicant's service.

a. Counsel states in a 9-page brief in support of the application which is available for the Board's review in supporting documents the applicant deserves clemency because he has paid for his misconduct, because of his long and well-demonstrated history of rehabilitation, because he sincerely atones for his misconduct, and because this relief is necessary for him in his old age. Counsel argues the following

- The depression that the applicant experienced during service caused and mitigates the self-medication that led to his discharge; Included in his reasoning:
 - Depression qualifies as a condition that mitigates his discharge
 - Experienced depression while in service
 - Condition mitigates his discharge
 - Condition outweighs the discharge
- Faithful service, relative to his infrequent misconduct, means that he is entitled to a discharge upgrade
- He is entitled to a discharge upgrade because he has paid for his misconduct, rehabilitated himself, and overcame adversity
- He should receive a discharge upgrade because that is the only adequate remedy

b. Counsel concludes the applicant was a good soldier and a promising Non-Commissioned Officer (NCO) in the Army's 82nd Airborne Division. After eight years of exemplary service, family issues drove him into a deep depression, and he self-

medicated by becoming increasingly reliant on alcohol. If current programs were in place back then rather than a pervasive culture of drinking, this probably would never have happened. But it did, and one day in 1981, he made a serious mistake that ruined his military career. He accepts responsibility for this misconduct and has regretted it deeply ever since.

c. Lastly, counsel adds over the past forty-three years, the applicant has paid dearly that mistake. He has been homeless, has struggled to find employment because of his discharge, has been rejected in a previous appeal for a discharge upgrade, and has suffered with alcoholism for years. But he has managed to overcome all of that adversity. He has been sobered for three decades, he has been a stellar employee for the past thirty years, and he has raised a daughter as a single father. He is a good man, beloved by all who know him, and he has lived a good, long life.

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

a. He enlisted in the Regular Army on 27 February 1973.

b. On 6 December 1974, he reenlisted for five years. He was promoted to sergeant on 25 March 1975.

c. He received non-judicial punishment (NJP) on 3 November 1976, for on or about 4 October 1976, without authority failed to go at the time prescribed to his appointed place of duty. Also, failed to follow a lawful order issued by a military policeman, to place his hands on top of his head. He was reduced to specialist/E-4 (suspended for 180 days until 2 June 1977).

d. On 5 December 1976, he was honorably discharged for immediate reenlistment. His reenlistment is void of his records.

e. Orders 210-13, issued at Headquarters, 82d Airborne Division, Fort Bragg, NC on 31 October 1979, shows he was discharged on 30 October 1979, for immediate reenlistment. His record is void of a DD Form 214 for this period.

f. On 31 October 1979, he reenlisted for three years.

g. He received NJP on 19 January 1981, for on or about 6 January 1981, without authority absent himself from his unit and did remain so absent until on or about 10 January 1981. Also, on or about 11 January 1981, willfully disobey a lawful order. He was reduced to E-4.

h. On 6 April 1981, at Fort Bragg, NC, the applicant was found guilty by a general court-martial (GCM) of:

- Charge I (Article 134), and its specifications of:
 - On or about 20 January 1981, wrongfully communicate to others a threat to kill Sergeant First Class (SFC) C.T. by carrying a loaded .22 rifle
 - On or about 20 January 1981, through carelessness, discharge a .22 semi-automatic rifle
- Charge II (Insubordinate conduct towards an NCO), and its specification of on or about 20 January 1981, wrongfully and unlawfully assault SFC C.T., by throwing his headgear at him
- Charge III (Willfully Disobeying Superior Commissioned Officer), and its specification of, on or about 20 January 1981, having received a lawful order from Captain C.S.T., his superior commissioned officer, to surrender his rifle to him, willfully disobey the same
- Charge IV (Failure to Obey an Order or Regulation) and its specification of, on or about 20 January 1981, wrongfully and unlawfully violate a lawful general regulation, to wit: 82d Airborne Division Regulation 190-2, paragraph 3(d), by wrongfully possessing a semi-automatic .22 caliber rifle
- Additional Charge (Offenses by sentinel or lookout) and its specification of, on or about 2 February 1981, escape from the lawful custody of Sergeant P.H.
- The court sentenced him to forfeiture all pay and allowances, to be reduced to the grade of E-1, to be confined at hard labor for a period of five years, to be discharged from the armed service with a dishonorable discharge

i. On 16 June 1981, the convening authority approved only so much of the sentence as provides for dishonorable discharge, confinement at hard labor for 13 months, forfeiture of all pay and allowances for 13 months, and reduction to Private E-1 was approved.

j. The Record of Trial was forwarded to The Judge Advocate General of the Army for appellate review.

k. On 23 September 1981, U.S. Army Court of Criminal Appeals having found the approved findings of guilty, and the sentence correct in law and fact the findings of guilty and the sentence were affirmed.

l. The applicant was notified of his right to petition the Court of Military Appeals for a grant of review with respect to any matter of law, within 30 days; on 6 October 1981, he acknowledged.

m. On 7 December 1981, on consideration of the Petition for Grant of Review of the decision of the United States Army Court of Military Review, his petition was denied.

n. GCM Order Number 106, issued on 21 December 1981, shows the unexecuted portion of the sentence to confinement was remitted effective 30 December 1981.

o. GCM Order Number 15, issued on 5 April 1982, shows the appellate review had been finally affirmed; Article 71(c) having been complied with; the sentence was duly executed.

p. Accordingly, the applicant was discharged with a dishonorable discharge on 8 June 1982. His DD Form 214 shows he was discharged in the rank of private/E-1 as a result of court-martial conviction in accordance with Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 11. It also shows he completed 1 year, 7 months, and 22 days of active service; his DD Form 214 also shows:

- Item 26 (Separation Code): JJD
- Item 27 (Reenlistment Code): RE-4
- Item 29 (Dates of Time Lost During this Period): 810106 – 810109 (6 January 1981 – 9 January 1981, 810121 – 810201 (21 January 1981 – 1 February 1981, 810202 – 810204 (2 February 1981 – 4 February 1981, 810205 – 811229 (5 February 1981 – 29 December 1981)

4. In his previous request (AC88-09218) on 15 February 1989, after reviewing the application and all supporting documents, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned. The application submitted was denied by the ABCMR.

5. 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.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a reconsideration of his previous request for upgrade of his dishonorable discharge to honorable. He also requests changes to his Narrative Reason for Separation from as 'a result of court-martial/other' to Secretarial Authority, Separation Authority to coincide with Secretarial Authority, Separation Code from 'JJD' to coincide with Secretarial Authority, and his Reenlistment Code from 'RE-4' to coincide with Secretarial Authority. On his DD Form 149, through counsel, the applicant indicated Other Mental Health Issues are related to his request. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) the applicant enlisted in the Regular Army on 27 February 1973, 2) He received non-judicial punishment (NJP) on 3 November 1976 for failing to go at the time prescribed to his appointed place of duty. He also failed to follow a lawful order issued by a military

policeman to place his hands on top of his head, 3) He received NJP on 19 January 1981, for, without authority absenting himself from his unit from on or about 6 January 1981 until on or about 10 January 1981. Also, on or about 11 January 1981, he willfully disobeyed a lawful order, 4) On 6 April 1981, the applicant was found guilty by a general court-martial (GCM) of wrongfully communicating to others a threat to kill a Sergeant First Class by carrying a loaded .22 rifle; through carelessness, discharge of a .22 semi-automatic rifle; wrongfully and unlawfully assault a SFC by throwing his headgear at him; disobeyed a lawful order from his superior commissioned officer to surrender his rifle to him; wrongfully possessing a semi-automatic .22 caliber rifle; and escape from lawful custody of a Sergeant, 5) the applicant was discharged on 08 June 1982 under the provisions of AR 635-200, Chapter 11, As a Result of Court-Martial/Other, with a separation code of JJD and reenlistment code of RE-4, 6) the applicant's previous request for relief to the ABCMR on 15 February 1989 was denied.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant's DD Form 4 (Enlistment Contract) for the purposes of his initial enlistment (27 February 1973) and reenlistment (06 December 1974) shows the applicant's physical profile as 111111, indicating there were no medical conditions found to be unfitting at the time of his enlistment/reenlistment. A Report of Medical Examination dated 13 April 1982 for the purposes of separation shows item number 42, psychiatric, as 'normal' on clinical evaluation. He was medically cleared for separation. His Report of Medical History dated 13 April 1982 shows he marked 'yes' to the following BH-related items: 'attempted suicide' and 'depression or excessive worry.' In the comments section it shows 'excessive worry-some family and personal problem.' A Report of Mental Status Evaluation (MSE) dated 13 April 1982, which was conducted due to his being considered for discharge due to misconduct, showed all domains of the MSE were within normal limits (WNL). It was also documented that the applicant had the mental capacity to understand and participate in proceedings, was mentally responsible, and met retention standards IAW AR 40-501, Chapter 3.

d. A review of JLV was void of medical information and there is no documentation that the applicant is service-connected through the VA for any conditions; however, it is of note that his dishonorable discharge renders him ineligible for VA clinical services.

e. The applicant provided a self-authored statement to the Board dated 22 April 2024. In effect, the applicant reported that due to broken promises from the Army regarding

anticipated assignments after re-enlisting and problems at home, his alcohol use increased. Moreover, the day of the incident, he stated that he was intoxicated.

f. A character referenced dated 14 December 2023 authored by a veteran who previously served with the applicant at Ft. Bragg noted that he noticed the applicant was drinking heavily and began having marital problems while stationed at Ft. Bragg. The author also stated that the applicant started to become anxious and would use alcohol to cope.

g. The applicant provided a graduation certification from the Bedford Stuyvesant Alcoholism Treatment Center showing he successfully completed the course of treatment on 19 June 1996.

h. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends that his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant contends his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration. A review of records was void of any BH diagnosis for the applicant in-service or post-discharge. While it was noted on his separation physical that the applicant endorsed experiencing 'depression or excessive worry' due to family and personal problems, there are no in-service or post-discharge records available for review showing the applicant has been diagnosed with a mitigating BH condition. More importantly, even if there were evidence that the applicant had been diagnosed with a mitigating BH condition, such as depression or anxiety, it is of note that these conditions do not interfere with one's ability to distinguish between right and wrong and adhere to the right. Moreover, the seriousness of the applicant's misconduct that led to his discharge (e.g., communicating a threat, discharging a weapon, assault, disobeying a lawful order to surrender his rifle, wrongful possession of a semi-automatic rifle, and escape from

lawful custody) outweighs the relief offered through Liberal Consideration. Thus, BH mitigation is not supported.

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 not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. One potential outcome discussed was to grant partial relief by upgrading to Under Other Than Honorable Conditions based upon the time period since the misconduct and the guidance received on clemency. However, based upon the lengthy pattern of misconduct, some of which was serious misconduct of a violent nature, as well as the following findings outlined in the medical review:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes.

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? No,

the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:XXX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:	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.

//SIGNED//

X

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 (AR) 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for separation of enlisted personnel.

a. Chapter 11 states a Soldier will be given a dishonorable discharge pursuant only to an approved sentence of a general court-martial, after completion of appellate review and after such affirmed sentence has been ordered duly executed.

b. 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. 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. 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.

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. AR 601-210 (Regular Army and Reserve Components Enlistment Program) governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waivable and non-waivable separations. Table 3-1, defines reentry eligibility (RE) codes:

a. RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

b. RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. Eligibility: Ineligible unless a waiver is granted.

c. RE-4 Applies to: Person separated from last period of service with a non-waivable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years of active Federal service. Eligibility: Ineligible for enlistment.

4. AR 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of JJD as the appropriate code to assign Soldiers who are discharged as a result of court-martial, other. SPD code of "JFF" as the appropriate code to assign Soldiers who are discharged under the provisions of AR 635-200 with a narrative reason of "Secretarial Authority." The Secretary of the Army will determine RE code for separations under Secretarial authority. SPD code may be used when HQDA message or other directive authorizes voluntary separation in an individual case or category of cases.

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//