

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 March 2025

DOCKET NUMBER: AR20240008221

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

- item 4a (Grade, Rate or Rank) and item 4b (Pay Grade) – SFC/E07
- item 23 (Type of Separation) – Retirement
- item 24 (Character of Service) – Honorable

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

- Online Application, with self-authored statement
- Prosecution Exhibit 9 (Wifi)
- Inspector General (IG) Request, dated 15 July 2021
- excerpt, court-martial transcript, Command Sergeant Major (CSM) [REDACTED]
- Department of Defense (DOD) IG Request, dated 27 September 2021
- excerpt, court-martial transcript, Colonel (COL) [REDACTED]
- Criminal Investigation Division (CID) Form 94 (Agents Investigative Report), dated 11 July 2014
- Lantern Forensic Report
- memorandum, Article 138, dated 25 June 2015
- DA Form 2166-8 (Noncommissioned Officer Evaluation Report (NCOER)), for the period ending 28 June 2014
- letter, U.S. Senator John Cornyn, dated 11 March 2017
- letter, Director, Human Resources, Fort Sill, OK, dated 7 March 2017
- excerpt, court-martial transcript, "Tampered evidence"
- excerpt, court-martial transcript, "Lied under oath"
- Decision on Reconsideration, U.S. Army Court of Criminal Appeals, dated 15 October 2018
- DD Form 214, for the period ending 12 April 2019

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 prosecutors failed to turn over all of the evidence before and after his trial. The government failed to protect his due process rights during and after his appeal.

3. The applicant enlisted in the Regular Army on 26 October 1994. The highest rank he attained was sergeant first class (SFC)/E-7, effective 1 November 2011.

4. He served in Kosovo from 5 February 2014 to 9 June 2014.

5. The complete facts and circumstances surrounding the applicant's discharge are not available for review in his service record. He was discharged on 12 April 2019, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 3, by reason of court-martial (other). He completed 24 years, 5 months, and 17 days of net active service. His DD Form 214 contains the following entries:

- item 4a (Grade, Rate or Rank) and item 4b (Pay Grade) – PV1/E01
- item 23 (Type of Separation) – Discharge
- item 24 (Character of Service) – Bad Conduct

6. The applicant provides the following:

a. Prosecution Exhibit 9 (Wi-Fi) was one of the government's key pieces of evidence in his court-martial; 83 of the Wi-Fi locations are missing, which is proof that the government used tampered evidence.

b. He requested unredacted copies of two IG complaints: one filed by him in January or February 2017, and one filed by his wife. The government has yet to turn over copies of the reports.

c. CID Form 94, dated 11 July 2014, shows there was additional evidence taken from the cell phone of Sergeant (SGT) [REDACTED], which was not turned over by prosecutors. The Lantern Forensic Report shows the prosecution suppressed additional evidence.

d. An excerpt from court-martial transcripts, shows Command Sergeant Major (CSM) [REDACTED] failed to disclose she was dismissed from a directly related case which was unethical and an example of unlawful command influence.

e. An excerpt from court-martial transcripts, shows Colonel (COL) [REDACTED] statement also amounted to unlawful command influence.

f. A memorandum, dated 25 June 2015, shows the applicant filed a formal complaint under the provisions of the Uniform Code of Military Justice, Article 138, wherein he alleged he was unlawfully punished prior to his trial through improper flagging.

g. A DA Form 2166-8 (NCOER), for the period ending 28 June 2014.

h. A letter from U.S. Senator John Cornyn, dated 11 March 2017; and a letter from the Director, Human Resources, Fort Sill, OK, dated 7 March 2017, shows the applicant's family was erroneously disenrolled from the Defense Enrollment Eligibility Reporting System. They were subsequently reenrolled. The applicant states he was unlawfully punished, post-trial, through the denial of an identification card and Tricare benefits.

i. Two excerpts from court-martial transcripts (pages 83 and 85), show proof of tampered evidence and lying under oath.

j. A Decision on Reconsideration, dated 15 October 2018, shows the U.S. Army Court of Criminal Appeals upheld and affirmed the findings of guilty and the sentence as approved by the convening authority.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, 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 review based on law, policy, and regulation. The applicant served honorably in the Regular Army from 26 October 1994 until his discharge on 12 April 2019 following a court-martial, resulting in a bad conduct discharge and reduction in rank to PV1/E-1. He completed over 24 years of active service, including a deployment to Kosovo, but the full circumstances of his discharge are not available in the service record. The Board noted the applicant's contention that his due process rights were violated through prosecutorial misconduct, suppression of evidence, unlawful command influence, and post-trial administrative errors. However, the applicant's claims, while detailed, are not substantiated by sufficient evidence to override the findings of the court-martial and sentence to discharge the applicant with a bad conduct discharge.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XX	:XX	:XX	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. Title 10, U.S. Code (USC), 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 Army Board for Correction of Military Review (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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. The regulation provides:

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 BCD 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.

4. 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.

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/NR) 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.

//NOTHING FOLLOWS//