

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 September 2025

DOCKET NUMBER: AR20240013046

APPLICANT REQUESTS: with counsel, an upgrade of his Bad Conduct Discharge (BCD).

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)
- Brief in Support of Military Upgrade
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Driver License
- Occupational Safety and Health Administration Certificate
- Resume
- 5 Reference Letters
- Photograph

FACTS:

1. The applicant states, in effect:

a. He served honorably for 4 years and 11 months before his discharge, notwithstanding an act of indiscretion. He made an uncharacteristically bad decision which ultimately led to his discharge. He was young at the time of his enlistment and made a decision unbecoming of a private first class. He admits he purchased and ingested psychedelics while traveling in Amsterdam for self-medication, aware of the Army's zero tolerance policy. He is remorseful for his involvement in illegal drug use.

b. Although his act of indiscretion was found to violate the Uniform Code of Military Justice (UCMJ), the offense should not be enough to prevent him from obtaining an honorable discharge. He confessed his mistake and given the opportunity, would have corrected his mistake and continued to serve honorably. It is unjust to continue to characterize and punish himself for the discharge. He has repaid his debts to society and the Army through his separation by fulfilling the terms of his nonjudicial punishment yet still lives with the consequences of his mistake.

c. He has demonstrated the ability to overcome his mistakes and move forward in a positive light. He has developed himself as a model citizen with no criminal record, no involvement with drugs or alcohol, or any run ins with the law since his discharge. Had he been allowed to correct his mistake; a strong argument could be made that no punitive discharge would have been issued. He respects the values of the Army and has made strides in his life due to his time in the military, which taught him discipline, accountability, and responsibility. He has a great support system in place and is pursuing an associate's degree in accounting and finance with the goal of achieving a bachelor's degree in electrical engineering with the hopes of building a family with his fiancé and purchasing a home.

d. He opines a "whole person concept" should be applied to the review of his discharge. He notes how he endured numerous rejections from the Armed Forces for being too young, underweight, or for severe acne prior to receiving acceptance from the Army. He deployed to Afghanistan for Operation Freedom's Sentinel and served as part of the personal security detail for the Deputy Commanding General. He considered this one of his greatest accomplishments while serving. After redeployment to Fort Drum, NY, he received orders to Germany. He was subsequently promoted to sergeant and selected and trained in multiple positions.

e. Since his discharge, he has been fully employed and promoted three times, most recently to the position of Training Manager for a trenchless and cured-in-place pipe technology robotics company. He is a second-year student at community college and has recently become engaged after a five-year committed relationship. He loves his country and wishes to remain close to the Army and the veterans who have served and to be counted among the Army's honorably discharged. He feels he was not given a reasonable opportunity to mitigate or correct his mistake; instead, he was administratively separated.

2. The applicant enlisted in the Regular Army (RA) on 8 April 2015, at over 19 years of age. He served in military occupational specialty 11B (Infantryman). Evidence shows he served in Afghanistan from 19 February 2016 to 5 September 2016. He was promoted to the rank/grade of sergeant/E-5 on 1 November 2019. Evidence further shows he was awarded or authorized the:

- Army Certificate of Achievement
- Army Achievement Medal
- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Afghanistan Campaign Medal with 1 Campaign Star
- Noncommissioned Officer Professional Development Ribbon
- Army Service Ribbon

- Overseas Service Ribbon
- North Atlantic Treaty Organization Medal

3. His Official Military Personnel File contains a Statement of Trial Results (Special Court-Martial) which found him guilty of:

a. While in the rank/grade of sergeant/E-5, the applicant did, at or near Vilseck, Germany, on or about 7 December 2019, wrongfully introduce some amount of Psilocyn a Schedule 1 controlled substance onto Rose Barracks, Germany.

b. While in the rank/grade of sergeant/E-5, on or about 7 December 2019, at or near Vilseck, Germany, wrongfully distribute some amount of Psilocyn a Schedule 1 controlled substance.

c. While in the rank/grade of sergeant/E-5, on or about 8 December 2019, at or near Vilseck, Germany, wrongfully use Psilocyn a Schedule 1 controlled substance.

d. Total Sentence Adjudged was confinement for six months, reduction to private first class and a punitive BCD.

e. With the appellate review completed in the Special Court-Martial case of the applicant, the findings of guilty and the sentence, adjudged on 16 June 2020 and as entered by the judgment dated 13 August 2020, have been affirmed. Pursuant to Article 57(c)(1), UCMJ, the appellate review is complete, and the BCD may be executed.

4. On 13 August 2021, the applicant was discharged in accordance with Army Regulation 635-200 (Personnel Separations - Active Duty Enlisted Administrative Separations), chapter 3. The DD Form 214 he was issued shows he was discharged as the result of court-martial and received a BCD. The DD Form 214 lists a Separation Program Designator (SPD) code of "JJD" with a corresponding Reentry (RE) code of "4." It also shows at the time of his discharge he completed 5 years, 11 months, and 14 days of creditable active military service with lost time for the period 16 June 2020 to 7 November 2020.

5. The applicant provides a certificate, resume, photograph, and several character reference letters attesting to his professionalism, dedication, loyalty, service, character, and unwavering dedication to his duties as a Soldier and noncommissioned officer.

6. RE code "4" applies to Soldiers separated from their last period of service with a nonwaiverable disqualification.

7. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. Under the provisions of 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.

8. 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.

a. 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.

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.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that 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 through counsel and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The Board determined the punishment at the time was too harsh. Therefore, the Board determined the applicant's characterization of service should be upgraded to Under Other than Honorable Conditions.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant 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 13 August 2021 to show in item 24 (Character of Service): Under Other than Honorable Conditions.

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 - Active Duty Enlisted Administrative Separations), sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 3 provides the policies and procedures for separating members with a dishonorable discharge or a BCD. It stipulates that a Soldier will be given a BCD pursuant only to an approved sentence of a general or special court-martial, and that the appellate review must be completed and affirmed before the BCD portion of the sentence is ordered duly executed.

b. 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.

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.

2. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. Under the provisions of 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. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and 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.

a. 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.

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.

4. Army Regulation 635-5-1 (SPD Codes) states that the SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The SPD code of JJD is the correct code for RA Soldiers discharged in accordance with Army Regulation 635-200, chapter 3, Section IV, court-martial, other.

5. The SPD/RE Code Cross Reference Table provides instructions for determining the RE code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table in effect at the time of his discharge shows the SPD code of JJD has a corresponding RE code of "4."

6. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the RA, U.S. Army Reserve, and Army National Guard. Table 3-1 includes a list of RA RE codes.

- an RE-1 applies to Soldiers completing their terms of active service who are considered qualified to reenter the U.S. Army – they are qualified for enlistment if all other criteria are met
- an RE-3 applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable – they are ineligible for enlistment unless a waiver is granted
- an RE-4 applies to Soldiers separated from their last period of service with a nonwaiverable disqualification

7. Army Regulation 15-185 prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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.

//NOTHING FOLLOWS//