

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 29 September 2023

DOCKET NUMBER: AR20230002429

APPLICANT REQUESTS: An upgrade of his bad conduct discharge (BCD) to an under honorable conditions (general) discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 he deeply regrets his actions from 30 years ago. He has learned and grown a lot since then. The Army instilled in him how to become a man and take responsibility for his actions. He would like an upgrade to clean up his record.
3. On 9 October 1980, the applicant enlisted in the Regular Army for a 3-year service obligation. Upon completion of training and award of military occupational specialty 13B (Cannon Crewmember), he was assigned to Germany and arrived on 19 January 1981.
4. The applicant accepted non-judicial punishment (NJP), under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on the following occasions:
 - a. On 3 March 1982, for being incapacitated for the proper performance of his duties, on or about 19 February 1982. His punishment included reduction to E-1, forfeiture of \$100 pay for two months, and 30 days correctional custody.
 - b. On 16 July 1982, for on specification of being disrespectful in language to his superior noncommissioned officer (NCO); two specifications of willfully disobeying lawful orders from his superior NCO; and one specification of being drunk and disorderly in

quarters on or about 15 July 1982. His punishment included reduction to E-1 and forfeiture of \$125 pay for one month.

5. On 16 July 1982, he departed Germany enroute to Fort Sill, OK, and arrived on 22 August 1982.

6. On 10 November 1982, the applicant accepted NJP, under the provisions of Article 15 of the UCMJ, for willfully disobeying a lawful order by drinking beer while on duty as the charge of quarters on or about 23 October 1982. His punishment included forfeiture of \$123 pay, extra duty for 14 days, and 14 days restriction.

7. On 16 February 1983, before a general court-martial, at Fort Sill, OK, the applicant was found guilty of the following specifications in violation of the UCMJ, on 13 December 1982:

- three specifications of willfully damaging U.S. Government property
- two specifications of wrongfully appropriating U.S. Government property
- two specifications of breaking and entering
- one specification of drunk driving

8. The court sentenced him to forfeiture of \$300 pay per month for 12 months, one year and one day of confinement at hard labor, and separation from service with a BCD. On 22 March 1983, the convening authority approved the sentence, except the portion extending to confinement at hard labor for more than 10 months. The record of trial was forwarded for appellate review.

9. On 2 September 1983, General Court-Martial Order Number 325, issued by the U.S. Army Correctional Activity, Fort Riley, KS, noted the unexecuted portion of the applicant's sentence to confinement was remitted without further action. Subsequently, he was placed on involuntary excess leave while awaiting appellate review.

10. On 20 October 1983, the U.S. Army Court of Military Review approved the findings of guilt and affirmed the sentence.

11. On 28 February 1984, General Court-Martial Order Number 80, issued by the U.S. Army Correctional Activity, Fort Riley, KS, noted the applicant's sentence had finally been affirmed and ordered the BCD to be duly executed.

12. On 26 March 1984, the applicant was discharged pursuant to his court-martial sentence. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 3, as a result of court-martial. His service was characterized as bad conduct. He was credited with completing 2 years, 8 months,

and 26 days of net active service this period. He had lost time from 14 December 1982 to 1 September 1983.

13. 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.

14. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, evidence in the records and published DoD guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors for the misconduct and the applicant did not provide documentation showing in-service mitigating factors to overcome the misconduct or evidence of post-service achievements or letters of reference to weigh in support of a clemency determination. Based on the available documentation and the offenses leading to the applicant's separation, the Board concluded that any mitigation for the offenses were outweighed and the applicant received an equitable and just discharge. As a result, the Board found insufficient evidence of an error or injustice which would warrant a change to the applicant's characterization of service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

█ █ █ DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined 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.



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, 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 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 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - 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 was 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 provided that an enlisted person 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.
3. 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.
4. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records (BCM/NR) on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.
 - 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 on the basis of equity, injustice, or clemency grounds, Boards 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.

//NOTHING FOLLOWS//