

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 March 2024

DOCKET NUMBER: AR20230002700

APPLICANT REQUESTS: an upgrade of his bad conduct discharge (BCD).

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record)

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 he wishes to have his BCD upgraded for "benefits".
3. A review of the applicant's service record shows he enlisted in the Regular Army on 14 March 1984.
4. General Court-Martial Order Number 57, issued by Headquarters, 9th Infantry Diversion, Fort Lewis, WA, on 13 December 1985, shows the applicant, in accordance with his pleas, was found guilty of:
  - between on or about 15 February 1985 and on or about 11 March 1985, theft bank card
  - between on or about 15 February 1985 and on or about 11 March 1985, theft of U.S. currency in excess of \$100.00
  - on diverse occasions between on or about 20 February 1985 and on or about 8 March 1985, theft of U.S. currency in excess of \$100.00
5. The recommended sentence included reduction in grade to E-1, forfeiture of all pay and allowances, confinement for 10 months, and to be discharged with a BCD.
6. On 13 December 1985, the court-martial convening authority approved the court-martial findings and the sentence and directed that except for the part of the sentence extending to a BCD, to be executed, but reduced the sentence adjudging confinement

and forfeitures in excess of 9 months, suspended until 29 April 1986 at which time, unless sooner vacated the suspension was to be remitted.

7. The record of trial was forwarded to the U.S. Army Court of Military Review. On 27 January 1986, the Court affirmed the findings of guilty and sentence.
8. The applicant requested and was approved for excess leave on 9 June 1986.
9. General Court-Martial Order Number 519, on 22 July 1966, noted that the applicant's sentence had finally been affirmed and ordered the BCD duly executed.
10. The applicant's DA Form 2-1 (Personnel Qualification Record – Part II) shows he was absent without leave for 13 days from 11 October 1985 through 23 October 1985 and imprisoned for 222 days from 30 October 1985 through 8 June 1986.
11. The applicant was discharged on 1 August 1986, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 3, due to a court-martial conviction. The DD Form 214 (Certificate of Release or Discharge from Active Duty) he was issued shows his service was characterized as bad conduct. He had 1 year, 5 months, and 22 days of active service with 54 days in excess leave and 235 days of lost time.
12. 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.
13. In determining whether to grant relief the Boards for Correction of Military/Navy Records (BCM/NR) can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

2. The Board reviewed and noted the applicant provided no documentation for consideration of post-service achievements or statements in support of his application. The Board determined that an upgrade to the applicant's characterization of service was not warranted. The court-martial sentenced the applicant to a bad conduct discharge. All requirements of law and regulation were met.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

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 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 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. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

c. Chapter 3 provides that 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.

3. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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//