

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 November 2023

DOCKET NUMBER: AR20230004674

APPLICANT REQUESTS: reconsideration of his request for upgrade of his dishonorable discharge to under honorable conditions.

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

- DD Form 149 (Application for Correction of Military Record), 28 June 2022
- Department of Veterans Affairs (VA) decision, 18 June 1998
- reference statement, Sergeant First Class (SFC) Retired, M.C.O., 23 August 2022

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 AR1999018646 on 8 September 1999.
2. The applicant states, in effect, an upgrade of his characterization from dishonorable to under honorable conditions is requested.
3. The applicant enlisted in the Regular Army on 27 March 1979, for a period of 3 years, and executed an immediate reenlistment on 28 September 1981 for a period of 6 years.
4. A DA Form 2-1 (Personnel Qualification Record) shows the highest rank/grade he obtained was sergeant (SGT)/E-5, with a date of rank of 6 January 1984.
5. The applicant accepted nonjudicial punishment on 21 May 1986, for going absent without leave (AWOL) on or about 24 April 1986 until on or about 26 April 1986. The punishment imposed was reduction to the grade of E-4, forfeiture of \$200.00 pay per month for two months (suspended for 60 days), and extra duty for 30 days.
6. General Court-Martial Order (GCMO) Number 1, shows on 15 January 1987, the Court-Martial Convening Order Number 16, dated 3 September 1986, arraigned and tried the applicant, he was found guilty of the following offense(s) and specification(s):

- a. Charge I, Article 120, guilty of the following:

Specification: rape of Mrs. P.L.C, wife of SGT R.W.C Jr., on or about 18 September 1986.

- b. Charge II, Article 129, guilty of the following:

Specification: In the nighttime, unlawfully breaking and entering the dwelling house of SGT R.W.C. Jr., with intent to commit rape and robbery therein, on or about 18 September 1986, (guilty, except the words, "rape and robbery" substituting therefore the word, "larceny". Of the excepted words: not guilty of the substituted word: guilty).

- c. Charge III, Article 80, guilty of the following:

Specification: Attempt, by means of physical force and violence with a knife and by putting her in fear of physical harm, to steal from the presence of Mrs. P.L.C against her will, U.S. currency of some value greater than \$1.00, the property of Mrs. P.L.C., on or about 18 September 1986.

- d. Charge IV, Article 134, guilty of the following:

Specification: false swearing on or about 20 September 1986.

7. The court sentenced him to reduction to the grade of E-1, total forfeiture, confinement for 30 years, and a dishonorable discharge. The sentence was modified on 15 January 1987 to a dishonorable discharge, reduction to the grade of E-1, forfeiture of \$426.00 pay per month for 9 years, and confinement for 9 years (confinement in excess of 7 years was suspended for 2 years).

8. The record of trial was forwarded for appellate review, the findings of guilty and sentence were affirmed on 29 April 1987.

9. GCMO Number 367, dated 21 October 1987, issued by the U.S. Disciplinary Barracks, U.S. Army Combined Arms Center and Fort Leavenworth, Fort Leavenworth, Kansas, ordered the dishonorable discharge to be duly executed.

10. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 20 November 1987, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations Enlisted Personnel), paragraph 3-10, by reason of court-martial, in the grade of E-1. His service was characterized as dishonorable. His DD Form 214 also shows in:

- item 12c (net active service this period) – 7 years, 5 months, and 18 days
- item 13 (decorations, medals, badges, citations and campaign ribbons awarded or authorized) – Army Achievement Medal, Good Conduct Medal (2nd award), Army Service Ribbon, Overseas Service Ribbon (1), and Marksman Rifle M-16 Qualification Badge
- item 18 (remarks) – Immediate reenlistment this period 27 March 1979 through 27 September 1981
- item 26 (separation code) – JJD
- item 27 (reentry code) – RE-4
- item 29 (dates of time lost during this period) – 24 April 1986 to 26 April 1986 and 18 September 1986 through 27 September 1987

11. On 8 September 1999, the ABCMR denied his request for discharge upgrade, stating the applicant failed to submit sufficient relevant evidence to demonstrate the existence of probable error or injustice.

12. The applicant provides:

a. A decision document from the VA, approved on 18 June 1998, stating he is not entitled to receive VA benefits.

b. A reference statement from SFC M.C.O., retired, stating his cousin, the applicant grew up very structured, he was a loving husband and father. When released from confinement, he never asked for handouts and worked whatever job he could find to make a living for himself and his family. He and the applicant work together now, referencing the applicant as very disciplined. He states the applicant talks about the injustice he experienced while in, he believes in the applicant's innocence and supports his discharge upgrade request.

13. 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.

14. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

BOARD DISCUSSION:

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 contentions, 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. The applicant provided one letter of support; however, documentation lacked evidence attesting to post-service achievements to weigh a clemency determination. After due consideration of the request, the Board determined the character of service the applicant received upon separation was not in error or unjust.

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 to amend the decision of the Army Board for Correction of Military Records (ABCMR) in Docket Number AR1999018646 on 8 September 1999.

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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. 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.
2. AR 635-200, in effect at the time, provides for the orderly administrative separation of Soldiers in a variety of circumstances.

a. Chapter 3, provides guidance and information on the information as it relates to the character of service and the description of separation. Characterization at separation will be based upon the quality of the Soldier's service, including the reason for the separation and guidance, subject to the limitations under the various reasons for separation. Paragraph 3-7 addresses characterization of service as follows:

(1) Honorable discharge is appropriate when the quality of the Soldier's service 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. An honorable discharge may be furnished when disqualifying entries in the Soldier's military record are outweighed by subsequent honest and faithful service over a greater period during the current term of service. It is a pattern of behavior and not the isolated incident that should be considered the governing factor in determination of character of service.

(2) General discharge 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 member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to Active Duty.

(3) Under other than honorable conditions discharge is an administrative separation from the Service. It may be issued for misconduct, fraudulent entry, homosexual conduct, security reasons, or for the good of service in the following circumstances when the reason for separation is based on a pattern of behavior that constitutes a significant departure from the conduct expected of Soldiers of the Army. In addition, when the reason for separation is based upon one or more acts or omissions that constitutes a significant departure from the conduct expected of Soldiers of the Army is another valid circumstance. Some examples provided by the regulation are disregard by a superior or customary superior-subordinate relationships. An under other

than honorable conditions discharge will be directed by a commander exercising general court-martial authority.

b. Paragraph 3-10, states a member will be given a dishonorable discharge pursuant only to an approved sentence of a general court-martial.

3. 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.

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, 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.

//NOTHING FOLLOWS//