

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 8 December 2023

DOCKET NUMBER: AR20230005456

APPLICANT REQUESTS: upgrade of his dishonorable discharge.

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 (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 that he requests upgrade of his discharge to the highest available as allowed by law. He has been a law-abiding citizen for the past 43 years since this incident.
3. The applicant was inducted into the Army of the United States on 3 December 1968. He did not complete training and was not awarded a military occupational specialty.
4. Before a general court-martial on 29 April 1969, the applicant was found the guilty of, in conjunction with three other Soldiers, committing sodomy with Private First Class T.L.F. by force and without the consent of the Soldier on two occasions on or about 17 March 1969.
5. The court sentenced him to confinement at hard labor for eight years, forfeiture of all pay and allowances, and to be dishonorably discharged from the service. The sentence was adjudged approved on 4 June 1969. The record of trial was forwarded for appellate review. Pending completion of appellate review, the applicant was confined.
6. The U.S. Army Board of Review on 24 July 1969, approved the findings of guilty and the sentence was thereby affirmed.

7. DD Form 1478 (Prisoner's Summary Continuation Sheet), dated 10 September 1969, shows his neuropsychiatric examination on 13 August 1969. It states that he had been involved in repeated antisocial activity starting at age 12 and extending to the time he entered the military life. He had served much time in various juvenile institutions and prisons. He had a history of drug usage. His mental status shows he was somewhat blasé and indifferent. There was no indication of a thought disorder or perceptual distortions. Diagnosis-inadequate personality, chronic and moderate, manifested by chronic drug usage, lack of emotional stamina, inadaptability, difficulty tolerating stress and restriction, difficulty in relationship to authority figures, antisocial activity, and a tendency to use poor judgment under stress.
8. General Court-Martial Order Number 982, issued by Headquarters, U.S. Disciplinary Barracks, Fort Leavenworth, KS on 6 October 1969 shows the sentence to dishonorable discharge and forfeiture of all pay and allowances, was affirmed and having been complied with the sentence would be duly executed.
9. On 8 January 1970, the applicant was disapproved for clemency.
10. The applicant was discharged on 4 May 1970. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged under the provisions of Army Regulation (AR) 635-200, Chapter 11 as a result of court martial. He was assigned Separation Program Designator 292 (court martial) with Reenlistment Code 4. His service was characterized as dishonorable. He completed 3 months, and 15 days of net active service. He had 413 days of lost time from 18 March 1969 through 4 May 1970.
11. 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.
12. In reaching its determination, the Board can consider the applicant's petition and her service record in accordance with the published equity, injustice, or clemency determination guidance.

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. AR 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.
 - c. Chapter 11 provided that an enlisted person would be given a bad conduct discharge 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. 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.

//NOTHING FOLLOWS//