

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 December 2023

DOCKET NUMBER: AR20230005620

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his dishonorable characterization of service, and a new request to correct his DD Form 214 for the period ending 3 May 1991 to show a different narrative reason for separation, presumably more favorable.

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)

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 AC93-11232 on 6 October 1993.
2. As a new argument, the applicant states he had a previous period of honorable service in his first term.
3. The applicant enlisted in the Regular Army on 9 March 1982 for a 4-year period. He was honorably discharged on 9 January 1986 for the purpose of immediate reenlistment. He reenlisted in the Regular Army on 10 January 1986. The highest rank he attained was specialist/E-4.
4. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 29 September 1988 for failure to go at the time prescribed to his appointed place of duty, on or about 26 September 1988. His punishment consisted of reduction to private/E-2, forfeiture of \$50.00 pay for one month, 14 days of extra duty, and 14 days of restriction.
5. General Court Martial Order Number 6, issued by Headquarters, U.S. Army, Berlin, 19 May 1989, shows:

a. The applicant pled not guilty to all of the charges against him. He was found guilty of the following charges or specifications:

- committing carnal knowledge with a person not his wife, who at the time was under 16 years of age, on or about 20 August 1988
- attempting to commit sodomy, on or about 20 August 1988
- wrongfully using some amount of hashish (marijuana), between on or about 1 October 1988 and on or about 15 November 1988
- wrongfully using some amount of cocaine, between on or about 15 October 1988 and on or about 15 November 1988

b. He was sentenced to confinement for nine years, forfeiture of all pay and allowances, reduction to private/E-1, and to be discharged from the Army with a dishonorable discharge.

c. The sentence was approved on 19 May 1989 and the record of trial was forwarded to the Judge Advocate General of the Army for appellate review.

6. On 30 March 1990, the U.S. Army Court of Military Review upheld the findings of guilty and the sentence, reducing the period of confinement to five years.

7. General Court-Martial Order Number 119, issued by the U.S. Disciplinary Barracks, U.S. Army Combined Arms Center, Fort Leavenworth, KS on 26 March 1991, noted the applicant's sentence had been affirmed, and ordered the dishonorable discharge duly executed.

8. The applicant was discharged on 3 May 1991 under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 3-10, as a result of court-martial – other. His DD Form 214 confirms his characterization of service was dishonorable, with separation code JJD and reentry code RE-4. He was credited with 6 years, 10 months, and 13 days of net active service, with lost time from 21 January 1989 to 9 January 1990 and 10 January 1990 to 3 May 1991.

a. He was awarded or authorized the following: Army Good Conduct Medal, Army Occupation Medal, Army Service Ribbon, and Overseas Service Ribbon

b. The Remarks block listed his reenlistment as well as his continuous honorable service from 8 March 1982 to 9 January 1986.

9. The ABCMR reviewed the applicant's request for an upgrade of his characterization of service on 6 October 1993. After careful consideration, the Board determined there was not sufficient relevant evidence to demonstrate the existence of a probable error or injustice. The applicant's request was denied.

10. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code (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.

11. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, 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. The Board considered the applicant's statement, the applicant's record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant's trial by a general court-martial was warranted by the gravity of the offenses charged (carnal knowledge with a person not his wife, who at the time was under 16 years of age, attempting to commit sodomy, wrongfully using marijuana, and wrongfully using cocaine). His conviction and discharge were conducted in accordance with applicable laws and regulations and the discharge appropriately characterizes the misconduct for which he was convicted. He was given a dishonorable discharge pursuant to an approved sentence of a general court-martial. The appellate review was completed, and the affirmed sentence was ordered duly executed. All requirements of law and regulation were met with respect to the conduct of the court-martial and the appellate review process, and the rights of the applicant were fully protected. The applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that 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 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 ABCMR set forth in Docket Number AC93-11232 on 6 October 1993.

[REDACTED]

[REDACTED] [REDACTED]

[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. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provided 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.

b. Paragraph 3-7b provided 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.

c. Chapter 3, Section IV provided that a member would be given a dishonorable pursuant only to an approved sentence of a general court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed.

2. 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.

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//