

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 January 2024

DOCKET NUMBER: AR20230006031

APPLICANT REQUESTS: an upgrade of his bad conduct discharge to honorable.

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, in effect:

a. When the situation that happened to him took place, he was a 19 year old young man trying to fit in with a group of people. He had a friend that was apprehended for the sale of drugs. He and his friend knew a local Korean woman that sold drugs. His friend asked him to go and retrieve some methamphetamine for him. He accepts full responsibility for his actions; however, he was accused and convicted for basically being a drug dealer, which he never was. When he could not produce a sale for Criminal Investigation Detachment (CID), he was charged with attempt to distribute an illegal substance. It was the most embarrassing thing to ever happen to him and has been the only thing that he is ashamed of.

b. Since his discharge, he has maintained an upstanding lifestyle with no criminal intents, held steady employment, raised six beautiful children, and currently works for Northrop Grumman as a Supervisor for their PC Technician Department. He made a terrible mistake, but he grew from it and overcame what it could have destroyed. Before that incident he was an outstanding Soldier. He held the position of a squad leader from basic training even into his first duty station. He has gone on to encourage two of his children to enter the military. He is hurt that he did not get a second chance to complete his 20 years, as he once longed to.

c. He is only asking for the second chance that he believes in his heart that he deserves. Although he did the crime, he was 100 percent entrapped to do so. It is not to put the blame on anyone, but himself; however, at the mercy of the board, he is asking for grace to be removed from the distained position of Dishonorable to General.

3. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 17 August 1983 for four years. He served in Korea from on or about 6 January 1984 to on or about 13 March 1985.

b. DA Form 4187 (Personnel Action) reflects his duty status was changed from "Present for Duty" to "Confinement Military Authority," with an effective date of 14 March 1985.

c. Headquarters, U.S. Army Element, Combined Field Army (ROK/US) General Court-Martial Order Number 30, dated 18 April 1985, shows he was arraigned on the following offenses and the following findings or other dispositions were reached:

- Charge, Article 112a, Guilty, one specification of wrongfully distribute methamphetamine.
- Additional Charge, Article 112a, Not Guilty, one specification of wrongfully possessing methamphetamine

The finding of guilty as to the Specification of the Charge and the Charge were based on his plea of guilty. He pled not guilty to the specification of the Additional Charge.

d. The court sentenced him to reduction to the grade of E1, forfeiture of all pay and allowances, confinement for four months, and a bad-conduct discharge. The sentence was adjudged on 14 March 1985.

e. On 18 April 1985, the sentence was approved and, except for the bad conduct discharge (which requires additional action), was ordered executed.

f. DA Form 4187 reflects the applicant's duty status changed from "Confined Military Authority" to "Present for Duty," effective 21 June 1985.

g. U.S. Army Court of Military Review Memorandum Opinion, dated 8 July 1985 states, the court considered the issue personally raised by appellant and briefed by his counsel and found it to be without merit. The Court having found the approved findings of guilty, and the sentence correct in law and fact, and having determined on the basis of the entire record that they should be approved, such findings of guilty and the sentence are affirmed."

h. Headquarters, U.S. Army Correctional Activity, Fort Riley, KS General Court-Martial Order Number 610, dated 12 November 1985, states “the sentence to a bad-conduct discharge, confinement for four months, and forfeiture of pay and allowances, and reduction to the grade of E1, adjudged on 14 March 1985, as promulgated in General Court-Martial Order Number 30, Headquarters, U.S. Army Element, Combined Field Army (ROK/US), 18 April 1985, has been finally affirmed. Article 71(c) having been complied with, the bad-conduct discharge will be executed. That part of the sentence extending to confinement has been served.”

i. The applicant was discharged on 4 December 1985. His DD Form 214 shows he was discharged in the rank/grade of private/E-1, as a result of a court-martial conviction in accordance with Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel). He completed 2 years and 9 days of active military service with lost time from 14 March 1985 to 21 June 1985. His service was characterized as bad conduct and he was assigned the separation code JJD.

4. By regulation, a member 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.

5. In reaching its determination, the Board can consider the applicant’s petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence 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 on consideration of discharge upgrade requests. The Board considered the severity of the misconduct and whether there was sufficient evidence of mitigating circumstances to weigh in favor of a clemency determination. The Board noted that the applicant had become a business owner. However, after due consideration of the request and, in the absence of any mitigating factors such as post-service accomplishments or letters of reference to weigh in favor of the request, the Board determined that the character of service the applicant received upon separation was not in error or unjust and an upgrade to his character of service is not warranted.

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 to the records of the individual concerned and an upgrade to his character of service is not warranted.

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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. 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 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel, as a result of court-martial.
 - a. Paragraph 3-7a provides 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 provides 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. Paragraph 3-7c states a discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or for the good of service in selected circumstances.
 - d. Paragraph 3-10 states that a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general court-martial. The appellate review must be completed and the affirmed sentence ordered duly executed.
 - e. Paragraph 3-11 states a member 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. Title 10, U.S. Code, section 1552, provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the Uniform Code of Military Justice, action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the Uniform Code of Military Justice or action on the sentence of a court-martial for purposes of

clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

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. 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 based on 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. 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//