

IN THE CASE OF: ██████████

BOARD DATE: 18 January 2024

DOCKET NUMBER: AR20230006447

APPLICANT REQUESTS: reconsideration of his prior request to upgrade his character of service from bad conduct to honorable or general (under honorable conditions).

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), dated 1 July 1983

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 AR20110001518 on 4 August 2011.

2. The applicant states while in the Army he was approached by a fellow soldier, ██████, to go into town with him to get away from the barracks. He didn't have a car, so he agreed. They did not go far when they were pulled over by the Military Police (MP) who searched the vehicle and discovered stolen items in the trunk. They were both accused of having stolen the items. He told the MPs he didn't know anything about the items and was simply riding to town with ██████. They were booked for the stolen items. He tried to plead his case. ██████ told him he informed the MPs he (the applicant) had nothing to do with the stolen items, but they did not believe him. He was young and still learning about life. He now sees they railroaded him by giving him a bad conduct discharge. He asked his court appointed lawyer what it meant and was told it means he and the Army do not get along and it will be automatically changed to a general, under honorable conditions discharge after 7 years. He paid his dues to the system by doing time for something he didn't do; he just wanted to take a ride. He wants to be able to get treatment from the Department of Veterans Affairs but cannot due to the bad conduct status. He was young and had no idea all those white people in Killeen, TX, were railroading him.

3. The applicant enlisted in the Regular Army on 18 October 1979.

4. A DA Form 2627 (Record of Proceedings under Article 15, UCMJ) shows on 7 April 1980 the applicant accepted non-judicial punishment for possession marijuana.
5. Special Court-Martial (SPCM) Order Number 146 shows the applicant was arraigned, tried and convicted of conspiracy to commit larceny with fellow soldier [REDACTED] and stealing 116 pounds of meat. He was sentenced to reduction to the grade of E-1, confinement for 116 days, and forfeit of \$330.00 per month for 6 months. His sentence was adjudged on 29 September 1981.
6. SPCM Order Number 777 shows effective 8 December 1981, the unexecuted portion of the approved sentence of confinement for 116 days and forfeiture of \$330.00 per month for 6 months is suspended until 16 February 1982.
7. On 3 November 1982, the applicant elected not to undergo a medical examination for separation.
8. SPCM Order Number 8 shows the applicant was arraigned, tried and convicted of stealing a radio/cassette deck of a value of about \$250.00, the property of another Soldier. He was also convicted of unlawfully entering a room, the property of the U.S. Government, with intent to commit a criminal offense, to wit: larceny, therein. He was sentenced to be discharged from the service with a bad conduct discharge. His sentence was adjudged on 3 February 1983.
9. On 29 April 1983, the court-martial finding of guilty, and the sentence was affirmed by the U.S. Army Court of Military Review.
10. SPCM Order Number 23, dated 20 May 1983 affirmed the sentence of discharge from the service with a bad conduct discharge and directed the sentence be executed.
11. The applicant's DD Form 214 shows he was discharged on 1 July 1983 under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel) as the result of court-martial. His character of service shows bad conduct. He completed 3 years, 7 months, and 1 day of net active service.
12. The applicant previously applied to the Board on 9 January 2011, requesting his character of service be upgraded to honorable. On 4 August 2011, the Board denied the applicant's request, determining the evidence presented did not demonstrate the existence of a probable error or injustice and that the overall merits of his case were insufficient as a basis for correction of his records.
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.

14. The applicant provided argument or evidence that the Board should consider in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, 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 and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20110001518 on 4 August 2011.

4/15/2024

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CHAIRPERSON

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. AR 635-200 (Personnel Separations - Enlisted Personnel) sets policies, standards, and procedures to insure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

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.

2. 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.

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//