

IN THE CASE OF: ██████████

BOARD DATE: 18 January 2024

DOCKET NUMBER: AR20230006782

APPLICANT REQUESTS:

- reconsideration of his prior request for upgrade of his bad conduct discharge to honorable
- personal appearance before the Board

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)

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 AR1998014156 on 25 March 1999.
2. The applicant states he wants his bad conduct discharge upgraded to honorable. He was unjustly represented. He was a good Soldier who got railroaded for being honest and not properly represented.
3. After a period of prior service in the Regular Army from 10 July 1979 through 30 June 1982, the applicant reenlisted in the Regular Army on 1 July 1982.
4. A DD Form 458 (Charge Sheet), dated 21 September 1983, shows the applicant was charged with stealing two sets of M-19 binoculars on 21 June 1983, the property of the U.S. and of a value of about \$1,078.00, as founded in Criminal Investigation Division (CID) Report.
5. Headquarters, 24th Infantry Division (Mechanized) and Fort Stewart General Court-Martial Order Number 81, dated 21 December 1983, shows the applicant was arraigned and tried before a general court-martial which convened at Hunger Army Airfield, GA, pursuant to Court-Martial Convening Order Number 257, this headquarters, dated 23 November 1983.

a. He was found guilty of wrongfully appropriating two sets of M-19 binoculars on 21 June 1983, the property of the United States and of a value of about \$1,078.00.

b. On 7 December 1983, he was sentenced to discharge from the service with a bad conduct discharge, confinement at hard labor for 6 months, and forfeiture of all pay and allowances. No previous convictions were considered.

6. On 3 January 1984, the Judge Advocate General directed that the record of trial pertaining to the applicant be referred for review by the U.S. Army Court of Military Review and that he be represented by the Chiefs of the Defense Appellate Division and the Government Appellate Division.

7. On 24 February 1984, the U.S. Army Court of Military Review, 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, affirmed such findings of guilty and the sentence.

8. U.S. Army Correctional Activity, Fort Riley, KS, General Court-Martial Order Number 278, dated 12 July 1984, the approved sentence to a bad conduct discharge, confinement at hard labor for 6 months, and forfeiture of all pay and allowances, adjudged on 7 December 1983, as promulgated in General Court-Martial Order Number 81, Headquarters, 24th Infantry Division (Mechanized) and Fort Stewart, dated 21 December 1983, had been affirmed. Article 71 (Execution of a Sentence; Suspension of Sentence) having been complied with, the sentence would be duly executed. That portion of the sentence pertaining to confinement had been served.

9. The applicant's DD Form 214 shows he received a bad conduct discharge on 25 July 1984, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 3, as a result of court-martial. He was credited with 1 year, 7 months, and 23 days of net active service this period, with lost time from 7 December 1983 through 6 May 1984.

10. The applicant previously applied to the ABCMR, requesting upgrade of his bad conduct discharge to honorable. On 25 March 1999, the Board denied the applicant's request, determining the applicant failed to submit sufficient evidence to demonstrate the existence of a probable error or injustice.

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

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. 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 AR1998014156 on 25 March 1999.

4/15/2024

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CHAIRPERSON
Signed by: USA

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, 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.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

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 3, in effect at the time, 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. The appellate review was required to be completed and the affirmed sentence ordered duly executed.

3. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

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.

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//