

IN THE CASE OF: ██████████

BOARD DATE: 14 March 2024

DOCKET NUMBER: AR20230007872

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to honorable, and an appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record), 16 May 2023
- two self-authored statements, 7 March 2023 and 16 May 2023
- character reference, from ██████████, 19 February 2023
- character reference, from ██████████, 20 March 2023
- character reference, from ██████████ date unknown
- authorization letter, 8 November 2023

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 he believes his discharge is unjust. He entered the Army in hopes to better his life while serving his country. He went home on leave before deploying overseas, when it came time for him to return, he had lost his wallet. He asked everyone in his house about it and ended up writing two checks to purchase bus tickets to get back to base.

a. When he returned, his Command harassed him for missing movement, and he was put into the stockade for three months. A few months later, he was informed of his discharge due to bouncing two checks.

b. Years later, his sister and friend admitted they stole his wallet, which had the money to get back to base. They put him in a position where he had to write the two bad checks so he could return to base.

c. He states this correction should be made because he was young and was never taught how to use a check book. He did the best he could with his circumstances to report back to his unit. He did not realize the repercussions of writing two bad checks, and he did not appeal his discharge. He is requesting a discharge upgrade because he is a person of excellent character, and due to his sister and friend stealing his money, it has deprived him of what could be a stellar career in serving the military.

3. The applicant enlisted in the Regular Army on 5 December 1975, for a 3-year period. He was awarded military occupational specialty 11B (Infantryman) and the highest rank he attained was Private/E-2.

4. A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)) shows he accepted nonjudicial punishment (NJP) on 2 August 1976, for being disrespectful in language towards two of his superior noncommissioned officers, on or about 23 July 1976. His punishment imposed was reduction to the grade of Private/E-1, forfeiture of \$180.00, extra duty and restriction for 14 days.

5. An additional DA Form 2627 shows he accepted NJP on 29 March 1977, for failing to go to his appointed place of duty on or about 25 March 1977 and on or about 28 March 1977. The punishment imposed was forfeiture of \$187.00 pay per month for two months, and correctional custody for 21 days.

6. Before a Special Court-Martial, assembled at Fort Campbell, Kentucky, adjudged on 3 November 1976, the applicant was found guilty of missing the movement of his unit on or about 27 August 1977. The court sentenced him to discharge from the service with a bad conduct discharge (BCD) (suspended for six months to be remitted unless sooner vacated), confinement at hard labor for three months, and forfeiture of \$248.00 per month for three months. The sentence was approved on 4 January 1977.

7. On 1 April 1977, the applicant's commander recommended proceedings to vacate the suspension of the court-martial sentence, stating the applicant had violated his parole status during the three month period since the suspension. The applicant wrote two dishonored checks on or about 29 January for the amount of \$50.00 and on or about 1 February for the amount of \$50.00. His performance was described as marginally satisfactory, and he received NJP for missing retreat ceremonies on or about 25 March and missing muster formation on or about 28 March. The commander further recommended the applicant receive the discharge already adjudged.

8. On 11 April 1977, the applicant received notification of a hearing to vacate the suspension of his court-martial sentence. He was informed that he had the right to be present during the hearing. Additionally, he had the right to be represented by counsel and the right to waive representation by counsel. The hearing officer stated the intention

of the hearing was to examine and consider the DA Form 2627 and the notification of two dishonored checks, both dated 11 March 1977.

9. The result of the hearing to vacate are not available for review.

10. Special court-martial order number 62, issued by Headquarters 101st Airborne Division (Air Assault) and Fort Campbell, Fort Campbell, Kentucky on 13 May 1977, affirmed the sentence and ordered the BCD to be duly executed.

11. The applicant was discharged accordingly on 26 May 1977, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted personnel), Chapter 11, as a result of court-martial. His DD Form 214 (Report of Separation from Active Duty) shows his service was characterized as UOTHC, with separation program designator code JJD and reenlistment code 3B. He was credited with 1 year, 3 months, and 2 days of net active service with 81 days of lost time.

12. The applicant provides three notarized character references summarizing the applicant as friendly, hardworking, a wonderful person to know, a guardian angel because of his level of love for human life. Additionally, the applicant's sister concurs with the stealing of his wallet by herself and her friend. The sister states she and her friend found his wallet when he was home for a visit, and they split the money they stole. She knows it was wrong; she is sorry and hopes her letter would clear up the misunderstanding.

13. On 30 April 1982, the Army Discharge Review Board considered the applicant's request for an upgrade of his characterization of service. The Board determined the applicant was properly discharged and denied his request.

14. A DD Form 215 (Correction to DD Form 214, Certificate of Release or Discharge from Active Duty) corrects the applicant's DD 214 Item 10, Reenlistment Code from 3B to read RE-3, RE-3B, and RE-3C.

15. 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. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

16. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, 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 found the character references the applicant provided insufficient in support of a clemency determination. The Board noted his original sentence to a BCD was suspended and would have been remitted after 6 months, but during the suspension period additional misconduct led to vacating the suspension. 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:

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 for correction of the records of the individual concerned.

6/25/2024

X

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. 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, 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 11 provided that an enlisted person would be given a dishonorable 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.
 - d. Paragraph 11-2 provided a member will 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, 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. 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/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, Boards 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//