

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 March 2024

DOCKET NUMBER: AR20230008455

APPLICANT REQUESTS: an upgrade of his bad conduct discharge (BCD).

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

- DD Form 149 (Application for Correction of Military Record)
- two self-authored statements
- Standard Form (SF) 88 (Report of Medical Examination), 16 October 1979 and 8 May 1984
- SF 93 (Report of Medical History), 16 October 1979 and 8 May 1984
- SF 601 (Immunization Record), June 1980 to August 1980
- SF 608 (Dental Health Record), June 1980 to June 1987
- Army Good Conduct Medal Certificate, 18 June 1980 to 17 June 1983
- SF 558 (Emergency Care and Treatment (Medical Record)), 6 February 1984 and 7 February 1984
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 6 June 1986
- Optional Form 275 (Medical Record Report), 13 March 1987
- DA Form 3647 (Inpatient Treatment Record Cover Sheet), 15 March 1987
- DD Form 215 (Correction to DD Form 214), issued 4 January 1989
- five Certificates of Completion/Appreciation, dated 2 January 2014 to 10 July 2023
- X-Ray image of Right Foot, 7 November 2022
- four letters of support, dated 14 December 2022 to 21 December 2022
- Congressional Privacy Act Consent Form, 16 December 2022
- medical appointment record, 21 December 2022
- Florida State License Certificate, 16 March 2023
- three Certificates of Completion, dated 1 June 2023 to 10 July 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:

a. His father was a World War II veteran who served honorably. After graduating from high school, the applicant joined the Army. He was stationed in Germany and lived with his family off post until 1984, when he moved into the barracks. He was awaiting an honorable discharge for enrollment into college.

b. In the barracks, he lived next door to Private C., who was known in the company for being an alcoholic and a troubled Soldier. One day, Private C. came to his room looking for another Soldier whom he wanted to buy drugs from. He admits to witnessing Private C. purchase drugs on the day in question. The applicant was not involved with drug selling or buying, on that day or ever, and never interacted with Private C. prior to that day. However, 3 months later, the day before he was due to be honorably discharged, he was detained, interrogated, and incarcerated for selling drugs.

c. He pleaded not guilty and never wavered in his innocent plea. He found out from his lawyer that Private C. was a confidential informant for the Army Criminal Investigation Division (CID) and had multiple crimes pending against him. He believes he was a scapegoat. The Soldier who sold the drugs to Private C. had already been discharged, and Private C. was trying to save himself in a one-for-one exchange with CID for the applicant. He accomplished many achievements during his 4 years of service, including Soldier of the Month, battalion Soldier of the Year runner-up, the Army Good Conduct Medal, and post-football champion for three consecutive years.

d. After his discharge, he completed college and has been a Respiratory Therapist for 28 years. His wife has been a registered nurse for 31, and they have four beautiful daughters, all with bachelor's degrees. His family spends their lives in part as community activists. He would like to thank the Board for reviewing his case and would like them to know that no one other than Private C. and CID has ever mentioned him as a drug seller. He believes the time has come for him to be exonerated and restored to his rightful place as an honorable Army Soldier. His family, especially his four daughters, deserve to know he never sold drugs and is an honorable Soldier.

3. The applicant enlisted in the Regular Army on 18 June 1980.

4. He accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice on 17 May 1984 for assaulting Private/E-2 D.H. by slapping her face and grabbing her arms. His punishment consisted of reduction to private first class/E-3, forfeiture of \$396.00 pay per month for 2 months, extra duty and restriction for 45 days.

On appeal the punishment of forfeiture of \$396.00 pay per month for 2 months was reduced to \$396.00 pay per month for one month, effective 19 June 1984.

5. General Court Martial Order (GCMO) Number 11, issued by Headquarters, 21st Support Command, APO, NY, issued 25 January 1985, shows:

a. The applicant was found guilty of the following charges:

- wrongfully distributing 1.5 grams of marijuana in the hashish form and 11 user units of lysergic acid diethylamide, on 15 May 1984
- assault by grabbing a service member around the throat with both hands and wrongfully communicating threats to kill a service member and a military police investigator, on 11 July 1984
- assault by offering to cut Private/E-2 C.'s throat and cheek and wrongfully communicating threats to kill a witness, on 12 July 1984

b. He was sentenced to be discharged from service with a dishonorable discharge, confinement for 8 years, forfeiture of all pay and allowances, and reduction to the lowest enlisted grade. The sentence was adjudged on 19 October 1984.

c. The convening authority approved the sentence and except for the dishonorable discharge ordered the sentence executed. The sentence was approved on 25 January 1984 and the record of trial was forwarded for appellate review.

6. A letter issued by U.S. Disciplinary Barracks, U.S. Army Combined Arms Center, Fort Leavenworth, KS, dated 19 June 1985, shows as a result of consideration by the Army Clemency Board and action by the Secretary of the Army the applicant's request for restoration to duty and clemency were disapproved on 6 June 1985.

7. A notice of court-martial order correction, U.S. Army Court of Military Review, dated 10 December 1985, ordered correction to GCMO Number 11, dated 25 January 1985 as follows: By deleting in its entirety specification 2 of additional charge I and substituting therefor the following: "specification 2: Assault with means likely to produce grievous bodily harm by offering to cut PV2 C.'s throat and cheek, on 12 July 1984. (Guilty.)"

8. The U.S. Army Court of Military Review upheld the findings of guilty and the sentence was approved as correct in law and fact. The findings of guilty and the sentence were affirmed on dated 12 December 1985:

9. GCMO Number 134, issued by the U.S. Disciplinary Barracks, U.S. Army Combined Arms Center, Fort Leavenworth, KS, on 28 April 1986, shows the sentence having been affirmed, was ordered duly executed.

10. The applicant was discharged accordingly on 6 June 1986, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 3-10, as a result of court-martial-other, in the rank/grade of private/E-1. His DD Form 214 shows his character of service was dishonorable, with separation code “JJD” and Reenlistment (RE) Code of “RE-4.” He was credited with 4 years and 29 days of active service, with lost time after normal expiration term of service from 17 July 1984 to 6 June 1986. He was awarded or authorized the following:

- Army Good Conduct Medal
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Grenade Bar

11. A memorandum issued by the Office of the Assistant Secretary, Washington, DC, dated 9 September 1988, shows the applicant’s request for restoration was denied and his request for an upgrade of his dishonorable discharge to a bad conduct discharge was approved.

12. A memorandum issued by U.S. Army Combined Arms Center, Fort Leavenworth, KS, dated 20 September 1988, requested the applicant be issued a DD Form 215 (Correction to DD Form 214) to show his approved upgrade to a bad conduct discharge. On 4 January 1989, the applicant was issued a DD Form 215 reflecting the correction.

13. The applicant provides the following documents which are available in their entirety for the Board’s review within the supporting documents:

a. Various certificates that show his good conduct for a 3-year period in the military and his post-service educational and professional achievements.

b. A privacy act consent form, showing he requested assistance from his U.S. Senator to help him with getting his discharge upgraded.

c. Various medical documents that show his dental, immunization, and medical history during his military service and his medical history regarding issues with his right foot after his discharge.

d. Four letters of support, which state, he is a loving and caring father, husband, friend, employee, and co-worker with outstanding character and good standing in his community. He loves to help others and sets a notable example for others to follow at work, at home, and in his community.

14. 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.

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

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. The Board found insufficient evidence of in-service mitigating factors to overcome the misconduct. The applicant provided no post-service character letters of support to weigh a clemency determination. Based on a preponderance of the evidence, the Board determined that the characterization 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.

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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, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 3 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.

b. 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.

c. 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.

d. 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, homosexual conduct, security reasons, or in lieu of trial by court martial.

3. 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.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards (DRBs) and Boards for the 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.

//NOTHING FOLLOWS//