

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 15 March 2024

DOCKET NUMBER: AR20230008475

APPLICANT REQUESTS: his bad conduct discharge (BCD) be upgraded to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (DVA) Letter
- Character Letters (six)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 has worked for the DVA for over 20 years as a Nurse Practitioner. He is sorry for his past indiscretions in the military. As stated on his first DD Form 214 (Certificate of Release or Discharge from Active Duty) (not provided), he has an honorable discharge. He is currently service connected at 60 percent (%) with the DVA for his injuries to the face with scarring. He has not stopped thinking about his behavior since the offense and is deeply ashamed. His actions were wrong and ruined his military career. He was so embarrassed after his incident, but more than that, he is so ashamed of his behavior. He takes full responsibility for his actions. This was a big wakeup call for him, he decided to get some professional help. Again, he apologizes, moving forward he has been doing better as a person and as a role model for his children, family, and peers. Today and in his future, he is committed to changing his behavior so that he never embarrasses his family and himself again. His social well-being, perception, behavior, interpersonal relationships, decision making were unfortunate, and he wrongly handled stress and made adverse decisions.

3. The applicant enlisted in the Regular Army on 1 March 1977 for 4 years. His DD Form 214 for this period of honorable service is not available for review.

4. The applicant reenlisted on 30 April 1979 for six years.

5. He arrived station in Germany on or about 22 March 1980.

6. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on:

- 19 February 1981, for operating a privately owned vehicle without being in possession of a valid operator's license on or about 26 January 1981; operating a vehicle while drunk on or about 26 January 1981; and wrongfully have in his possession one gram, more or less, of a controlled substance, hashish on or about 26 January 1981; his punishment consisted of extra duty and forfeiture of \$169.00
- 12 May 1981, for without authority, failure to go at the time prescribed to his appointed place of duty on or about 2 May 1981; willfully disobeying a lawful order on or about 20 April 1981; willfully disobeyed an order on or about 22 April 1981 and on or about 24 April 1981; his punishment consisted of reduction to private first class/E-3 (suspended), forfeiture of \$154.00 and extra duty
- 5 August 1981, for affixing a license plate on a vehicle other than the vehicle for which the license plates were issued on or about 25 July 1981; violate a lawful general regulation by operating a vehicle without being in possession of a valid operator's license on or about 28 July 1982; and being the driver of a vehicle at the time of an accident in which said vehicle was involved; wrongfully and unlawfully leave the scene of an accident without making his identity known on or about 28 July 1981; his punishment consisted of reduction to E-2, forfeiture of \$250.00 pay for two months and extra duty

7. The applicant's statement regarding his Article 15 punishment, dated 20 August 1981, shows the applicant appealed and admitted he was guilty of the charges and was ready to accept his punishment. He had an honorable discharge, which should show the type of Soldier he is and can still be. He asked for the return of one of his stripes plus the possibility of his family remaining in government quarters.

8. DA Form 4465 (Alcohol and Drug Abuse Prevention and Control Program Military Client Intake and Follow-Up Record), dated 18 August 1981 shows the applicant's diagnosis as improper use of morphine like drug.

9. The applicant was absent without leave (AWOL) on 28 October 1981 and present for duty (PDY) on 18 November 1981 and:

- AWOL on 19 November 1981 and PDY on 1 December 1981
- AWOL on 3 December 1981 and PDY on 15 December 1981
- he was confined on 18 December 1981 and escaped from confinement on 20 January 1982
- AWOL from 20 January 1982 through 24 June 1982

10. Before a general court-martial at Stuttgart, Germany on 23 February 1982, the applicant was found guilty of:

- AWOL on or about 28 October 1981 until on or about 18 November 1981
- AWOL on or about 19 November 1981 until on or about 1 December 1981
- AWOL on or about 3 December 1981 until on or about 15 December 1981
- assaulting his superior noncommissioned officer (NCO), by striking him with a closed fist on or about 11 December 1981
- resisting being lawfully apprehended by an NCO on or about 11 December 1981
- escape from lawful confinement while under guard on or about 20 January 1982

11. The court sentenced the applicant to reduction to private/E-1, forfeiture of \$250.00 pay per month for five months, confinement at hard labor for five months, and a BCD. The sentence was approved on 23 April 1982. The record of trial was forwarded to the Court of Military Review.

12. The U.S. Army Court of Military Review affirmed the findings and sentence on 28 June 1982.

13. The Medical Statement of Option, dated 16 July 1982 shows the applicant did not desire a separation medical examination.

14. General Court-Martial Order Number 3, issued by Headquarters, U.S. Army Training Center, Fort Dix, NJ on 27 January 1983, shows the sentence had been finally affirmed and ordered the BCD to be duly executed.

15. The applicant was discharged on 15 February 1983. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), Paragraph 3, as a result of court-martial with Separation Code JJD and Reenlistment Code RE-4. His service was characterized as bad conduct. He completed 3 years, 1 month, and 24 days of net active service. He lost time from 28 October 1981 to 17 November 1981, 18 December 1981 to 24 June 1982, 3 December 1981 to 14 December 1981 and 19 November 1981 to 30 November 1981. His awards include the Army Good Conduct Medal, Army Service Ribbon, and two Expert Marksmanship Qualification Badges.

16. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

17. The applicant provides:

- a. A DVA decision letter, dated 23 December 2021.

b. Character letters, that attest to the applicant being a colleague, highly skilled nurse practitioner, excellent educator, hardworking, caring and goes beyond his work ethics giving back to his veterans and the staff. He is a team player, an ambassador from the DVA. Through the pandemic he ensured all patients were up to date with their medical and vaccine requirements. He manages chronic health conditions and preventive health measure metrics that exceed the national average. He has demonstrated character and commitment to his family, community, and the veterans.

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

BOARD DISCUSSION:

1. The Board determined, after reviewing the application, all supporting documents, and the evidence found within the military record, the applicant's statements and letters of support, the regulatory and statutory guidance, and the Department of Defense guidance of clemency, the Board found that relief was not warranted.

2. The applicant has a long history of misconduct which includes operating a vehicle while drunk, attaching someone else's license plate to his vehicle, drug use to include morphine, wrongfully and unlawfully leaving the scene of an accident without making his identity know, failure to report, multiple incidents of AWOL, escape from confinement, and assault; thus, his discharge characterization is accurately reflects a BCD.

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, USC, 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 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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 provided that an enlisted person would be given a BCD 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, 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. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records (BCM/NRs) on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//