

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 May 2024

DOCKET NUMBER: AR20230009689

APPLICANT REQUESTS, in effect:

- reconsideration of his previous request to upgrade his bad conduct characterization of service to under honorable conditions (general)
- court-martial transcripts
- an investigation of the court-martial decision

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

- DD Form 149, Application for Correction of Military Record
- Applicant's statements (5)

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 AR20170014053 on 3 May 2019.

2. The applicant provides five statements wherein he contends, in effect, that he never had the opportunity to appeal his court-martial conviction. None of the five witnesses he had were allowed to testify, and the prosecutor was allowed to say whatever he wanted without having any evidence. He further contends that he was a good Soldier and he served for six years reaching the rank and pay grade of staff sergeant (SSG/E-6). Other noncommissioned officers with more time in the service did not like him because he could complete a mission and motivate a Soldier to follow orders better than they could. He is requesting a copy of his court-martial transcript and that an investigation of the court-martial decision.

3. The Board is not a records custodian and does not maintain records. The Board is also not an investigative body. Therefore, the Board will not consider the applicant's request for trial transcripts and investigation; these items will not be addressed in this Record of Proceedings.

4. The applicant enlisted in the Regular Army on 8 May 1980. He held military occupational specialty 36K, tactical wire operation specialist. The highest rank held was private first class/E-3.

5. He served in Germany from 27 September 1980 to 28 April 1982 while assigned to an Air Defense Artillery unit.

6. His record contains a DA Form 2-1, Personnel Qualification Record, which shows during his period of service the applicant had numerous periods of lost time which totaled 317 days.

- absent without leave (AWOL), 3 June 1981 to 4 June 1981
- imprisonment, 29 November 1982 to 2 February 1983
- AWOL/Dropped from the Rolls, 4 February 1983 to 12 July 1983
- AWOL after Expiration Term of Service (ETS), 13 July 1983 to 2 November 1983

7. Before a special court-martial (SPCM) on 20 October 1982, at Fort Lewis, Washington, the applicant was pled guilty to, and was found guilty of stealing a black leather jacket from the Army and Air Force Exchange Service valued at \$125 on 18 September 1982.

8. SPCM Order Number 7, 20 January 1983, published by Headquarters, 9th Infantry Division, Fort Lewis, Washington, shows the applicant was sentenced to forfeiture of \$360 pay per month for four months, confinement at hard labor for three months, reduction to private/E-1, and a bad conduct discharge. On 19 November 1982, the sentence was adjudged and on 20 January 1983, the sentence was approved.

9. On 11 May 1983, the U.S. Army Court of Military Review (USACMR) found that the approved findings of guilty and the sentence in the applicant's SPCM to be correct in law and fact. As such, the USACMR affirmed the findings of guilty and the sentence.

10. On 21 May 1983, he accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice for being AWOL from his unit at Fort Bragg, North Carolina, from on or about 4 February 1983 until on or about 3 November 1983.

11. SPCM Order Number 115, 18 November 1983, published by Headquarters, XVIII Airborne Corps and Fort Bragg, Fort Bragg, North Carolina ordered the sentence be duly executed.

12. The applicant was discharged according to the separation authority's directive on 21 December 1983. He completed 2 years, 8 months, and 9 days of net active service. His DD Form 214 shows he was discharged in accordance with Army Regulation

635-200, Personnel Separations-Enlisted Personnel, chapter 3, as a result of court-martial. His character of service is listed as "Bad Conduct Discharge."

13. Court-martial convictions stand as adjudged or modified by appeal through the judicial process.

14. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

15. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

BOARD DISCUSSION:

1. The applicant's contentions, the military record, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.

2. The applicant requested reconsideration of his previous request to upgrade his characterization of service from bad conduct to under honorable conditions (general).

a. The applicant accrued 317 days of AWOL.

b. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. He did not meet the burden of proof, he did not provide anything for the Board to consider, he did not provide evidence in mitigation, nor did he provide evidence of post service accomplishment.

c. The Board determined the applicant's characterization of service is appropriate.

3. The applicant requested a copy of his court-martial transcripts; however, the ABCMR neither houses nor maintains Soldiers Records.

4. The applicant requested the Board conduct an investigation of his court-martial decision, however, the ABCMR decides cases on the evidence of record. It is not an investigative body.

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 to amend decision of the ABCMR set forth in Docket Number AR20170014053, dated 3 May 2019.

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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 (AR) 635-200, Personnel Separations-Enlisted Personnel, in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

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.

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 for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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.

5. AR 15-185, ABCMR, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//