

IN THE CASE OF: ██████████

BOARD DATE: 11 April 2024

DOCKET NUMBER: AR20230009786

APPLICANT REQUESTS: His bad conduct (BCD) be upgraded.

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

DD Form 149 (Application for Correction of Military Record)

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 the punishment did not fit the offense.
3. The applicant enlisted in the Regular Army for 4 years on 29 September 1987. He completed training with award of the military occupational specialty 63B (Light Wheeled Vehicle Mechanic) with assignment to Germany. The highest grade he held was E-2.
4. The available records do not contain any significant information prior to his court-martial.
5. General Court-Martial Orders Number 37, issued by Headquarters, 3rd Armored Division, Frankfurt, Germany, on 28 March 1989, shows the applicant was found guilty of :
 - a. On or about 30 November 1988, the theft of military identification card and ration card of Specialist ██████████
 - b. On or about 13 December 1988, wrongfully and falsely tampering with the military identification card issued to Specialist ██████████ and Corporal ██████████ by cutting out their photos.

c. On or about 13 December 1988, attempting to steal \$500.00 in United States currency, by writing a check (number 1698) against the account of Corporal [REDACTED]

d. On or about 10 December 1988, with intent to defraud, falsely making in its entirety a certain check in the amount of \$336.00.

e. two specifications were dismissed on multiplicity grounds by the military judge;

(1) On 31 November 1988, the theft of military identification card and personal checkbook of Corporal [REDACTED]

(2) On 13 December 1988 with intent to defraud, falsely making in its entirety a certain check in the amount of \$500.00 .

6. The case was adjudged on 22 February 1989 and the sentence recommended was to be discharged with a dishonorable discharge (DD); confinement for 3 years and 6 months; forfeiture of all pay and allowances, and reduction to E-1.

7. The court-martial convening authority approved the finding but approved only the DD, 25 months of confinement; forfeiture of all pay and allowances; and reduction to E-1. He directed that the sentence, except for the DD be executed and the applicant be credited with 144 days of confinement.

8. The record of trial was forwarded to the U.S. Army Court of Criminal Appeals for appellate review. The U.S. Army Court of Criminal Appeals findings are not available for review.

9. General Court-Martial Order Number 13, issued by Headquarters, US Army Field Artillery Center, and Fort Sill, on 31 January 1990 noted), only so much of the sentence promulgated in General Court-Martial Order Number 3.7, Headquarters, 3rd Armored Division, APO New York 09039, dated 28 March 1989, as provides for a bad-conduct discharge, confinement for twenty-five months, forfeiture of all pay and allowances, and reduction to Private E-1, adjudged 22 February 1989, and the sentence as thus modified, had been finally affirmed. Article 71(c) having been complied with, the bad-conduct discharge was to be executed.

10. The available records do not include any documentation to show when or why there was a change of his characterization of service from a DD to the BCD.

11. The applicant was discharged on 6 April 1990, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Section IV and General Court-Martial Order #13, due to a court-martial conviction. The DD Form 214 (Certificate of Release or Discharge from Active Duty) he was issued confirms his

service was characterized as bad conduct. He is credited with 1 year, 4 months, and 23 days of active service with 409 days of lost time.

12. 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.

13. In determining whether to grant relief the Boards for Correction of Military/Navy Records (BCM/NR) 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, 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 the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

8/27/2024

X [REDACTED]

CHAIRPERSON
[REDACTED]

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 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. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

 - c. Chapter 3 provides that a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed and the affirmed sentence ordered duly executed.

3. 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.

//NOTHING FOLLOWS//