

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 May 2024

DOCKET NUMBER: AR20230011050

APPLICANT REQUESTS: upgrade of his bad conduct discharge (BCD) to an under honorable conditions (general).

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Report of Separation from The Armed Forces of The United States), 28 November 1955
- DD Form 214 (Armed Forces of The United States Report of Transfer or Discharge), 7 August 1957
- self-authored statement, 21 July 2023

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 that he is currently homeless and did not know of his discharge status until he applied for Department of Veterans Affairs (VA) healthcare benefits. He made a mistake when he went absent without leave (AWOL) during his military service. He was a young teen who met a German girl and went out on a date, not realizing he was on the work schedule, resulting in his AWOL. He served honorably in his first enlistment and faithfully for most of his second enlistment until his AWOL. He asks the Board to consider his entire military record and grant him relief so he can be eligible to apply for the U.S. Department of Housing and Urban Development-VA Supportive Housing (HUD-VASH) Program.
3. The applicant was inducted into the Army of the United States on 8 November 1954. He was honorably discharged on 28 December 1955 for the purpose of immediate reenlistment. He reenlisted in the Regular Army on 29 December 1955. The highest rank/grade he held was private first class/E-3.

4. Summary Court-Martial Order (SCMO) Number 7, issued by Headquarters, 599th Armored Field Artillery Battalion, Fort Sill, OK on 10 January 1956, shows he was found guilty of AWOL from on or about 5 January 1956 to on or about 8 January 1956. He was sentenced to reduction to private/E-2, 30 days restriction, and forfeiture of \$60.00 pay. The sentence was adjudged, approved, and ordered duly executed on 10 January 1956.

5. SCMO Number 31, issued by Headquarters, 597th Armored Field Artillery Battalion, Fort Sill, OK on 28 June 1956, shows he was found guilty of AWOL from his unit, on or about 26 June 1956 and did remain so absent until on or about 26 June 1956. He was sentenced to forfeiture of \$55.00 pay. The sentence was adjudged, approved, and ordered duly executed on 28 June 1956.

6. SCMO Number 35, issued by Headquarters, 597th Armored Field Artillery Battalion, Fort Sill, OK on 11 July 1956, shows he was found guilty of failing to go at the time prescribed to his appointed place of duty, on or about 8 July 1956. He was sentenced to forfeiture of \$55.00 pay. The sentence was adjudged, approved, and ordered duly executed on 11 July 1956.

7. General Court Martial Order (GCMO) Number 115, issued by Headquarters, Artillery and Guided Missile Center, Fort Sill, OK on 8 November 1956, shows the applicant was found guilty of:

- one specification of absenting himself from his unit, on or about 2 September 1956 and did remain so absent until on or about 12 September 1956
- two specifications of stealing property of some value on or about 27 August 1956 and on or about 24 June 1956

a. The court sentenced him to be discharged from the service with a BCD, forfeiture of all pay and allowances, and to be confined at hard labor for one year. The sentence was adjudged on 1 November 1956.

b. The convening authority approved the sentence on 8 November 1956 and the record of trial was forwarded for appellate review.

8. The United States Army Board of Review upheld the findings of guilty and the sentence as approved by the convening authority. The findings of guilty and the sentence were affirmed on 29 November 1956.

9. GCMO Number 455, issued by Headquarters Fort Crowder, Fort Crowder, MO on 17 December 1956, shows the sentence having been affirmed was ordered duly executed, but the execution of that portion thereof adjudging BCD was suspended until the applicant was released from confinement.

10. On 22 July 1957, the applicant underwent a complete medical and mental status examination as part of his consideration for discharge due to his misconduct. His medical examination showed he was diagnosed with inadequate personality, chronic, mild, and noted he was qualified for discharge.

11. The applicant was discharged accordingly on 7 August 1957, under the provisions of Army Regulation 635-204 (Personnel Separations – Dishonorable and Bad-Conduct Discharge), paragraph 1b, BCD, with Separation Program Number (SPN) 292 by reason other than desertion (courts-martial), with an under other than honorable condition characterization of service in the grade of E-1. He was credited with 8 months and 10 days of net active service with 1 year and 21 days of foreign service and had 332 days of lost time during the period covered.

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 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:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, 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. Upon review of the applicant's petition, available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the pattern of misconduct and multiple incidents of stealing.

2. The Board noted the applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. ABCMR 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. The Board determined the applicant's service record exhibits numerous instances of misconduct during his enlistment period for 8 months and 10 days of net active service with 1 year and 21

days of foreign service and had 332 days of lost time during the period covered. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust. Therefore, relief was denied.

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.

█

---

█ █

---

█

---

█

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

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. An undesirable discharge is a separation from the Army under other than honorable conditions and may be issued as an administrative action.

3. Army Regulation 635-204, in effect at the time, set forth the reason and authority for the separation of personnel separated with a dishonorable and/or BCD. Paragraph 1b provided that an enlisted person will be discharge with a BCD pursuant only to an approved sentence of a general or special court-martial imposing a BCD. This regulation prescribe that an enlisted person discharged with a BCD would be given a certificate of BCD (DD Form 259A).

4. 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.

5. 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 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, BCM/NRs 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//