

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 July 2024

DOCKET NUMBER: AR20230011151

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

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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 he had a drug and alcohol issue.
3. A review of the applicant's service records show:
 - a. He enlisted in the Regular Army on 11 February 2003.
 - b. On 14 January 2006, the applicant was convicted by a General Court-Martial of:
 - Between on or about 25 September 2005 and on or about 2 October 2005, unlawfully enter a barracks room, the property of PFC E.R., with the intent to commit a criminal offense, to wit: larceny, therein
 - On or about 20 October 2005, unlawfully enter a barracks room, the property of SPC F.A.G. III, with the intent to commit a criminal offense, to wit: larceny, therein
 - On or about 20 October 2005, unlawfully enter a barracks room, the property of PVT B.L.M., with the intent to commit a criminal offense, to wit: larceny, therein
 - Between on or about 21 October 2005 and on or about 23 October 2005, unlawfully enter a barracks room, the property of SPC J.G., with the intent to commit a criminal offense, to wit: larceny, therein

- On or about 2 November 2005, unlawfully enter a barracks room, the property of PFC J.M.A., with the intent to commit a criminal offense, to wit: larceny, therein
- Between on or about 25 September 2005 and on or about 2 October 2005, steal one PlayStation 2 game system, and one PlayStation 2 video game, of a value of \$500.00 or less, the property of PFC E.R
- On or about 20 October 2005, steal one PlayStation 2 game system, and one PlayStation 2 video game, of a value of \$500.00 or less, the property of SPC F.A.G III
- On or about 20 October 2005, steal one X-Box game system, and one X-Box video game, of a value of \$500.00 or less, the property of PVT B.L.M
- Between on or about 21 October 2005 and on or about 23 October 2005, steal about 35 digital video disc movies of a value of less than \$500.00, the property of SPC J.G
- On or about 2 November 2005, steal one PlayStation 2 game system, and five PlayStation 2 video games, of a value of \$500.00 or less, the property of PFC J.M.A

c. The court sentenced him to forfeiture of all pay and allowances, confinement for 30 months, and to be discharged from the service with a bad conduct discharge.

d. On 18 May 2006, the convening authority approved only so much of the sentence extending to forfeiture of all pay and allowances and confinement for 18 months; and a bad conduct discharge and except for the portion of the sentence extending to a bad conduct discharge, ordered the sentence executed.

e. The appellate authority affirmed the findings of guilty and the sentence.

f. General Court-Martial Order Number 207.8, issued by Headquarters, U.S. Army Field Artillery Center, Fort Sill, OK on 20 July 2007 shows the appellate review had been completed, the sentence has been finally affirmed. Article 71(c) having been complied with, and the Bad-Conduct Discharge will be executed.

g. The applicant was discharged on 7 September 2007. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged as a result of court-martial conviction in accordance with Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 3, with a bad conduct discharge. He completed 3 years, 7 months, and 22 days of active service. His DD Form 214 also shows he was awarded or authorized: Army Achievement Medal and Army Service Ribbon.

4. By regulation (AR 635-200), 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.
5. In reaching its determination, the Board can consider the applicant's 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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was discharged for conviction by court-martial for five specifications of intent to commit a criminal offense, to wit: larceny and five specifications of stealing. The Board determined a preponderance of the evidence shows an error or injustice did not occur when the applicant was discharged due to a court-martial conviction.
2. The applicant was given a bad conduct discharge pursuant to an approved sentence of a general court-martial. The appellate review was completed and the affirmed sentence was ordered duly executed. All requirements of law and regulation were met with respect to the conduct of the court-martial and the appellate review process and the rights of the applicant were fully protected.

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 (Active Duty Enlisted Administrative Separations) provides 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.
 - c. Paragraph 3-7c states 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, security reasons, or for the good of service in selected circumstances.
 - d. Paragraph 3-11 states a member 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. Title 10, U.S. Code, section 1552, provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the Uniform Code of Military Justice, action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the Uniform Code of Military Justice or action on the sentence of a court-martial for purposes of clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.
4. 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/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. 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, 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. 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//