

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 May 2024

DOCKET NUMBER: AR20230011346

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) character of service to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Certificates (6), Church of God in Christ, Inc., dated 2 March 1982 to 1 November 1983

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 AC85-09112 on 10 December 1986.
2. As a new argument, the applicant states he had a difficult time adjusting to military life. If he knew then what he knows now, he would have fought to stay in the military. He has been an ordained minister and pastor for the past 35 years.
3. The applicant enlisted in the Regular Army on 22 January 1968, for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty 67B (Airplane Repairman). The highest rank he attained was private/E-2.
4. Before a special court-martial on 23 January 1970, the applicant was found guilty of being absent from his unit without authority (AWOL), from on or about 15 September 1969 until on or about 13 November 1969. He was sentenced to confinement at hard labor for 30 days, forfeiture of \$25.00 per month for three months, and hard labor for 60 days. The sentence was approved on 17 February 1970.
5. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 23 June 1971, for absencing himself from his bed during bed check, on or about 19 June, 20 June, and 21 June 1971. His punishment consisted of 14 days of restriction.

6. General Court Martial Order Number 78, issued by Headquarters, U.S. Army School/Training Center, Fort Gordon, GA, on 13 July 1971, shows:

a. The applicant pled guilty to and was found guilty of being AWOL, on or about 9 May 1970 until on or about 3 May 1971.

b. He was sentenced to reduction to private/E-1, to be discharged from the Army with a bad conduct discharge (BCD), and confinement at hard labor for three months. The sentence was adjudged on 29 June 1971.

c. On 13 July 1971, the convening authority approved the sentence, and except for the portion adjudging the BCD, ordered the sentenced executed. The record of trial was forwarded to the U.S. Army Court of Military Review for appellate review.

7. The U.S. Army Court of Military Review affirmed the findings of guilty and the sentence on 23 August 1971.

8. General Court-Martial Order Number 106, issued by Headquarters, U.S. Army School/Training Center, Fort Gordon, GA, on 10 September 1971, shows the sentence was finally affirmed, the provisions of Article 71(c) had been complied with, and the BCD was ordered duly executed.

9. The applicant was discharged on 21 January 1972, under the provisions of Army Regulation (AR) 635-206 (Personnel Separations – Discharge – Misconduct [Fraudulent Entry, Conviction by Civil Court, AWOL, Desertion]), by reason of other than desertion (court-martial). His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) confirms his service was characterized as UOTHC. He was issued a DD Form 259A (BCD Certificate), and credited with 2 years, 9 months, and 13 days of net active service, with 317 days of lost time.

10. The ABCMR reviewed the applicant's request for an upgrade of his character of service on 10 December 1986. After careful consideration, the Board determined the applicant did not file within the time required, and it was not in the interest of justice to excuse the applicant's failure to do so.

11. As new evidence, the applicant provides six certificates from the Church of God in Christ, Inc., dated between 2 March 1982 and 1 November 1983, which show his ordination and appointment as a pastor.

12. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, 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. The Board should consider the applicant's statement in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, 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 found the evidence of post-service achievements provided by the applicant insufficient 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:

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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AC85-09112 on 10 December 1986.

9/24/2024

XCHAIRPERSON


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. AR 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 3 provided that an enlisted person would be given a bad conduct discharge 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.

b. 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.

c. 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.

2. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, 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.

3. Army Regulation 635-206, in effect at the time, set forth the basic authority for the separation of enlisted personnel for misconduct. Section VII (Desertion and Absence Without Leave), paragraph 47 provides that an individual discharged by reason of desertion or absence without leave under this section normally will be furnished an Undesirable Discharge certificate, except that an Honorable or General Discharge certificate may be furnished if warranted by the particular circumstances in a given case.

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/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 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.

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//