

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 May 2024

DOCKET NUMBER: AR20230011467

APPLICANT REQUESTS: his under other than honorable conditions (UOTHC) discharge be upgraded.

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

- DD Form 293 (Application for the Review of Discharge)
- Character Letters (three)

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 did not provide a statement in support of his request.
3. The applicant enlisted in the Regular Army on 5 August 1968 for two years. His military occupational specialty was 11B (Light Weapons Infantryman).
4. Before a general court-martial on 9 June 1969, the applicant was found guilty of, without authority, absenting himself from his unit (AWOL) on or about 5 January 1969 until on or about 12 January 1969; wrongfully appropriating a 1969 Chevrolet automobile, of a value in excess of \$100.00, the property of Specialist Four/E-4 [REDACTED] on or about 6 January 1969; and being AWOL on or about 11 March 1969 until on or about 28 April 1969.
5. The court sentenced him to confinement at hard labor for one year, forfeiture of all pay and allowances, and to be discharged from the service with a bad conduct discharge. The sentence was approved on 6 August 1969. The record of trial was forwarded for review by the Court of Military Review. Pending completion of appellate review, the applicant was confined.

6. A DD Form 1478 (Prisoner's Summary Continuation Sheet), dated 6 November 1969 shows that on 24 October 1969, the applicant underwent a neuropsychiatric examination.

a. The examination shows the applicant admitted that he came in the Army to avoid a sentence for car theft. He was raised by his mother who remarried. He is inconsistent in his statements about his development indicating that it was uneventful and mentioning at the same time his involvement in law breaking incidents. He admits drinking but not excessively and smoking marijuana but denies using drugs.

b. His mental status shows no evidence of a thought disorder, psychotic process, or organic brain damage. His insight and judgment show a tendency to be inadequate. Diagnosis-inadequate personality, chronic, moderate, as manifested by intolerance for discipline and ruling, sporadic antisocial behavior, low tolerance for frustration, difficulty in learning from experience and a tendency to use poor judgement. Recommendation restoration was not desired, and it was not recommended. Clemency was not recommended.

c. Restoration was not desired. The applicant stated he would have too much time to do if he returned to duty and just wants out of the service.

7. On 14 November 1969, clemency was not indicated. Restoration was not desired. Clemency was disapproved on 3 February 1970.

8. The U.S. Army Court of Military Review, dated 25 February 1970, shows the findings of guilty were affirmed. The sentence was set aside. A rehearing on the sentence was ordered.

9. General Court-Martial Order (GCMO) Number 31, issued by Headquarters, Fort Leavenworth, KS on 20 April 1970 shows the findings of guilty were affirmed, but the sentence was set aside on 25 February 1970 and a rehearing on the sentence was authorized. A rehearing as to the sentence only is ordered before another court martial to be hereafter designated.

10. GCMO Number 44, issued by Headquarters, Fort Leavenworth, Fort Leavenworth, KS on 28 April 1970 shows Only so much of the sentence as provides for a bad conduct discharge, confinement at hard labor for 8 months, and forfeiture of \$85.00 per month for 12 months was approved on 2 June 1970. The applicant was credited with confinement from 9 June 1969 to 25 February 1970. The record of trial was forwarded t for review by the Court of Military Review. The applicant had served that portion of the sentence pertaining to confinement.

11. GCMO Number 10, U.S. Army Aviation Center, Fort Rucker, AL, dated 17 September 1970 shows as provides for bad conduct discharge, confinement at hard labor for eight months, and forfeiture of \$85.00 per month for eight months has been affirmed and having been complied with the modified sentence would be duly executed.
12. The applicant was discharged on 25 September 1970. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged under the provisions of Army Regulation (AR) 635-204 (Personnel Separations-Dishonorable and Bad Conduct Discharge), as a result of court martial. His service was characterized as under other than honorable conditions. He completed 11 months of net active service. He had four periods of lost time.
13. 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.
14. The applicant provides character letters, one from his bishop, that attest to the applicant being a bishop, his trustworthiness, being a hard worker and intelligent with good communication skills. The applicant can be relied upon to take the initiative and make good sound decisions. He is a dedicated husband and highly organized with leadership and motivational skills. He is honest, helpful, success oriented and considerate of others.
15. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. 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 record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency.
2. The Board found the character references provided by the applicant support clemency. Based on a preponderance of the evidence, the Board determined the applicant's character of service should be changed to under honorable conditions (general).

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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| █ | █ | █ | GRANT FULL RELIEF |
| : | : | : | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| : | : | : | DENY APPLICATION |

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 to show his character of service as under honorable conditions (general).

9/24/2024

X

CHAIRPERSON

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. AR 635-204 provides that when authorized an enlisted person will be dishonorably discharged pursuant only to an approved sentence of a general court martial imposing dishonorable discharge.

3. AR 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.

c. Chapter 11 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.

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. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records (BCM/NR) on 25 July 2018, 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 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//