

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 7 June 2024

DOCKET NUMBER: AR20230012750

APPLICANT REQUESTS: an upgrade of his characterization of service.

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 (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 he thinks he has paid his debt to society, he regrets and is sorry for his behavior during his time while serving.

3. The applicant enlisted in the Regular Army on 14 January 1980.

4. General Court Martial Order Number 8, issued by Headquarters, U.S. Army, Berlin, shows:

a. The applicant was arraigned and tried for the following charge(s) and specification(s):

- absenting himself from his unit on or about 23 February 1983 and remaining absent until on or about 2 March 1983
- absenting himself from his unit on or about 6 March 1983 and remaining absent until on or about 21 March 1983
- resisting lawful apprehension by a military policeman on or about 5 March 1983
- escaping from lawful custody on or about 6 March 1983
- attempting to escape from lawful custody on or about 5 March 1983
- wrongfully using a heroin during the period 17 February 1983 to 2 March 1983

b. He pled guilty to the charge of absenting himself without leave from 23 February 1983 and remaining absent until on or about except for the words 2 March 1983

substituting the words to on or about 25 February 1983, he pled not guilty to wrongfully using heroin, and pled guilty to the rest of the charges.

c. He was found guilty of all charges and their specifications and sentenced to reduction to private/E-1, forfeiture of all pay and allowances, confinement at hard labor for 27 months, and to be discharged from the Army with a dishonorable discharge. The sentence was adjudged on 12 May 1983.

d. The sentence was approved on 26 July 1983, and the record of trial was forwarded to the Judge Advocate General of the Army for appellate review.

5. On 31 October 1984, the U.S. Army Court of Military Review affirmed the findings of guilty and the sentence.

6. General Court-Martial Order Number 62, issued by the U.S. Disciplinary Barracks, U.S. Army Combined Arms Center, Fort Leavenworth, KS on 30 January 1987, noted the applicant's sentence had been affirmed, and ordered the dishonorable discharge duly executed.

7. The applicant was discharged on 27 February 1987, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 3-10, as a result of court-martial. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his characterization of service was dishonorable, with separation code JJD and reenlistment code RE-4. He was credited with 4 years, 9 months, and 28 days of net active service. He had two periods of lost time from 23 February 1983 to 24 February 1983 and from 6 March 1983 to 13 May 1983. He was retained in service for 1,366 days for the convenience of the government. His awards include the Army of Occupation Medal, Army Good Conduct Medal (1st Award), and the Army Service Ribbon.

8. 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.

9. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

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 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. The applicant was found guilty of several charges, including heroin use. Upon review of the applicant's petition and available military record, the Board found insufficient evidence to suggest there was an error or injustice in the processing of the applicant's separation processing.

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.

[Redacted Signature]

[Redacted Name]

[Redacted Title]

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, in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a provided 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 provided 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. 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.
3. 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.
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//