

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 June 2024

DOCKET NUMBER: AR20230012832

APPLICANT REQUESTS: Reconsideration of his request for upgrade of his bad conduct discharge (BCD) to either under honorable conditions (general) or honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letters (2)
- Character reference letters (6)

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 Numbers: AR20070012132 on 5 February 2008, AR20190000348 on 17 September 2019, AR20200004942 on 6 January 2021, and AR20220006657 on 1 November 2022, respectively.

2. The applicant states he started his journey to command sergeant major, but his dream was destroyed by the people behind his downfall. He was set up from the time he arrived in Seoul, Korea. He was court-martialed by the testimony of two guys who he thought were close to him. The persons that did the crime were given immunity. No one listened to him on what was going on in the supply unit. His first lawyer presented a great argument proving his innocence. He took a polygraph test and passed; however, they never found the record of the test. He was told his discharge would be upgraded 6 months after his separation date. He cannot believe he has not received the corrections that he needs. He knows God is real and he is still trying to get to know him. He is a work in progress and believes that God is still working on him. He wakes up every morning thanking God for his grace and mercy.

3. On 7 June 1977, the applicant enlisted in the Regular Army, for 3 years. The highest grade he attained was E-2.

4. Before a special court-martial on 17 August 1978, at Camp Humphreys, Korea, the applicant was found guilty of one specification of unlawfully entering the dwelling of S\_; and one specification of unlawfully striking R\_M\_ on the head with his fists.
5. The court sentenced him to reduction to the grade of E-1. The sentence was approved on 5 September 1978, and the record of trial forwarded for appellate review.
6. Before a general court-martial on 13 February 1979, at Seoul, Korea, the applicant was found guilty of one specification of stealing the property of the U.S. government of a value of about \$6,652.00.
7. The court sentenced him to confinement at hard labor for 12 months, forfeiture of \$169.00 pay per month for 12 months, and a BCD. The sentence was approved on 14 May 1979, and the record of trial was forwarded for appellate review.
8. On 25 January 1980, the applicant received non-judicial punishment under Article 15 of the Uniform Code of Military Justice, for failing to go at the time prescribed to his appointed place of duty, on or about 14 January 1980. His punishment included forfeiture of \$50.00 and seven days extra duty.
9. Before a special court-martial on 29 May 1980, at Fort Knox, KY, the applicant was found guilty of one specification of assaulting a military policeman by shoving and grabbing him with his hands; and one specification of possession of marijuana.
10. The court sentenced him to a BCD. The sentence was approved on 18 July 1980, and the record of trial forwarded for appellate review.
11. The U.S. Army Court of Military Review set aside the finding of guilty of Specification 2 of Charge III for specification of possession of marijuana, but determined the sentence was appropriate for the remaining charge of assault upon a military policeman in the execution of his duties.
12. Special Court-Martial Order 106, issued by Headquarters U.S. Armor Center and Fort Knox, Fort Knox, KY on 3 June 1981, noted that the applicant's sentence had been affirmed and ordered the BCD duly executed.
13. The applicant was discharged on 24 June 1981. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11, as a result of court-martial. His service was characterized as bad conduct. He was assigned Separation Code JJD and Reentry Code 4. He was credited with 3 years, 2 months, and 24 days of net active service this period with 317 days of time lost.

14. The applicant petitioned the Army Discharge Review Board (ADRB) requesting upgrade of his BCD. On 11 July 1989, the ADRB voted to deny relief and determined his discharge was both proper and equitable.

15. The applicant petitioned the ABCMR numerous times between August 2007 through March 2022, for consideration of his request for upgrade of his BCD. Each time the Board voted to deny relief and determined that the overall merits of those cases were insufficient as a basis to for correction of the applicant's records.

16. The applicant provides six-character reference letters that collectively speak to the applicant's faith, struggle with substance abuse, and charitable work at a homeless shelter. These letters are provided in their entirety for the Board's review within the supporting documents.

17. 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.

18. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency 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 record, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of burglary. The Board carefully considered the numerous character letters of support attesting to the man the applicant has become and his hard work and dedication to his community and making himself a better person.

2. However, the Board agreed the applicant's post service achievements and character letters of support does not outweigh his serious misconduct. 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. The Board determined the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade. Based on the evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust. Therefore, reversal of the previous Board determination is without merit and relief is denied.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20070012132 on 5 February 2008, AR20190000348 on 17 September 2019, AR20200004942 on 6 January 2021, and AR20220006657 on 1 November 2022.

  
  


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. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.
2. Army Regulation 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, paragraph 11-2, provided that a member would be given a BCD pursuant only to an approved sentence of a general court-martial 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, 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.
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.

//NOTHING FOLLOWS//