

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 June 2024

DOCKET NUMBER: AR20230013096

APPLICANT REQUESTS: in effect, an upgrade of his bad conduct discharge (BCD) and an appearance before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- Standard Form (SF) 180 (Request Pertaining to Military Records), undated
- three statements of support, dated 1 November 2022 to 5 May 2023

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 served his country to the best of his ability and would go in again if his country needed him.
3. The applicant enlisted in the Regular Army on 24 August 1982, for a 4-year period. Upon completion of initial entry training, he was awarded military occupational specialty 13B (Cannon Crewman). The highest rank he attained was specialist fourth class/E-4.
4. The applicant received three letters of reprimand from the Assistant Division Commander (Operations), Headquarters, 101st Airborne Division (Air Assault), Fort Campbell, KY, on 20 February 1985, 28 June 1985, and 22 July 1985, for three civil convictions of driving under the influence, on 18 January 1985, 4 April 1985, and 22 May 1985, respectively. On all three occasions, the commander informed him the reprimands were administrative actions and not punishment under the Uniform Code of Military Justice. Any matters submitted in rebuttal would be considered prior to the commander making his final decision regarding the filing of the reprimand in the applicant's Official Military Personnel File (OMPF). The applicant acknowledged receipt of the reprimands and elected not to make statements in his own behalf. The commander directed the reprimands be filed in the applicant's OMPF.

5. Three DA Forms 4187 (Personnel Action) show the following changes in the applicant's duty status:

- Present for Duty (PDY) to Absent Without Leave (AWOL) on 15 August 1985
- AWOL to PDY on 26 August 1985
- PDY to Confined by Military Authorities on 15 October 1985

6. Before a special court-martial at Fort Campbell, KY, on 15 October 1985, the applicant pled guilty to and was found guilty of being AWOL, from on or about 15 August 1985 until on or about 26 August 1985, and wrongfully appropriating an automobile, on or about 13 August 1985. He was sentenced to confinement for 2 months, forfeiture of \$200.00 pay per month for 2 months, reduction to private/E-1, and separation from service with a BCD.

7. On 27 November 1985, the convening authority approved only so much of the sentence that provided for confinement for two months, forfeiture of \$70.00 pay per month for two months, reduction to private/E-1, and a BCD, and except for the portion adjudging the BCD, ordered the sentenced executed.

8. A DA Form 4187 shows the applicant was released back to the control of his battery on 3 December 1985, following his period of confinement.

9. Special Court-Martial Order Number 70, issued by Headquarters, 101st Airborne Division (Air Assault) and Fort Campbell, Fort Campbell, KY, on 22 September 1987, shows the sentence was finally affirmed, the provisions of Article 71(c) had been complied with, and the BCD was ordered executed.

10. The applicant was discharged on 17 November 1987, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 3, as a result of court-martial, in the rank of private/E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his service was characterized as BCD, with separation code JJD and reenlistment codes RE-3, 3B, and 3C. He was credited with 1 year, 10 months, and 9 days of net active service, with lost time from 12 March 1985 to 13 March 1985, 13 March 1985 to 25 July 1985, 15 August 1985 to 25 August 1985, and 15 October 1985 to 2 December 1985.

11. The applicant provides the following:

a. An undated SF 180, which shows he requested copies of his OMPF and medical records.

b. Three statements of support dated 1 November 2022 to 5 May 2023, wherein the authors attest to the applicant's volunteerism with the University Community Ministries,

Operation Jumpstart, which serves the homeless population in the North Tampa area. The applicant availed himself of their services and chose to become a volunteer. He is a reliable and hard-working volunteer, who has become a valuable member of the team. His is consistent and steadfast as he humbly strives to become better and serve others.

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 overall 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 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 and available military record, the Board determined there is insufficient evidence of mitigating factors to overcome the pattern of misconduct. The applicant provided no post service achievements; however, the Board carefully considered the character letters of support that attested to his community outreach support, dedication to the Operation Jumpstart Program and being a valued member.

2. The Board applauds the applicant's volunteerism and commitment to his community; however, the Board found the applicant's letters of support did not outweigh his serious misconduct. ABCMR 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's service record exhibits numerous instances of misconduct during his enlistment period for 1 year, 10 months, and 9 days of net active service, with four separate periods of lost time. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust. Therefore, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable

decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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, 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.

3. AR 635-200, in effect at the time, set 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.

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. 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.

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//