

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 July 2024

DOCKET NUMBER: AR20230013330

APPLICANT REQUESTS: an upgrade of his bad conduct discharge to under honorable conditions (General).

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record), 25 September 2023.

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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:
 - a. He cooperated with the authorities and was told that after serving his time at Fort Leavenworth he could terminate his service in 6 months with a general, under honorable conditions discharge. He was given a choice during the investigation, was led in a cattle truck, and he never knew the investigator's findings.
 - b. He requested information from the National Archives but he has none of the records of the confinement, loss of time, or any investigative reports. He was never given a right to counsel. His memory of the entire incident is a blur, and the memory of confinement haunts him to this day.
 - c. Since then he has never gone to jail and never even had a speeding violation. He is a hard working family man and he is requesting to be made whole again. The applicant annotated reprisal/whistleblower as an issue/condition related to his request.
3. A review of the applicant's service records show:
 - a. On 5 May 1982, he enlisted in the Regular Army. On 3 May 1985, he reenlisted for a period of 3 years.

b. His record is void of the facts and circumstances surrounding his discharge.

c. On 31 October 1988, the Appellate Military Judges of the U.S. Army Court of Military Review (ACMR) issued a decision in the applicant's case, affirming the findings of guilty and the sentence in his case. On consideration of the issue personally specified by the appellant, they held the findings of guilty and the sentence as approved by the convening authority correct in law and fact. This decision further shows he was represented by counsel.

d. On 2 March 1989, General Court Martial Convening Order Number 87 issued by U.S. Disciplinary Barracks and U.S. Army Combined Arms Center, Fort Leavenworth, reads: The general court-martial case of (Applicant), the sentence to bad conduct discharge, forfeiture of all pay and allowances, confinement for 48 months, and reduction to private/E-1, adjudged 9 June 1988, as promulgated in General Court-Martial Order Number 70, Department of the Army, HQ, 3d Armored Division, dated 12 July 1988, has been finally affirmed. Article 71(c) having been complied with the bad conduct discharge will be executed. The prisoner will be confined in the U.S. Disciplinary Barracks, Fort Leavenworth, and the confinement will be served therein, or elsewhere as competent authority may direct.

d. On 23 March 1989, U.S. Disciplinary Barracks, U.S. Army Combined Arms Center, Fort Leavenworth, issued Order 050-11, discharging him from the RA under authority of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), effective 7 April 1989.

e. On 7 April 1989, he was discharged. His DD Form 214 shows he completed 6 years, 1 month, and 4 days of active service with 299 days of time lost. It also shows in:

- block 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized): Army Service Ribbon, Overseas Service Ribbon Expert Marksmanship Qualification Badge with Rifle Bar (M-16), and Marksman Marksmanship Qualification Badge with Grenade Bar
- Block 18 (Remarks) lists his immediate reenlistments but does not list his continuous honorable service
- block 24 (Character of Service) – Bad Conduct
- block 25 (Separation Authority) – Army Regulation 635-200, Paragraph 3-11
- block 26 (Separation Code) – JJD
- block 28 (Narrative Reason for Separation) – court-martial, other

4. On 8 February 2024, the Chief, Case Management Division, ARBA, requested the Office of the Department of the Army, Inspector General (IG) provide an unredacted

record of all IG records pertaining to the applicant based on his issues. No records were identified in their search.

5. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

6. 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.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. Discharge upgrade: Deny. The evidence shows the applicant was convicted by a general court-martial in June 1988 of an unknown offense. The court sentenced him to a bad conduct discharge, forfeiture of all pay and allowances, confinement for 48 months, and reduction to private/E-1. The appellate review affirmed the findings of guilty and the sentence in his case. He was discharged on 7 April 1989 with a bad conduct discharge. The Board found no error or injustice in his available separation processing. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of available evidence, the Board determined that the character of service and reason for separation the applicant received upon separation were not in error or unjust.

b. Continuous Honorable Service: Grant. The Board noted that the applicant's service from first date of enlistment to the date before his last reenlistment was honorable. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, in addition to listing immediate reenlistment(s), an entry is required for continuous honorable service from first day of service for which DD Form 214 was not issued until date before commencement of current enlistment.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

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: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending his DD Form 214 for the period ending on 7 April 1989 to show:

- Continuous Honorable Active Service From 5 May 1982 to 2 May 1985.
- Member Completed His First Term of Service

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading the characterization of his discharge.

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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, 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 (Active Duty Enlisted Administrative Separations), then in effect, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Paragraph 3-7a. Honorable discharge: an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the soldier'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. General discharge: 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

c. Paragraph 3-7c. Under other than honorable conditions discharge: a discharge under other than honorable conditions is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial.

d. Paragraph 3-11. BCD. A Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court martial. The appellate review must be completed and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing staff judge advocate.

3. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator "JJD" corresponded to "Court-Martial, Other," and the authority, Army Regulation 635-200, Chapter 3, Section IV.

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Chapter 3 prescribes basic eligibility for prior-service applicants for enlistment and includes a list of Armed Forces reentry eligibility (RE) codes. Table 3-1 (U.S. Army reentry eligibility codes) reads:

- RE-1 applies to persons completing an initial term of active service who are considered qualified to reenter the U.S. Army if all other criteria are met
- RE-3 applies persons who are not considered fully qualified for reentry or continuous service at the time of separation, but disqualification is waivable
- RE-4 applies to persons separated from their last period of service with a nonwaivable disqualification

5. 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.

//NOTHING FOLLOWS//