

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 July 2024

DOCKET NUMBER: AR20230013345

APPLICANT REQUESTS: an upgrade of his dishonorable discharge to honorable.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Self-Authored Letters
- Character References (3)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 he is requesting an upgrade of his dishonorable discharge to honorable. He joined the Army at the age of 18 and was stationed in Germany, Korea, Virginia, Texas, and Colorado. After his discharge, he began a career in sales which eventually led to him starting his own mortgage brokerage business. In addition, he owned a daycare center, caring for over 100 children over the span of 15 years. He has always been proud to serve his country and uphold the values of the military. Since his discharge, he has found new ways to continue to serve his community. For the last three years, the applicant used his restaurant and bar to host a Thanksgiving program, providing free meals and clothing to the homeless and those in need. His community service has gained him recognition on local news networks. He was also awarded an honorary doctorate degree from the Denver Institute for Urban Studies for his work in the community. He believes his work in the community reflects the values and principles of the military. His dedication to serving others and making a positive impact on society is something that he has learned during his time in the military.
3. The applicant provides three-character references:

a. Mr. C.P., Chief Executive Officer, the Pride Initiative Non-Profit Organization worked with the applicant for over 10 years in the home buying industry. Mr. C.P. describes the applicant's dedication to work as unparalleled, going above and beyond to ensure his clients received the best possible service. Mr. C.P. states the applicant is an exceptional individual who has made a significant impact on the lives of many through his community service and daycare.

b. Mr. C.T., President, Rock & Associates, American Restoration, Trinity Development, and Fruit of the Spirit Ministries worked for the applicant for several years. Mr. C.T. states that while working for the applicant, the applicant provided him meals and allowed him to drive his spare vehicle while he was in the process of getting his life in order. The applicant's business, philanthropy, and leadership skills inspired and motivated Mr. C.T. to pursue his own Doctor of Philosophy degree. The applicant never turned down an opportunity to assist anyone in need, he is a great man and true American in every sense of the word.

c. Mr. D.W., Board Member, Restoration Christian Fellowship, describes the applicant as an exceptional individual whose work and contributions have had a significant impact on the lives of many in the community. His acts of kindness do not go unnoticed. He goes above and beyond to make sure families are taken care of. The applicant is a father of two sons and a dedicated grandfather, that shares his time, talents, and love. He exemplifies community.

4. A review of the applicant's service record shows:

a. Having had prior service in the Arizona Army National Guard, he was ordered to involuntary active duty on 18 June 1979.

b. On 10 August 1989, he was convicted by a general court-martial for:

- one specification of wrongfully distributing 4.3 grams, more or less, of a controlled substance, on or about 24 March 1989
- one specification of wrongfully possessing some amount of a controlled substance, on or about 29 March 1989
- one specification of wrongful endeavor to impede an investigation, on or about 29 March 1989

His sentence included a dishonorable discharge, confinement for five years, forfeiture of all pay and allowances, and reduction to the grade of E-1.

c. On 16 October 1989, the convening authority approved the sentence and except for the part of the sentence extending to a dishonorable discharge, ordered it executed.

The record of trial was forwarded to the Judge Advocate General of the Army for appellate review.

d. General Court-Martial Order Number 52, dated 20 April 1992, after Article 71(c) was complied with and the sentence was affirmed, ordered the dishonorable discharge executed.

e. On 15 May 1992, he was discharged from active duty with a dishonorable characterization of service. His DD Form 214 shows he completed 9 years, 10 Months, and 2 days of active service with 1,122 days of lost time due to confinement. He was assigned separation code JJD and the narrative reason for separation is listed as "As a Result of Court-Martial, Other," with reentry code 4. It also shows he was awarded or authorized the following:

- Good Conduct Medal (3rd award)
- Army Achievement Medal with one Oak Leave Cluster
- Non-Commissioned Officer Professional Development Ribbon (level 2)
- Army Service Ribbon
- Overseas Service Ribbon (1)

f. His DD Form 214 shows in the Remarks block: Continuous honorable service from 18 June 1979 to 2 November 1986. It also lists his immediate reenlistments.

5. By regulation (AR 635-200), a Soldier will be given a dishonorable 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.

6. In reaching its determination, the Board can consider the applicant's petition and her service record 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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. The applicant was convicted by a court-martial that sentenced him to a dishonorable discharge. The applicant's trial by a court-martial was warranted by the gravity of the offenses charged (wrongfully distributing cocaine, wrongfully possessing cocaine, and wrongful endeavor to impede an investigation). His conviction and discharge were conducted in accordance with applicable laws and regulations and the

discharge appropriately characterizes the misconduct for which he was convicted. He was given a dishonorable discharge pursuant to an approved sentence of a general court-martial. The appellate review was completed, and the affirmed sentence was ordered duly executed. All requirements of law and regulation were met with respect to the conduct of the court-martial and the appellate review process, and the rights of the applicant were fully protected. The Board found no error or injustice in the separation processing.

b. The applicant provided three letters in support of a clemency determination. The authors speak of the applicant's business, philanthropy, leadership skills, and motivation. They also speak of contributions and significant impact on the lives of many in the community. However, the Board determined such letters did not outweigh the serious misconduct he committed (distribution). As such, and 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.

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.

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 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. 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 the 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. 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, homosexuality, security reasons, or for the good of the service.

d. A Soldier will be given a dishonorable 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.

3. Title 10, U.S. Code, section 1552, provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

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/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 based on 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//