

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 August 2024

DOCKET NUMBER: AR20230013613

APPLICANT REQUESTS: an upgrade of his bad conduct discharge

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, 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 has not been in any trouble since the incident that led to his discharge, 40 years ago. He is now off of drugs and alcohol and has been working as a productive member of society, driving buses for public transportation. He additionally states that when he was younger this was not so important to him, but now that he is older and wiser, he feels the need to clear his name. He now attends church, has raised a family, has been married for 30 years, and never had any arrests.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 22 August 1979.
 - b. On 24 November 1980, the applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for willfully disobeying a lawful order. His punishment included a reduction to private/E-2, suspended for 30 days.
 - c. On 16 April 1981, the applicant accepted NJP for failing to go to his appointed place of duty at the time prescribed.
 - d. On 9 August 1982, the applicant accepted NJP for willfully disobeying a lawful order. His punishment included a reduction to private first class/E-3.

e. DA Form 4187 (Personnel Action) dated 5 October 1983 shows the applicant's duty status changed from "present for duty" to "confinement [by] military authorities" effective 1 October 1982.

f. Special Court-Martial Order Number 39, issued by Headquarters, 2d Armored Division, dated 20 October 1982 shows the applicant plead to and was found guilty of violating Article 121 by stealing a turntable on or about 10 July 1982. His sentence included reduction to private/E-1, to be discharged from the service with a bad conduct discharge, to be confined to hard labor for 2 months; and to forfeit \$367 pay per month for 2 months. The sentence was adjudged on 1 October 1982 and approved on 20 October 1982.

g. On 16 July 1990, Orders 184-24 issued by Headquarters, 2d Armored Division discharged the applicant accordingly, with a bad conduct characterization. His DD Form 214 shows he completed 3 years, 11 months, and 19 days of active service. It also shows he was awarded or authorized:

- Army Service Ribbon
- Overseas Service Ribbon
- Noncommissioned Officer Development Ribbon w/numeral 2
- Expert Marksmanship Qualification Badge with Grenade Bar
- Marksman Marksmanship Qualification Badge with Rifle Bar

4. By regulation, AR 635-200, in effect at the time, states 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.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was discharged for conviction by court-martial for a minor theft offense. The Board noted the applicant's assertion he has not been in any trouble since the incident while in service over 40 years ago and he has been a productive member of society. The Board determined the punishment, for the crime committed,

may have been too harsh. The Board concluded an under honorable conditions (General) characterization of service was more appropriate.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 28 September 1983 to show his characterization of service as under honorable conditions (General).

█

█ █

█

█

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 (AR) 635-200 (Personnel Separations – Enlisted Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 3 states a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or a special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

b. 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.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. 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 or for the good of the service.

(1) When the reason for separation is based upon a pattern of behavior that constitutes a significant departure from the conduct expected of soldiers of the Army.

(2) When the reason for separation is based upon one or more acts or omissions that constitutes a significant departure from the conduct expected of soldiers of the Army. Examples of factors that may be considered include the following:

- (a) Use of force or violence to produce serious bodily injury or death.
- (b) Abuse of a position of trust.
- (c) Disregard by a superior of customary superior-subordinate relationships.
- (d) Acts or omissions that endanger the security of the United States or the health and welfare of other soldiers of the Army.
- (e) Deliberate acts or omissions that seriously endanger the health and safety of other persons.

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/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//