

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 August 2024

DOCKET NUMBER: AR20230013620

APPLICANT REQUESTS: upgrade of his dishonorable discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Statement

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 a discharge upgrade "for the benefit of his father, if not for him." He adds in a statement:

a. He was born to a military family, to parents who are still together after 63 years . Besides thinking in his teens that he had strict parents, a career soldier and German mother, he had a normal childhood. He joined the military due to wanting change from not completing high school and having a succession of jobs that required no skill. Joining the military did allow him to obtain his high school diploma.

b. He served in military occupational specialty 16P, surface to air low altitude heat guided missiles. What more could an 18 year old wish for in a job? He graduated from advanced individual training, and he was chosen to be an operator (driver) of the M48 Chaparral track vehicle. In 1980-1983 there were no major U.S. military conflicts. His time in service was highlighted by training maneuvers at first duty station Fort Carson, CO, and second duty station Schwabach Kaserne, Germany . When stationed in Germany the allure of Europe and several uniquely different cultures just hours away were intriguing. In August of 1983, just 3 months shy of his ETS (expiration of term of service) date, he decided to travel with two German nationals to the Netherlands for the weekend. Unbeknownst to him, his companions decided to bring marijuana back to

Germany. In Holland it was legal at the time, in Germany marijuana was not. He was in the vehicle when it was inspected at the border, hence his smuggling conviction.

c. He did not think in his youth that his discharge status would have such an effect on his senior years, i.e., integrity, patriotism and to make his father proud. In hindsight his experience in the Army had a beneficial effect in his life through the years, work ethics, leadership, camaraderie, and a broader view of our world. He would deeply appreciate the Board's consideration for a discharge upgrade.

3. The applicant enlisted in the Regular Army on 12 November 1980 and held MOS 16S, MANPAD ADA Systems Crewman. He served in Germany from 31 August 1982 to around 3 September 1983. He was advanced to private first class (PFC)/E-3 on 1 October 1981

a. On 2 January 1981, he accepted nonjudicial punishment (NJP) under Article 15 for being found asleep upon his post. His punishment included forfeiture of pay and extra duty and restriction

b. On 10 February 1982, the applicant again received NJP under Article 15 for wrongfully possessing marijuana. His punishment included reduction to private/E-2 (suspended).

c. On 4 March 1982, the suspension of the punishment of reduction to PV2, and other punishment, imposed on 17 February 1982, and suspended, to be automatically remitted of not vacated before 17 May 1982 was vacated.

d. On 15 December 1983, he was convicted by a general court-martial of

- Charge I, one specification of assaulting Sergeant First Class CM by grabbing him by the shirt collar and pushing him against the M-113 vehicle
- Charge II, one specification of wrongfully importing 50 grams of marijuana in the hashish form into Germany; one specification of failing to have in his possession a valid leave form; and one specification of possessing a concealed knife with a blade longer than 3 inches
- Charge III, one specification of wrongfully possessing marijuana
- Charge IV, one specification of being absent without leave from 26 August to 31 August 1984

The court sentenced him to reduction to private/E-1, forfeiture of \$480 pay per month for one year, confinement at hard labor for 1 year, and a dishonorable discharge.

e. On 13 February 1984 the convening authority disapproved specification 2 of Charge II and approved only so much of the sentence as provides for a dishonorable discharge, confinement at hard labor for 11 months, forfeiture of \$480 pay per month for 11 months and reduction to private/E-1. The record of trial was forwarded to the appellate authority for appellate review.

f. The applicant had been placed in pre-trial confinement at Fort Riley, KS beginning on 3 September 1983, after having been reported absent without leave on 31 August 1983. He remained confined until 7 June 1984 and was placed on excess leave on 8 June 1984.

g. On 21 June 1984, the U.S. Army Correctional Facility, Fort Riley, KS published General Order Number 245 that states:

(1) The findings of guilty of Charge III and its specification were set aside and that charge and specification were dismissed; the remaining findings of guilty and only so much of the sentence as provides for a dishonorable discharge, confinement at hard labor for ten months, forfeiture of \$480.00 pay per month for ten months (forfeitures applying to pay becoming due on and after the date of the convening authority's action), and reduction to grade of Private E-1, adjudged on 15 December 1983, have been affirmed.

(2) Article 71(c) having been complied with, the sentence, as thus modified, will be duly executed. That portion of the sentence pertaining to confinement has been served.

h. The applicant was discharged from active duty on 3 July 1984. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged in accordance with chapter 3 of Army Regulation (AR) 635-200, Personnel Separations, as a result of court-martial with a dishonorable characterization of service (Separation Code JJD, Reenlistment Code 4). He completed 2 years, 10 months and 9 days and he had lost time from 26 to 30 August 1983 and from 3 September 1983 to 6 June 1984.

4. He did not qualify to have his discharge reviewed by the Army Discharge Review Board (ADRB). By regulation (AR 15-180 (Army Discharge Review Board (ADRB))), service members convicted by a general court-martial are not eligible to apply to the ADRB. They may apply to the ABCMR.

5. By regulation (AR 635-200), a Soldier will be given a dishonorable discharge pursuant only to an approved sentence of a general. 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 his service 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 records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of assaulting a noncommised officer and wrongfully possessing marijuana.

2. The Board noted, the applicant' provided no post service accomplishments or character letters of support for the Board to weigh a clemency determination. 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 agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of his dishonorable discharge. Based on the preponderance of evidence, the Board denied relief.

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 (Active Duty Enlisted Administrative Separations) provides for the separation of enlisted personnel:
 - a. Paragraph 3-7a provides that 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. Paragraph 3-7b provides that 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. Paragraph 3-7c states 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 for the good of service in selected circumstances.

d. Paragraph 3-11 states a member will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial, and a dishonorable discharge pursuant only to an approved sentence of a general 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 Uniform Code of Military Justice, 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 Uniform Code of Military Justice 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. 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. 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//