

IN THE CASE OF: ██████████

BOARD DATE: 14 August 2024

DOCKET NUMBER: AR20230013890

APPLICANT REQUESTS: reconsideration of his previous request 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)
- Self-Authored Statement

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20120012546 on 10 January 2013.
2. The applicant states in 1983 while in field training, he had an injury to his back, and went to sick call to have his lower back checked. He did not get further treatment and was told by the sergeant to suck it up and return to the field for training. He used cannabis to control the pain. He made a mistake and was not given the opportunity to correct it through counseling or rehabilitation. He was led to believe that he had to plead guilty.
3. A review of the applicant's service records show:
 - a. He enlisted in the Regular Army on 6 October 1981.
 - b. He departed Germany on 23 July 1983 for assignment to Fort Stewart, GA. He was advanced to the pay grade of E-4 on 1 February 1984.
 - c. On 18 September 1984, he reenlisted for a period of 3 years and service school training as a motor transport operator.
 - d. General Court-Martial Order Number 32, issued by Headquarters, 24th Infantry Division, shows a Court-Martial convened on 8 April 1985. The applicant was arraigned, tried, and convicted of the following:

(1) Charge, Article 112a:

- Specification 1: in that the applicant did, on 5 November 1984, wrongfully distribute 10.37 grams of marijuana
- Specification 2: in that the applicant did, on 29 November 1984, wrongfully distribute 6.27 grams of marijuana

(2) Additional Charge: Article 112a, Specification: in that the applicant did, on 21 December 1984, wrongfully distribute 35 grams of marijuana.

e. He was sentenced to be reduced to private/E-1, to be confined for 21 months, forfeiture of all pay and allowances, and to be discharged from the service with a dishonorable discharge on 13 June 1985.

f. The sentence was approved, and, except for the dishonorable discharge, will be executed, but the execution of that part of the sentence adjudging confinement in excess of 15 months, is suspended until 1 November 1986, at which time, unless the suspension is sooner vacated the suspended part of the sentence will be remitted without further action. The accused was credited with restriction tantamount to confinement from 10 January 1985 until 29 May 1985.

g. On 17 January 1986, the sentence to a dishonorable discharge, confinement for 21 months (confinement: in excess of 15 months was suspended until 1 November 1986 with provisions for automatic remission), forfeiture of all pay and allowances, and reduction to the grade of E-1, adjudicated on 13 June 1985, as promulgated in General Court-Martial Order Number 12, has been finally affirmed. The accused will be credited with pretrial confinement from 19 January 1985 until 29 May 1985. Article 71(c) having been compiled with; the dishonorable discharge will be executed. The accused will be confined in the U.S. Army Correctional Activity, Fort Riley, KA, and the confinement will be served therein, or elsewhere as competent authority may direct.

h. On 10 October 1985, the U.S. Army Court of Military Review, decided on consideration of the entire record held the findings of guilty and the sentence as approved by the convening authority correct in law and fact. Accordingly, those findings of guilty and the sentence were affirmed.

i. On 17 January 1986, the applicant's duty status changed from confined military authorities to present for duty (PDY).

4. The applicant was discharged from active duty on 31 January 1986. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations –

Enlisted Personnel), Chapter 3, as a result of court-martial, other, with a dishonorable conduct characterization of service. His DD Form 214 also shows:

- a. He completed 3 years, 8 months and 17 days of active service.
 - b. He was awarded or authorized the Expert Marksmanship Qualification Badge with Rifle Bar (M-16), Marksman Marksmanship Qualification Badge with Hand Grenade Bar, Army Service Ribbon, Army Good Conduct Medal, and the Overseas Service Ribbon.
 - c. He received a separation code of "JJD" and a reentry code of "4."
 - d. Lost time during this period 19850613 - 19860116.
5. On 10 January 2013, in ABCMR Docket Number AR20120012546, the Board denied his request for an upgrade of his discharge.
8. By regulation (AR 635-200), 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.
9. 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:

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. The applicant's was tried by a general court-martial that found him guilty of drug distribution. The applicant's trial by a court-martial was warranted by the gravity of the offenses charged. 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 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 his separation processing. Also, the applicant provided insufficient evidence of post-service achievements or letters of reference in support of a clemency


determination. Therefore, based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation were not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 to amend the decision of the ABCMR set forth in Docket Number AR20120012546 on 10 January 2013.



 CHAIRPERSON


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. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) 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 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 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.
2. 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.
3. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military BCM/NRs and DRBs 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.
 - 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, Boards 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.

4. 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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

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.

//NOTHING FOLLOWS//