

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 July 2024

DOCKET NUMBER: AR20230014049

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)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) effective 18 October 1984
- NGB Form 22 (Report of Separation and Record of Service) effective 1 April 1986
- DD Form 214 effective 31 May 1988
- DD Form 214 effective 23 April 1991

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 bad conduct discharge. He is aware that his conduct did not meet the standards expected and he deeply regrets the mistakes he made. He has proudly served the country in various capacities including the U.S. Coast Guard, the Army, and the National Guard. All of which concluded with an honorable discharge.
3. The applicant provides:
  - a. The below listed documents to be referenced in the service record:
    - DD Form 214 effective 18 October 1984
    - NGB Form 22 effective 1 April 1986
    - DD Form 214 effective 23 April 1991

b. His DD Form 214 for the service period ending 31 May 1988. He entered the U.S. Coast Guard on 17 February 1986 and was honorably discharged for the convenience of the Government. He completed 2 years, 3 months, and 15 days of active service with 2 years, 11 months, and 27 days of prior active service. It also shows he was awarded or authorized:

- Army Service Ribbon
- Army Overseas Ribbon
- Army Good Conduct Medal
- Coast Guard Arctic Service Medal
- Coast Guard Sea Service Ribbon

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

a. His DD Form 214 shows he enlisted in the Regular Army on 20 October 1984. He was honorably released from active duty on 16 October 1984. He completed 2 years, 11 months, and 27 days of active service with no lost time. He was assigned separation code LBK and the narrative reason for separation listed as "Expiration Term of Service (ETS)," with reentry code 1. It also shows he was awarded or authorized:

- Army Service Ribbon
- Overseas Service Ribbon
- Good Conduct Medal
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Hand Grenade Bar

b. An NGB Form 22 shows he enlisted in the Tennessee Army National Guard (TNARNG) on 26 November 1984. He was honorably released on 1 April 1986 and transferred to the Individual Ready Reserve (IRR).

c. An NGB Form 22A (Correction to NGB Form 22) was issued on 15 May 1989 to correct the following:

- Item 10b (Prior Reserve Component Service): 00-04-07
- Item 10d (Total Service for Pay): 04-08-10

d. He enlisted in the Regular Army on 16 February 1989. His foreign service includes service in Germany from 9 March 1989 to 5 March 1992.

e. On 10 April 1990, he was convicted by a special court-martial of:

- one specification of wrongfully possessing drug paraphernalia on or about 28 October 1989

- one specification of failing to submit an unadulterated urine sample on or about 5 December 1989
- two specifications of wrongful use of marijuana in the hashish form
- one specification of wrongfully possessing 6.21 grams of marijuana in the hashish form on or about 28 October 1989

f. His sentence included reduction to the private (E-1), forfeiture of \$450.00 pay per month for 6 months, confinement for 4 months, and a bad conduct discharge.

g. On 24 May 1990, the convening authority approved so much of the sentence as provides for reduction to the private (E-1), forfeiture of \$450.00 pay per month for 6 months, and confinement for 90 days; and except for that part of the sentence extending to bad conduct discharge, ordered it executed. The record of trial was forwarded to the Judge Advocate General of the Army for appellate review.

h. Special Court-Martial Order Number 49 dated 28 March 1991, after Article 71(c) was complied with and the sentence was affirmed, ordered the bad conduct discharge executed.

i. On 23 April 1991, he was discharged from active duty. His DD Form 214 shows he was discharged in accordance with chapter 3 of AR 635-200 (Enlisted Separations) with a bad conduct discharge, Separation Code JJD, As a Result of Court-Martial, and Reentry Code 4. He completed 1 year and 26 days of active service, and he had lost time from 20 April to 1 July 1990. It also shows he was awarded or authorized:

- Army Service Ribbon
- Coast Guard Arctic Service Medal
- Coast Guard Sea Service Ribbon
- Army Achievement Medal

5. By regulation, a member 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.

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:

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 evidence shows the applicant's trial by a court-martial was warranted by the gravity of the offenses charged (possession and use of drugs, possession of drug paraphernalia, and failing to submit a urine sample). 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 bad conduct 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 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 the applicant received upon separation were 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.

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

a. Paragraph 3-7a (Honorable discharge) states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the member'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. Paragraph 3-7b (General discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-7c (Under Other Than Honorable Conditions) 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, homosexuality, security reasons, or for the good of the service.

d. Paragraph 3-11 (DD Form 259A (Bad Conduct Discharge Certificate) states a member 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.

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//