

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 August 2024

DOCKET NUMBER: AR20230014130

APPLICANT REQUESTS: an upgrade of his characterization of service.

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

DD Form 149 (Application for Correction of Military Record), 18 September 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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, in effect, he received a bad conduct discharge for bogus checks, which were made good once he received notification of the bad checks. He feels the bad conduct discharge was extremely harsh.
3. The applicant enlisted in the Regular Army on 6 July 1982, for a period of 3 years, he subsequently reenlisted on 26 April 1985, for an additional period of 5 years. He was awarded the military occupational specialty of 16R (VULCAN Crewmember) and the highest rank he attained was specialist four/E-4.
4. He accepted nonjudicial punishment, under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) for wrongfully using some amount of marijuana on or about 30 April 1985. His punishment imposed was reduction to the grade of E-1, forfeiture of \$308.00 pay per month for two months, extra duty and restriction for 30 days.
5. Two DA Forms 4856 (General Counseling Form) show:
 - a. On 27 January 1987, his command received notification from the installations check control office, that the applicant had several checks with insufficient funds. The applicant received counseling on 28 January 1987 where he was notified of his Commanders intent to bar him from reenlistment and consideration for separation under

the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14 (Separation for Misconduct). The applicant concurred with the counseling.

b. On 19 February 1987, he was counseled by the Commander for intent to bar him from reenlistment due to his indebtedness. Additionally adding, the applicant was failing to keep his financial affairs in order, as he had written bad checks on and off the military installation.

6. Special Court Martial Order Number 21, issued by Headquarters, 1st Cavalry Division, Fort Hood, Texas, dated 31 July 1987, shows:

a. The applicant was arraigned for the charge of failing to maintain sufficient funds in his account to cover 13 checks in a total amount of \$800.00, written and uttered to the Soldier's Dome Enlisted Club facility.

b. He pled guilty and was found guilty. He was sentenced to reduction to E-1, forfeiture of \$438.00 pay per month for three months, confinement for three months, and to be discharged from the Army with a bad conduct discharge. The sentence was adjudged on 3 June 1987.

c. The sentence was approved and ordered to be executed.

7. The available record is void of the appellate review and the special court-martial order showing the affirmed sentence was ordered to be duly executed.

8. The applicant was discharged on 5 October 1987, under the provisions of Army Regulation 635-200, Chapter 3, as a result of court-martial, in the grade of E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he received a bad conduct characterization of service, with separation code JJD and reenlistment code RE-3. He was credited with 5 years and 3 months of net active service. His awards include the Army Achievement Medal, the Noncommissioned Officer's Professional Development Ribbon (Numeral 1), Army Service Ribbon, and the Overseas Service Ribbon.

9. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, 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.

10. The Board should consider the applicant's argument and/or evidence 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 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 found sufficient evidence of in-service mitigating factors to support the request for relief. In rendering its decision, the Board noted the applicant's honorable service over a five-year period and acknowledged that the applicant made restitution for the uttered bad checks. The Board carefully considered the nature of the misconduct, which consisted of a one-time use of marijuana and writing bad checks and concluded that the resulting punitive discharge was disproportionately severe.

2. While the ABCMR does not possess the authority to overturn a court-martial conviction, it is empowered to modify the severity of the sentence imposed when clemency is warranted. Clemency, as an act of mercy, provides a means to moderate an unduly harsh punishment. Given the applicant's prior honorable service and the circumstances surrounding the offenses, the Board determined that clemency is warranted with an upgrade of his discharge to under honorable (general) conditions.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

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:

In addition to the administrative notes annotated by the Analyst of Record (below the signature), the Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by re-issuing his DD Form 214 to show a characterization of general under honorable conditions.

7/25/2025

X 

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214, for the period ending 5 October 1987, is missing important entries that affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following entries in Item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 19820706 UNTIL 19850425

REFERENCES:

1. Title 10, USC, 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the

presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body.

3. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, 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. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 3 provided that an enlisted person would be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed.

b. Paragraph 3-7a provided 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.

c. Paragraph 3-7b provided 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.

5. 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/NR) 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 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.

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//