

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 July 2024

DOCKET NUMBER: AR20230014148

APPLICANT REQUESTS: an upgrade of his bad conduct discharge (BCD) to honorable, and an appearance before the Board via video or telephone.

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 (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 his first term was served with no issues and was honorable. His misconduct was a onetime incident in his career/life.
3. The applicant enlisted in the Regular Army on 10 October 1978, for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty 64C (Motor Transport Operator). He reenlisted on 13 August 1981. The highest rank he attained was specialist fourth class (SP4)/E-4.
4. On 29 March 1983, the applicant received permanent change of station orders to Germany.
5. The applicant requested a 60-day deferment of his orders. In a medical statement, from Headquarters, Medical Department Activity, dated 27 April 1983, a social worker noted, the deferment appeared justified. The applicant and his spouse were working through a marital crisis. They were willing to engage in marital counseling at the social work service and anticipated the dissolution of their marriage if [the applicant] departed. The deferment would afford adequate opportunity to increase communication and reestablish the trust necessary for his marriage to endure an 11-month unaccompanied tour.

6. The applicant's service record does not contain documentation which shows the deferment was approved or disapproved. Port of Call Instructions show the applicant was scheduled to depart for Germany on 12 June 1983. The instructions were acknowledged by the applicant on 9 May 1983.

7. A DA Form 4187 (Personnel Action) shows the applicant was reported absent without leave (AWOL) on 12 June 1983, after he failed to report to St. Louis International Airport on that same date.

8. The applicant surrendered to authorities, at Fort Campbell, KY, on 18 July 1983, and was reported as Attached/Present for Duty.

9. Before a special court-martial, at Fort Knox, KY on 12 September 1983, the applicant pled guilty to and was found guilty of two specifications of being AWOL, on or about 13 June 1983 to on or about 5 July 1983, and on or about 6 July 1983 to on or about 18 July 1983. He was sentenced to forfeiture of \$380.00 pay per month for three months, confinement at hard labor for three months, to be discharged from service with a BCD, and reduction to private/E-1. Only so much of the sentence that provided for a BCD, confinement at hard labor for 45 days, forfeiture of \$380.00 pay per month for three months, and reduction to private/E-1 was approved on 3 November 1983. The record of trial was forwarded for appellate review.

10. On 30 April 1984, the U.S. Army Court of Military Review affirmed the findings of guilty and the sentence.

11. Special Court-Martial Order Number 123, Headquarters, U.S. Army Armor Center, Fort Knox, KY, dated 15 August 1984, shows the sentence was finally affirmed, the provisions of Article 71(c) had been complied with, and the sentence was ordered duly executed.

12. The applicant was discharged on 13 September 1984, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 3, by reason of court-martial, other, in the rank of SP4 and grade E-1. His service was characterized as BCD, with separation code JJD and reenlistment code RE-3, 3B, 3C. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was credited with 5 years, 8 months, and 23 days of net active service. He had three periods of lost time.

13. 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.

14. Regulatory guidance provides a Soldier will receive 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.

15. The Board should consider the applicant's overall 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 partial 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 the applicant's character of service as harsh and determined there is sufficient evidence of in-service mitigating factors to overcome the misconduct of marijuana and AWOL. The Board noted the applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination.

2. The Board found clemency is warranted based on the misconduct and the applicant's 5 years of prior service. The Board agreed an upgrade to under other than honorable conditions (UOTHC) discharge is more appropriate based on the misconduct. 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. Furthermore, during deliberation, the Board determined the applicant had prior periods of honorable service which is not currently reflected on his DD Form 214 and recommended that change be completed to more accurately show his period of honorable service and upgrade his discharge to UOTHC by granting a partial upgrade.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial 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 13 September 1984, to show the following entries in

- item 18 (Remarks):
 - SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
 - CONTINUOUS HONORABLE SERVICE FROM 19781010 UNTIL 19810812

Additionally, his DD Form 214 contains an error. The applicant was reduced to the rank/grade of private (PVT)/E-1. Correct Item 4a (Grade, Rate or Rank) to show PVT

- Item 24 (Character of Service) : Under Other Than Honorable Conditions (UOTHC)

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to an upgrade of the applicant's bad conduct discharge (BCD) to honorable.



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): N/A

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. 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 regulation states the ABCMR has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.

3. AR 635-5 (Personnel Separations) provides for an additional entry on the DD Form 214 for continuous honorable active service when a Soldier who previously reenlisted without being issued a DD Form 214 was discharged with any characterization of service except honorable.

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. When a Soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to private/E-1, in accordance with Army Regulation 600–8–19 (Enlisted Promotions and Reductions).

c. 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.

d. 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. 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.

6. 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//