

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 August 2024

DOCKET NUMBER: AR20230014722

APPLICANT REQUESTS:

- upgrade of his bad conduct discharge (BCD) to honorable
- restoration of pay grade E-6, with backpay and allowances

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

DD Form 149 (Application for Correction of Military Record), 17 October 2023

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 was on his way to making the Army a career when pressure, tension, and lack of discipline in his use of alcohol side-tracked him. He allowed the misuse of alcohol to compromise his integrity and he made choices and errors he should not have made. He deeply regrets the choices he made. He is now and has been free from using alcohol for many years and has served as Pastor of his local church.
3. The applicant enlisted in the Regular Army on 30 September 1974 for a period of 3 years. His official military personnel file contains an illegible DD Form 214 (Certificate of Release or Discharge from Active Duty) showing his discharge for immediate reenlistment. He reenlisted on 27 December 1978, and again on 8 June 1981 for a period of 4 years.
4. He was awarded the military occupational specialties of 76Y (Unit Supply Specialist) and 76P (Materiel Control and Accounting Specialist). The highest rank he attained was staff sergeant/E-6, with a date of rank of 31 December 1979.

5. Special Court-Martial Order Number 1, dated 23 January 1985, shows the applicant was arraigned and tried. He was found guilty of the following offense(s) and specification(s):

a. Six specifications of larceny in the following:

- \$183.88 in currency on or about 11 May 1983
- \$75.80 in currency on or about 18 May 1983
- \$77.50 in currency on or about 21 October 1983
- \$185.51 in currency on or about 7 December 1983
- \$23.02 in currency on or about 10 January 1984
- \$14.10 in currency on or about 18 January 1984

b. one specification of forgery of a name on a check on or about 24 December 1983.

6. He was sentenced to confinement for 2 months, forfeiture of \$278.00 pay per month for 2 months, reduction to the lowest enlisted grade of E-1, and discharge from the service with a BCD. The sentence was adjudged on 4 December 1984.

7. On 23 January 1985, the sentence was approved and except for the BCD, was ordered to be executed. The record of trial was forwarded for appellate review.

8. Special Court-Martial Order Number 2, dated 28 January 1985, issued by Headquarters, Fort Devens, Massachusetts, ordered the BCD to be duly executed.

9. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 28 January 1985, under the provisions of Army Regulation 635-200 (Personnel Separations Enlisted Personnel), Section IV (Separation after Expiration of Term of Service/Period of Active Duty/Active Duty Training) by result of court-martial, other, in the grade of E-1. His service was characterized as BCD. He was credited with 5 years, 11 months, and 11 days of net active service this period, with 4 years, 2 months, and 27 days of total prior active service. He had lost time from 4 December 1984 to 24 January 1985. He was awarded or authorized the following decorations, medals, badges, citations, and campaign ribbons:

- Army Good Conduct Medal (2nd award)
- Army Achievement Medal with/1 oak leaf cluster
- Noncommissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon
- Sharpshooter Badge Rifle M-16

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

11. Regulatory guidance provides a Soldier will receive a BCD 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.

12. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the pattern of misconduct leading to the applicant's separation and the lack of mitigation for the misconduct, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. 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.
2. Prior to closing the case, the Board noted the administrative notes below from the analyst of record and recommended those changes be completed to more accurately reflect the military service of the applicant.

2/5/2025

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 28 January 1985, 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 19781227 UNTIL 19810607

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

3. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

4. Army Regulation 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 BCD 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//