

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 September 2024

DOCKET NUMBER: AR20230014921

APPLICANT REQUESTS:

- upgrade of his bad conduct discharge
- personal appearance before the Board

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, 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:
  - a. He would like his bad conduct discharge upgraded. Since being discharged from the service, he has been an upstanding member of his community staying out of trouble.
  - b. He has worked for the Department of Defense as a contractor and passed multiple background checks. He learned his lesson and would like to have this blemish removed from his record.
3. The applicant enlisted in the Regular Army on 26 April 1989.
4. The complete facts and circumstances surrounding the applicant's discharge are not in his available records for review, to include a DD Form 458 (Charge Sheet).
5. On 12 March 1992, the applicant voluntarily requested discharge for the good of the service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, because he understood he may request discharge for

the good of the service because the charge of forgery preferred against him under the Uniform Code of Military Justice (UCMJ), Article 123, authorizes the imposition of a bad conduct or dishonorable discharge. He consulted with counsel, who advised him of his rights, and he did not submit statements in his own behalf.

6. On 12 March 1992, the applicant's immediate commander recommended approval of his request for discharge under the provisions of Army Regulation 635-200, chapter 10, for the good of the service, and further recommended the issuance of an under other than honorable discharge.

7. On 12 March 1992, the applicant's battalion commander and on 13 March 1992, the applicant's brigade commander both recommended disapproval of his request for discharge under the provisions of Army Regulation 635-200, chapter 10, for the good of the service.

8. On 27 March 1992, the Commanding General, 1st Cavalry Division, disapproved the applicant's request for discharge under the provisions of Army Regulation 635-200, chapter 10, for the good of the service and directed that processing of the court-martial charge against the applicant would not be further delayed.

9. Headquarters, 1st Cavalry Division Special Court-Martial Order Number 25, dated 24 September 1992 shows:

a. The applicant was arraigned by special court-martial at Fort Hood, TX, on 30 April 1992, where he was charged with forgery of endorsement/attempted larceny of \$3,339.25 on 15 October 1991. The applicant pleaded guilty by exceptions, deleting attempted larceny language and was found guilty by exceptions, of forgery of endorsement, deleting attempted larceny language.

b. On 20 April 1992, the applicant was sentenced to a bad conduct discharge, confinement for 3 months, forfeiture of \$392.00 pay per month for 3 months, and reduction to private (PVT)/E-1.

c. The sentence was approved and, except for the part of the sentence extending to a bad conduct discharge, would be executed.

10. Headquarters, 1st Cavalry Division Special Court-Martial Order Number 11, dated 18 March 1993, shows the applicant's sentence to a bad conduct discharge, confinement for 3 months, forfeiture of \$392.00 pay per month for 3 months, and reduction in rank/grade to PVT/E-1, adjudged on 30 April 1992, as promulgated in Special Court-Martial Order Number 25, this Headquarters, dated 24 September 1992, had finally been affirmed and the bad conduct discharge would be executed. That portion of the sentence extending to confinement had been served.

11. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows:

a. The applicant was given a bad conduct discharge on 7 March 1994, under the provisions of Army Regulation 635-200, chapter 3, due to court-martial.

b. He was credited with 4 years, 7 months, and 29 days of net active service and lost time from 30 April 1992 through 12 July 1992.

c. He was awarded or authorized the Southwest Asia Service Medal with two bronze service stars and the Kuwait Liberation Medal, with 6 months and 7 days of foreign service.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board carefully considered the applicant's request, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and, other than his own statement, the applicant provided no evidence of post-service achievements, and he provided no letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was 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.

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. 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 Uniform Code of Military Justice, 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 Uniform Code of Military Justice 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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.
  - a. 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.

b. 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.

c. Chapter 3, paragraph 3-11, provides that an enlisted person would be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review is required to be completed and the affirmed sentence ordered duly executed.

4. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR.

a. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

b. 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.

//NOTHING FOLLOWS//