

IN THE CASE OF: ██████████

BOARD DATE: 19 September 2024

DOCKET NUMBER: AR20230015057

APPLICANT REQUESTS: an upgrade of his bad conduct discharge to honorable.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record), 14 November 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 is requesting an upgrade of his bad conduct discharge to honorable. He was wrongly accused of stealing. He was set up by two sergeants out of jealousy. A private told him about the plot but it was too late, and he was arrested. They placed the jewelry in his locker while he was away. He wrongly served time. His grandfather served during World War I and World War II. It was his dream to be like him, but these individuals took his dream. He begs for a second chance. He helps take care of wounded Veterans and takes them back and forth to the doctor. Military life is all he knows and still to this day he carries himself as a squared-away Soldier.
3. A review of the applicant's service records shows:
 - a. On 3 January 1985, he enlisted in the Regular Army for 3 years. He was awarded military occupational specialty 12F (Engineer Tracked Vehicle Crewman) and he attained the rank/grade of private first class (PFC)/E-3.
 - b. On 9 December 1986, his status changed from absent without leave (AWOL) to present for duty (PDY). A DA Form 4187 (Personnel Action) showing the date he went AWOL is not contained in the available records.
 - c. On 5 March 1987, he was convicted by a special court-martial of the below listed offenses. His sentence included reduction to private, E-1, forfeiture of \$438.00 pay per month for four months, confinement for four months, and a bad conduct discharge.

(1) Specification 1: (dismissed).

(2) Specification 2: Larceny of a property of a value of about \$150.00 on or about 12 January 1987; guilty

(3) Specification 3: Larceny of a property of a value of about \$497.70 on or about 26 January 1987; guilty

(4) Specification 4: (combined with Specification 3);

d. On 23 April 1987, the convening authority approved so much of the sentence as provides for reduction to private, E-1, forfeiture of \$438.00 pay per month for four months, confinement for four months; 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.

e. On 30 April 1987, he underwent a medical examination and gave a report of medical history. The examining physician noted he was qualified for separation.

f. On the same date, he underwent a mental health evaluation. A DA Form 3822-R (Mental Status Evaluation) shows the chief psychiatrist Irwin Army Community Hospital, found that the applicant met the physical retention standards prescribed in Army Regulation 40-501 (Standards of Medical Fitness). The examiner further determined that the applicant was mentally responsible, able to distinguish right from wrong, able to adhere to the right, and had the mental capacity to understand and participate in proceedings.

g. Special Court-Martial Order Number 9 dated 9 October 1987, after Article 71(c) was complied with and the sentence was affirmed, ordered the bad conduct discharge executed.

h. On 25 March 1988, he was discharged from active duty with a bad conduct characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 2 years, 11 months, and 20 days of active service with 99 days of lost time.

4. 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.

5. 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:

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. 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:

| <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:

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.

3/6/2025

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.

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//