

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 October 2024

DOCKET NUMBER: AR20230015163

APPLICANT REQUESTS: in effect, 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)
- Veterans Information Solution-Department of Veterans Affairs (VA) Military History
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)

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, in effect, he is requesting an upgrade of his characterization of service for burial rites.
3. On 23 August 1963, the applicant enlisted in the Regular Army for 3 years and he was trained as a personal specialist and a lineman. He was assigned to Korea on 9 January 1964. On 23 March 1964, he was advanced to pay grade E-3, which was the highest pay grade he achieved.
4. The applicant accepted non-judicial punishment under the provisions of Article 15. Uniform Code of Military Justice (UCMJ) on 19 May 1964, for being drunk and disorderly, staggering, using incoherent speech, and causing an affray with a group of Korean civilians. His punishment consisted of a forfeiture of \$45 pay and 30 days of restriction.

5. A Charge Sheet (DD Form 458), dated 4 November 1964, confirms the applicant was charged with breaking restriction and leaving the area of Company B, 51st Signal Battalion, Korea, on 31 October 1964.

6. General Court-Martial Order Number 2 issued by Headquarters, I CORPS (Group), shows he was convicted of violating a lawful general order, to wit: United States Forces Korea Policy Directive 7-7, dated 12 December 1961, Enclosure 1 to Eighth United States Army Regulation (AR) 190-21, dated 16 February 1964 and of violating AR 60-1, dated 18 December 1963 by:

- Receiving Military Payment Certificates from an unauthorized source on 8 September 1964
- Purchasing Far East Exchange Service merchandise, to wit: a Bulova watch, a value of \$19.50, for the purpose of transferring possession to an individual not authorized post exchange (PX) privileges on 8 September 1964
- Purchasing Far East Exchange Service merchandise, to wit: a tape recorder, a value of \$59.95, for the purpose of transferring possession to an individual not authorized PX privileges on 9 September 1964
- Purchasing an iron, of a value of \$6.25, for the purpose of transferring possession to an individual not authorized PX privileges on 9 September 1964
- Using an altered Far East Exchange Service Ration Card, on 9 September 1964
- Purchasing an Omega watch of a value of \$74.95 for the purpose of transferring possession to an individual not authorized PX privileges on 29 September 1964
- Purchasing a Nivco Radio of a value of \$9.95 for the purpose of transferring possession to an individual not authorized PX privileges on 9 October 1964
- Purchasing a Benrus watch of a value of \$21.50 and a General Electric Iron of a value of \$6.25, a total of \$27.75, for the purpose of transferring possession to an individual's not authorized PX privileges on 10 October 1964
- Using a Far East Exchange Service Ration Card other than one issued to him or a member of his immediate family, on 10 October 1964
- Purchasing a watch of a value of \$70.00 and a Sony TC-102 Tape Recorder of a value of \$59.95, a total of \$129.95, for the purpose of transferring possession to individual's not authorized PX privileges on 16 October 1964
- With intent to defraud, falsely make the signature of DLR to a certain Far East Exchange sales slip, for a Benrus watch and a General Electric Iron, which said slip if genuine would, apparently operate to the legal prejudice of another, on 10 October 1964

a. On 29 December 1964, the court sentenced him to a and conduct discharge, forfeiture of \$40 pay for 6 months, and confinement at hard labor for 6 months.

b. On 9 February 1965, the convening authority approved the sentence. The record of trial was forwarded to The Judge Advocate General of the Army for review by a board

of review. Pending completion of the appellate review, the applicant was assigned to the Post Stockade, Presidio of San Francisco, CA.

7. On 20 February 1965, the applicant submitted a statement through his chain of command stating he wanted to stay in the military and earn an honorable discharge. He did not want a bad conduct discharge.

8. General Court-Martial Order Number 18 issued by Headquarters Sixth U.S. Army, Presidio of San Francisco, CA, dated 29 April 1965, shows after completion of all required post-trial and appellate reviews, the convening authority ordered the BCD executed.

9. On 30 April 1965, he underwent a medical examination, and he was found qualified for separation.

10. On 1 June 1965, he was discharged in pay grade E-1. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he completed 1 year, 4 months, and 4 days of active service. He was awarded the Sharpshooter Marksmanship Qualification Badge (M-1 Rifle) and (M-14 Rifle). Additionally, his DD Form 214 shows in:

- Reason and Authority, “[Army Regulation (AR)] 635-204 (Personnel Separations – Dishonorable and Bad – Conduct Discharges), SPN 292, Other Than Desertion (Court-Martial)”
- Character of Service, Under Other Than Honorable Conditions [issued a Bad Conduct Discharge Certificate]
- Remarks, “155 Days Lost from: 1-4 Nov 64; 29 Dec 64-28 May 65”

11. The applicant provided a Veterans Information Solution-VA Military History statement showing his period of active service from 23 August 1963 to 1 June 1965, is considered honorable for VA purposes. His submissions were provided to the Board in their entirety.

12. AR 635-204, in effect at the time, provided for separation of enlisted personnel with a BCD based on an approved sentence of a general court-martial or a special court-martial imposing a BCD.

13. AR 635-200 (Personnel Separations), provides 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. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

14. Court-martial convictions stand as adjudged or as 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. Any redress by this Board of the finality of a court-martial conviction is prohibited by law. The Board is only empowered to change a discharge if clemency is determined to be appropriate to moderate the severity of the sentence imposed.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for conviction by general court-martial for violating lawful general orders by receiving payment from an unauthorized source, transferring post exchange merchandise to an unauthorized individual on seven occasions, using an altered ration card on two occasions, and intent to defraud. The Board found no error or injustice in the separation proceedings. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. The applicant was given a bad conduct discharge pursuant to an approved sentence of a general court-martial. The appellate review was completed and the affirmed sentence was ordered duly executed. All requirements of law and regulation were met with respect to the conduct of the court-martial and the appellate review process and the rights of the applicant were fully protected.

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.

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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 (AR) 635-204, Personnel Separations – Dishonorable and Bad – Conduct Discharges), in effect at the time, provided for separation of enlisted personnel with a dishonorable discharge pursuant to an approved sentence of a general court-martial. This regulation also provided for separation of enlisted personnel with a BCD based on an approved sentence of a general court-martial or a special court-martial imposing a BCD.

3. AR 635-200 (Personnel Separations) provides 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.

4. 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.

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/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.

//NOTHING FOLLOWS//