

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 September 2024

DOCKET NUMBER: AR20230015190

APPLICANT REQUESTS: In effect, an upgrade of his bad conduct discharge (BCD) to a more favorable characterization of service.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 his company commander told him he would kick out all 17-year-old [Soldiers]. He was made to sign papers that he did not understand at age 17. He states he woke up with another Soldier trying to have oral sex with him and he ran away from Fort Knox, KY, in an absent without leave (AWOL) status. He did not know he could do anything about his situation, but he did not want to go to his grave with this on his record and mind. He does not want any benefits. But he does not want to feel like a failure. He is a hard-working man who takes care of his family.
3. On 3 June 1980, the applicant enlisted in the Regular Army, he completed the training requirements, and he was awarded military occupational specialty (MOS) 52D (Power Generation Equipment Repairer). On 9 January 1981, he was assigned to Fort Knox, KY, with duties in his MOS.
4. The applicant accepted non-judicial punishment under the provisions of Article 15. Uniform Code of Military Justice (UCMJ) on the following dates:
  - 24 April 1981, for being AWOL from his unit at Fort Knox, from 22 to 23 April 1981

- 12 May 1981, for failing to go to his appointed place of duty at the time prescribed, on 2 May 1981
- 14 August 1981, for being AWOL from his unit at Fort Knox, from 13 July to 11 August 1981

5. Before a special court-martial on or about 16 July 1981, at Fort Knox, KY, the applicant was found guilty of one specification each:

- Failing to go to his appointed place of duty at the time prescribed (extra duty) on 22, 23, 24 and 25 May 1981
- Being AWOL from his unit from 29 May to 23 June 1981
- Breaking restriction by leaving the company area on 18 May 1981
- Willfully disobeying an order from a commissioned officer to get his bags packed, his load-bearing equipment on, and to be ready for movement to the field site at 0845 hours, on 8 July 1981
- Willfully disobeying an order from a commissioned officer to get into his vehicle for movement into the field, on 8 July 1981
- Breaking arrest by leaving his quarters on 11 July 1981
- Escaping from the lawful custody of a staff sergeant on 13 and 17 July 1981

6. Specification 3 of Additional Charge II [Escaping from the lawful custody of a staff sergeant on 17 July 1981] was dismissed by a military judge upon motion of the government. He was found guilty of all remaining charges.

7. On 7 October 1981, the court sentenced him to confinement at hard labor for 5 months and separation from service with a BCD. The sentence was approved on 24 November 1981 and the record of trial was forwarded to the U.S. Army Court of Military Review for appellate review.

8. On 17 February 1982, the U.S. Army Court of Military Review affirmed the findings and sentence.

9. Special Court-Martial Order Number 139, issued by Headquarters, U.S. Disciplinary Barracks, Armor Center, Fort Knox, KY, on 21 June 1982, noted the applicant's sentence had been affirmed and ordered the BCD duly executed.

10. On 9 July 1982, the applicant was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of chapter 11, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), due to court-martial. His service was characterized as BCD. He completed 1 year, 9 months and 11 days of active service with lost time on 22 April 1981, 29 May to 22 June 1981, 11 July to 10 August 1981, and 7 October to 7 December 1981.

11. 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.

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 the applicant provided no evidence of post-service achievements or 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.

2/26/2025

XCHAIRPERSON  


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) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
  - 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. An under other than honorable conditions discharge is a separation from the Army under conditions other than honorable. When authorized, it is issued to a Soldier whose reason for separation specifically allows such characterization.
  - d. Chapter 11 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. The service of Soldiers sentenced to a BCD was to be characterized as under other than honorable conditions.

3. 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.

4. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, Boards 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//