

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 October 2024

DOCKET NUMBER: AR20240000664

APPLICANT REQUESTS:

- Upgrade of his bad conduct discharge to a general discharge under honorable conditions
- Permission to appear personally before the Board

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, in effect, as a former Soldier, he has always been proud of his military service and, for the most part, his service was honorable. He regrets his youthful mistakes 33 years ago, and what occurred resulted in the loss of his freedom, dignity, and military honor. He now owns a company and hires Veterans; if the Board grants this upgrade, he is hoping his employees will be as proud of him and his company as he is of them.
3. A review of the applicant's service record shows the following:
 - a. On 10 September 1986, the applicant enlisted into the Regular Army for 3 years. Upon completion of initial entry training and the award of military occupational specialty 13N (Lance (Missile) Crewmember), orders assigned him to a field artillery unit in The Netherlands; he arrived at his new unit, on 28 January 1987.
 - b. In September 1988, Permanent Orders awarded the applicant the Army Achievement Medal for meritorious achievement during a tactical operations

competition. Effective 1 November 1988, his leadership promoted him to specialist (SPC)/E-4.

c. On 29 August 1989, consistent with the applicant's pleas, a general-martial convicted the applicant for Uniform Code of Military Justice (UCMJ) violations.

(1) The court found the applicant guilty of disobeying Article 112a (Wrongful Use, Possession, and/or Distribution of Controlled Substances), UCMJ, two specifications; in that, between December 1988 and May 1989, the applicant wrongfully used and possessed an undetermined amount of heroin, and, during that same period, distributed an undetermined amount of heroin.

(2) The military judge sentenced the applicant to 15-months' confinement, total forfeiture of all pay and allowances, reduction to private (PV1)/E-1, and a bad conduct discharge. The court immediately remanded the applicant to confinement.

d. On 18 October 1989, the general court-martial convening authority (GCMCA) approved only so much of the sentence as allowed for 12-months' confinement, total forfeiture of all pay and allowances, reduction to PV1, and a bad conduct discharge, and, except for the bad conduct discharge, he directed the sentence's immediate execution. Additionally, the GCMCA granted 3-months' credit towards the applicant's confinement due to illegal punishment.

e. On or about 24 January 1990, orders transferred the applicant to the U.S. Army Correctional Brigade (USACB) at Fort Riley, KS; on 16 March 1990, USACB placed the applicant on indefinite excess leave.

f. On 16 July 1990, the U.S. Army Court of Military Review evaluated the applicant's court-martial conviction. The court determined the military judge erred by failing to find the applicant's pre-trial restriction as tantamount to confinement; the court directed the GCMCA grant the applicant 45-days' administrative credit against his confinement sentence.

g. On 19 October 1990, a general court-martial order announced the completion of the applicant's appellate process and directed the execution of his bad conduct discharge; in addition, the order noted that the applicant had already completed his confinement, and that he had been granted 3-months credit toward his confinement sentence, plus the 45-days' administrative credit ordered by the U.S. Army Court of Military Review.

h. On 1 November 1990, the Army separated the applicant with a bad conduct discharge. His DD Form 214 shows he completed 3 years, 8 months, and 17 days of his 3-year enlistment contract. The report additionally reflected the following:

(1) Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized):

- Army Service Ribbon
- Army Achievement Medal (1st Award)
- Overseas Service Ribbon
- Two marksmanship qualification badges

(2) Special Additional Information:

- Item 25 (Separation Authority) – Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 3 (Character of Service/Description of Separation), section IV (Dishonorable and Bad Conduct Discharge)
- Item 26 (Separation (Separation Program Designator (SPD)) Code) – "JJD"
- Item 27 (Reentry (RE) Code) – RE-4
- Item 28 (Narrative Reason for Separation) – "As a Result of Court-Martial"

4. AR 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of wrongful use, possession, and/or distribution of controlled substances. The Board noted the applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. ABCMR 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.

2. The Board found the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the bad conduct discharge to a general under honorable conditions or honorable discharge. Therefore, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 the following:
 - a. 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.

b. With respect to courts-martial, and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of a Secretary's Department may only extend to actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. The Secretary of the Army shall make such corrections by acting through boards of civilians within the executive part of the Army.

2. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge). An honorable discharge was separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when subsequent honest and faithful service over a greater period outweighed disqualifying entries in the Soldier's military record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 3-7b (General Discharge). A general discharge was a separation from the Army under honorable conditions. When authorized, separation authorities could issue a general discharge to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-11 (Bad Conduct Discharge). A Soldier received a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate authority must have completed the review process, and the affirmed sentence ordered duly executed.

d. Chapter 5 (Separation for the Convenience of the Government) , section II (Secretarial Authority), stated the separation of Soldiers was the prerogative of the Secretary of the Army. Except as otherwise delegated, such separations only occurred by the Secretary's authority, and were to be based on a determination that the separation was in the best interests of the Army.

3. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation.

a. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in item 28 (Narrative Reason for Separation).

b. For item 27 (RE Code), the regulation referred preparers to the regulations governing enlistment/reenlistment.

4. AR 635-5-1, in effect at the time, stated Soldiers separated with a bad conduct discharge received an SPD of "JJD"; the associated narrative reason for separation was "As a Result of Court-Martial, Other."

5. AR 601-210 (Regular Army and Army Reserve Enlistment Program), in effect at the time, covered eligibility criteria, policies, and procedures for the Active Army and RC enlistment program. Table 3-6 (Armed Forces RE Codes, RA (Regular Army) RE Codes) included the following list of the RE codes:

- RE-1 – for Soldiers who completed their term of active service and were considered qualified to reenter the U.S. Army
- RE-3 – applied to Soldiers who were not considered fully qualified for reentry or continuous service at time of separation, but the disqualification was waivable
- RE-4 – pertained to Soldiers with a nonwaivable disqualification

6. The SPD/RE Code Cross Reference Table, in effect at the time, provided instructions for determining the RE code for Active Army Soldiers. This cross reference table showed the SPD code and a corresponding RE code. The SPD code of "JJD" had a corresponding RE code of "4."

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 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.

8. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

//NOTHING FOLLOWS//