

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

D. BOARD DATE: 16 May 2025

DOCKET NUMBER: AR20240000775

APPLICANT REQUESTS: Upgrade of his bad conduct discharge (BCD) to under honorable conditions (general) or honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Legal brief, 7 pages
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for service from 18 February 1986 to 19 June 1990
- Four letters of support that collectively attest to his remorse, humility, work ethic, integrity, and his selfless service to the community
- Civil court document from the 21st Judicial Circuit, St. Louis County, MO, shows that on 21 October 2022, the applicant's records related to the arrest, plea, trial, or conviction record(s) specified were expunged
- General Court-Martial Order Number 25, dated 16 April 1980, affirmed the applicant's court-martial sentence

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. Counsel states in a 7-page brief in support of the application, which is available for the Board's review in supporting documents:

a. The applicant is appealing to the Board for consideration of a change to the character of his military discharge. His BCD is based on a single, nonviolent conviction for possession with the intent to distribute less than two grams of marijuana. As a result, he was found guilty of two counts of Article 112a of the Uniform Code of Military Justice. The applicant's conviction; however, is more usefully understood in the context of racial dynamics that underlie the circumstances of his case.

b. Counsel argues In accordance with the Application for the Review of Discharge, petitioners are asked to provide reasons "based on propriety, equity, and/or clemency... why the Board should grant the requested change" in their military records. In response, this memo intends to convey: a brief discussion of the circumstances that led to the applicant's court-martial in 1989; and relevant factors of "propriety" and "equity" that inform his appeal. Counsel elaborates the following areas:

- a change in the societal perception of marijuana use
- at the time of his court-martial, he was not advised by his legal counsel that this guilty plea would result in the loss of veteran's and other medical benefits
- he readily acknowledges his past guilt and has reiterated that he takes full responsibility for his past behavior. At trial, he pled guilty to both charges
- following his discharge, he has not committed any further criminal acts related to the distribution or possession of any narcotics
- his conviction from nearly 30 years ago, stems from a non-violent, marijuana case, which have been the subject of ongoing review by military and civilian leadership, indicating the severity these offenses are being reduced
- following his discharge, the applicant has been continuously employed as a healthcare aide, and then a self-employed contractor and entrepreneur
- he arrived in Germany as a young, impressionable Soldier and his abstinence from drugs in his post-military life; conclude that this single narcotic offense was a product of youthful indiscretion

c. Counsel concludes the conviction that has led the applicant to seek the Board's review was undoubtedly serious constituting a breach in the public's trust which had no justification. Nevertheless, as this memo has demonstrated, this narcotic-related offense was singular in nature and now dated, having occurred approximately 30 years ago. Second, through his continuous employment and dedication to the least advantaged members of the St. Louis, MO, community, he has not reoffended in a drug related conviction since his release from incarceration. Third, the applicant has demonstrated a professional and humanitarian dedication to his community. Finally, the President has himself stated that it is the policy of his administration to forgive nonviolent marijuana offenders, particularly those from communities of color.

3. The applicant enlisted in the Regular Army on 18 February 1986.

4. Before a general court-martial on 28 March 1989, at Nelson Barracks, Neu Ulm, Germany, the applicant was found guilty of two specifications of wrongfully distributing some amount of hashish, on 29 December 1988.

5. The court sentenced him to reduction to E-1, forfeiture of all pay and allowances, confinement for one year, and to be discharged from the service with a BCD. The sentence was approved on 9 May 1989, however only so much of the sentence as

provided for reduction to E-1, forfeiture of all pay and allowances, confinement for nine months, and a BCD was approved. The record of trial was forwarded for appellate review.

6. The U.S. Army Court of Military Review affirmed the findings and sentence on 5 January 1990.

7. General Court-Martial Order Number 25, issued by Headquarters U.S. Army Armor Center and Fort Knox, Fort Knox, KY, on 16 April 1990, noted the applicant's sentence had been affirmed and ordered the BCD to be duly executed.

8. The applicant was discharged on 19 June 1990. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 3, Section IV, as a result of court-martial. His service was characterized as bad conduct. He was credited with 3 years, 8 months, and 26 days of net active service this period with 221 days of lost time.

9. 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.

10. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the lengthy period of honorable service completed prior to the single incident of misconduct, as well as the post-service character evidence provided by the applicant, the Board concluded there was sufficient evidence to grant clemency by upgrading the applicant's characterization of service to General, Under Honorable Conditions.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:XXX	:XXX	:XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Under Honorable Conditions (General)
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

//SIGNED//
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. Title 10, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) 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. Chapter 3, Section IV provided that a member 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.
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/NR) 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//