

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 October 2024

DOCKET NUMBER: AR20240001635

APPLICANT REQUESTS: an upgrade of his dishonorable discharge to under honorable conditions (General).

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

- DD Form 149 (Application for Correction of Military Record)
- 3-Character References
- Medical Records

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 a second chance, and that he learned from his mistakes.

3. The applicant provides:

a. Three-character references that show in part the following:

(1) G\_\_\_\_ W\_\_\_\_ states he has known the applicant for 40 years. [Applicant] has always been known to be of sound character, creative, honest, optimistic, patient and having a sense of ambition.

(2) V\_\_\_\_ S\_\_\_\_ states he has known the applicant for over 10 years. They have been close friends since childhood. [Applicant] is honest, trustworthy and willing to help others.

(3) F\_\_\_\_ H\_\_\_\_ states [applicant] has used integrity when performing any job. In their community [applicant] has been the picture of a devoted and loving guy.

b. Medical Records for the period January 1980 to August 1985.

4. A review of the applicant's service records show:

a. He enlisted in the Regular Army on 20 February 1980.

b. On 20 October 1982, he reenlisted for a period of 3 years.

c. General Court-Martial Order Number 22, issued by Headquarters, V Corps, shows a Court-Martial convened on 19 February 1985. The applicant was arraigned, tried, and convicted of the following:

(1) Charge, Article 125. Specification: Sodomy committed by force and without consent on Private First-Class E\_\_\_\_\_ on 27 November 1984 at Frankfurt, Germany.

(2) He was sentenced to be reduced to private/E-1, to be confined for 2 years, forfeiture of all pay and allowances, and to be discharged from the service with a dishonorable discharge on 19 February 1985.

(3) The sentence was approved, and, except for the dishonorable discharge, will be executed.

d. On 9 August 1985, the U.S. Army Court of Military Review, decided on consideration of the entire record held the findings of guilty and the sentence as approved by the convening authority correct in law and fact. Accordingly, those findings of guilty and the sentence were affirmed.

e. On 23 December 1985, the sentence to a dishonorable discharge, confinement for 2 years, forfeiture of all pay and allowances, and reduction to the grade of E-1, adjudicated on 13 February 1985, as promulgated in General Court-Martial Order Number 22, has been finally affirmed. Article 71(c) having been compiled with; the dishonorable discharge will be executed. The accused will be confined in the U.S. Army Correctional Activity, Fort Riley, KA, and the confinement will be served therein, or elsewhere as competent authority may direct.

f. DA Form 2496 (Disposition Form) shows that on 9 April 1986, the Chairman of the Army Clemency and Parole Board on behalf of the Secretary of the Army approved parole for [applicant] and directed that he be released from confinement and placed in a parole status.

g. The applicant was discharged from active duty on 20 April 1982. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows 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, with a dishonorable conduct characterization of service. His DD Form 214 also shows:

- a. He completed 2 years, 3 months and 25 days of net active service; and 2 years, and 8 months of total prior active service.
- b. He was awarded or authorized the Army Commendation Medal, Army Service Ribbon, Army Good Conduct Medal, and the Expert Marksmanship Qualification Badge with Rifle Bar (M-16).
- c. Item 18 (Remarks) shows entries but did not list his reenlistment period, or his continuous honorable service.
- d. He received a separation code of "JJD" and a reentry code of "4."
- e. Lost time during this period 19 February 1985 to 28 April 1986.

5. By regulation (AR 635-200), a Soldier 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.

6. 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:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. 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. Although, the applicant provided no post service achievements, the Board carefully considered the applicant's character letters of support attesting to his integrity, character and the man he has become today since his discharge in consideration of clemency

2. The Board determined that the character of service the applicant received upon separation was not in error or unjust. However, during deliberation the Board determined the applicant had a prior period of honorable service which is not currently reflected on his DD Form 214 and recommended that change be completed to more

accurately show his period of honorable service by granting a partial relief to correct his records.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 by adding in item 18 (Remarks) the entry "Continuous Honorable Service from "19800220-19821019."

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to an upgrade of his dishonorable discharge to under honorable conditions (General).

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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.

ADMINISTRATIVE NOTE(S): N/A

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. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
3. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.
  - a. Chapter 3 states a Soldier 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.
  - b. 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.
  - c. 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. 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.

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

c. 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.

6. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army (RA) and the Reserve Components.

a. Chapter 3 prescribes basic eligibility for prior service applicants for enlistment and includes a list of Armed Forces Reentry (RE) Codes, including RA RE Codes.

- Re Code of “1” (RE-1) applies to persons qualified for enlistment if all other criteria are met
- RE-3 applies to persons ineligible for reentry unless a waiver is granted
- RE-4 applies to persons who have a nonwaiverable disqualification and are ineligible for enlistment

b. Chapter 4 states recruiting personnel have the responsibility for initially determining whether an individual meets current enlistment criteria and are responsible for processing waivers.

7. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The SPD code JJD is to be used for RA Soldiers discharged for court martial other under the provisions of Army Regulation 635-200, chapter 3.

8. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross reference table shows the SPD code and a corresponding RE Code. The table in effect at the time of his discharge shows the SPD code JJD has a corresponding RE Code of "4."

//NOTHING FOLLOWS//