

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 December 2024

DOCKET NUMBER: AR20240002101

APPLICANT REQUESTS: an upgrade of his bad conduct discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Character Statement

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:

a. He takes full responsibility for his actions and his lack of discipline, and character for being a Soldier in the U.S Army. When joining the military, he was a very privileged young man still trying to find his way in life after not having his parents around every day to guide him. He made life altering mistakes and have dedicated his time to correcting the things he did wrong. He has a better outlook on life now and is trying to provide a better life for himself and his sons. He has held down employment since and has stayed out of trouble.

b. He volunteers his time mentoring young men to take life seriously. He was raised in the military and thought that maybe he could follow in his father's footsteps. After joining the military, he realized he wasn't mature enough for the Army lifestyle and he couldn't handle that realization. Now that he's out of the Army, he has a deep appreciation for the military and all the military has done for him and he would like to continue to be a part of the military family and give back to helping Veterans, and those still serving. This dishonorable discharge is holding him back from doing so. He humbly requests that his dishonorable discharge be upgraded so that he can support the military community.

3. The applicant provides a character statement, written by his father (retired Command Sergeant Major C.D.H), which reads as follows:

“It is my great honor to speak on behalf of the applicant, who is requesting an upgrade in his dishonorable discharge status due to (Sexual Misconduct). Having known the applicant during and after his military career as his father, I can wholeheartedly vouch for his excellent character and strong work ethic. Being his father, my wife and I raised him from an infant to the man he has become. The applicant joined the Army while I was attending the U.S. Army Sergeants Major Academy. I pushed for him to join the Army because of how great the Army was for me and my family. The applicant was raised in a very disciplined and professional household. During that time, I always saw him as a very disciplined and modern child, he never got into trouble at school and never once was cited or reprimanded for negative or unprofessional behavior. Kevin was very good with his younger sister and brother; he was a role model for them to follow. Separate from his military career, his role as a civilian and a loving father has created a time of personal and professional growth. He has gotten his life back on track by being a dependable dad, getting back into college, and is actively involved in the community as a youth basketball coach. He and I spend every week together talking about Christ and his son, my grandson. I personally know the applicant and I would be happy to discuss the subject further in person if required.”

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 11 February 2013 for a period of five (5) years.

b. DA Form 4187 (Personnel Action), dated 20 April 2015, reflects the applicant's duty status changed from “Present for Duty” to “Confined by Military Authorities” (CMA), effective 16 March 2015.

c. Headquarters, U.S. Army Garrison, Fort Bliss orders 079-80, dated 20 March 2015, reflects the applicant was reassigned to the Personnel Control Facility Fort Sill, OK, with confinement at the Northwestern Joint Regional Correctional Facility, Joint Base Lewis-McChord, WA. Reporting date set as 31 March 2015.

d. General Court-Martial Order Number 8, issued by the Headquarters, Fort Bliss, Fort Bliss, TX, dated 20 May 2015, shows that the sentence to a bad-conduct discharge, confinement for six (6) months, and reduction to Private E1, was adjudged on 16 March 2015. As of note, there were no additional orders related to the General Court-Martial found in the applicant's service file.

e. DA Form 4187, dated 11 August 2015, reflects the applicant's duty status changed from "Confined by Military Authorities" to "Present for Duty," effective 10 August 2015.

f. Headquarters, U.S. Army Garrison, Fort Sill orders 032-1309, dated 1 February 2016, reflects the applicant was reassigned to the Fort Sill Transition Center Fort Sill, with a reporting date/date of discharge of 4 February 2016.

g. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 4 February 2016, under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 3, Court-Martial (other), separation code JJD, reentry code 4, and character of service as Bad Conduct. He served 2 years and 7 months of net active service this period, with lost time from 16 March 2015 to 9 August 2015.

5. There is no evidence that the applicant applied to the Army Discharge Review Board for review of his discharge within the board's 15-year statute of limitations.

6. By regulation, AR 635-200, para 3-10 states a member 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.

7. 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 relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the request 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 request and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the serious misconduct. The Board noted the applicant's post service achievements and character letter of support, attesting to his work ethic and character for clemency determination.

2. However, the 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. The Board agreed 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. Based on the preponderance of evidence, the Board denied relief.

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, USC, section 1552(b), provides that applications for correction of military records must be filed within three years after discovery of the alleged error or injustice. This provision of law also allows the Army Board for Correction of Military Records

(ABCMR) to excuse an applicant's failure to timely file within the three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation (AR) 635-200 (Active-Duty Separations) sets forth the basic authority for the separation of enlisted personnel, as a result of court-martial.

a. Paragraph 3-7a provides that 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. Paragraph 3-7b 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.

c. Paragraph 3-7c states a discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or for the good of service in selected circumstances.

d. Paragraph 3-10 states that a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general court-martial. The appellate review must be completed and the affirmed sentence ordered duly executed.

e. Paragraph 3-11 states a member 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.

3. 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.

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 based on 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.

//NOTHING FOLLOWS//