

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 November 2024

DOCKET NUMBER: AR20240002965

APPLICANT REQUESTS: an upgrade of his bad conduct discharge, and a change of the narrative reason for separation to a more favorable reason.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 293 in lieu of DD Form 149 (Application for Correction of Military Record),  
29 January 2024

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. A review of the applicant's service records show:
  - a. On 16 February 1979, he enlisted in the Regular Army for 3 years.
  - b. On 1 October 1981, he was honorably discharged in order to reenlist.
  - c. On 2 October 1981, he reenlisted for 4 years beginning at rank/grade of private first class/E-3.
  - d. On 19 May 1982, he accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for being AWOL from his assigned place of duty from on or about 10 to 12 May 1982; and from on or about 17 and 18 May 1982. His punishment consisted of reduction to private 2/E-2, forfeiture of \$125.00 for 1 month, and 14 days extra duty. He did not appeal this punishment.
  - e. On 3 June 1982, he accepted NJP under the provisions of Article 15 of the UCMJ for being AWOL from his assigned place of duty from on or about 21 May 1982 to on or about 25 May 1982, and for being AWOL from his assigned place of duty from on or about 1 June 1982 to on or about 3 June 1982. His punishment consisted of reduction

to private/E-1, forfeiture of \$144.00 for 1 month, and 14 days extra duty. He did not appeal this punishment.

f. On 30 September 1982, the Staff Judge Advocate, Fort Stewart, notified his command of the result of trial by Special Court-Martial, convened on 30 September 1982, in which he was tried by a military judge alone. He was found guilty of four specifications of violation of Article 86 of the UCMJ for AWOL. He was sentenced to be discharged from the service with a bad conduct discharge and to be confined at hard labor for 30 days. The sentence was adjudged on 30 September 1982.

g. On 27 October 1982, he was approved for involuntary excess leave.

h. Special Court-Martial Order (SCMO) Number 118, issued by Headquarters (HQ), 24th Infantry Division, Fort Stewart, dated 27 October 1982, reflects was arraigned and tried on four specifications of AWOL; he was sentenced to confinement for 30 days hard labor and to be discharged from the service with a bad conduct discharge. He was ordered confined to the installation detention facility, pending completion of appellate review for the following violations of Article 86 of the UCMJ:

(1) Specification 1: for on or about 9 June 1982 to on or about 17 June 1982, absents himself from his unit, Company C, 2nd Battalion, 21st Infantry, Fort Stewart;

(2) Specification 2: for on or about 2 July 1982 to on or about 25 July 1982, absents himself from his unit, Company C, 2nd Battalion, 21st Infantry, Fort Stewart;

3) Specification 3: for on or about 28 July 1982 to on or about 29 July 1982, absents himself from his unit, Company C, 2nd Battalion, 21st Infantry, Fort Stewart; and

(4) Specification 4: for on or about 4 August 1982 to on or about 2 September 1982, absents himself from his unit, Company C, 2nd Battalion, 21st Infantry, Fort Stewart.

i. On 15 April 1983, the U.S. Army Court of Military Review, having found the approved findings of guilty and the sentence correct in law and fact and, having determined on the basis of the entire record that they should be approved, affirmed the findings of guilty and the sentence.

j. On 6 May 1983, the U.S. Army Judiciary notified the applicant as to the findings of the U.S. Army Court of Military Review and of his right to petition the Court for a grant of review within 60 days.

k. Special Court-Martial Order Number 68, dated 21 November 1983, issued by HQ, 24th Infantry, Fort Stewart, executed the sentence as promulgated in SCMO Number 118, dated 27 October 1982; the provisions of Article 71(c) having been complied with, the sentence would be duly executed. The applicant was then on excess leave.

l. On 21 November 1983, 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 3, Section IV, of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) with a bad conduct discharge, by reason of court-martial, with separation code JJD, and reenlistment codes of 3, 3B, 3C. It further shows he completed 4 years, 5 months, and 15 days of active service. It also shows he was awarded or authorized:

- Army Service Ribbon
- Overseas Service Ribbon
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)
- Sharpshooter Marksmanship Qualification Badge with Grenade Bar

3. 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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for conviction by court-martial for four specifications of being absent without leave. The Board found no error or injustice in the separation proceedings. Based on a preponderance of the evidence, the Board concluded that the characterization of service and narrative reason for separation the applicant received upon separation was appropriate.

2. The applicant was given a bad conduct discharge pursuant to an approved sentence of a court-martial. The appellate review was completed and the affirmed sentence was ordered duly executed. All requirements of law and regulation were met with respect to

the conduct of the court-martial and the appellate review process and the rights of the applicant were fully protected.

3. Prior to closing the discussion, the Board determined the applicant's record was void a remark annotating his continuous honorable active service. As a result, the Board determined his DD Form 214 should be amended, for the period ending 21 November 1983, to show in item 18 (Remarks): Continuous Honorable Active Service from 16 February 1979 to 1 October 1981.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. 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. Prior to closing the discussion, the Board determined the applicant's record was void a remark annotating his continuous honorable active service. As a result, the Board determined his DD Form 214 should be amended, for the period ending 21 November 1983, to show in item 18 (Remarks): Continuous Honorable Active Service from 16 February 1979 to 1 October 1981.

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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 (USC), 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. By law (10 USC 1552), court-martial convictions stand as adjudged or modified by appeal through the judicial process. This Board 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. The ABCMR does not have authority to set aside a conviction by a court-martial.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), then in effect, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Paragraph 3-7a Honorable discharge: an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the soldier'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. General discharge: 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

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

d. Paragraph 3-11. Bad conduct discharge. 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. Questions concerning the finality of appellate review should be referred to the servicing staff judge advocate.

4. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator "JJD" corresponded to "As a Result of Court-Martial, Other" and the authority, Army Regulation 635-200, Chapter 3, Section IV.

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/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. 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. 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//