

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 November 2024

DOCKET NUMBER: AR20240002985

APPLICANT REQUESTS:

- clemency and upgrade of his bad conduct discharge to general, under honorable conditions or to honorable
- an appearance hearing at the Board or a video or telephone hearing

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

- DD Form 149 (Application for Correction of Military Record), 20 January 2024
- letter of support, AJ____, undated
- email of support, MZE____, 20 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. The applicant states:

a. At the time he was a young man, and he was under pressure while being married with a child. He did something that was not who he truly was.

b. He is truly sorry for his actions. He hopes he can be forgiven.

3. The applicant provided copies of:

a. A letter of support from AJ____, in which the author notes he is an incredible family man. He works every day, and his work crew loves him. He is fair and just, and he would not ask his crew to do anything he would not do himself. He made mistakes when he was young but learned from his mistakes. Please consider the man he is today, not the child he was before.

b. An email of support from MZE____, who has known the applicant since 2003 and notes he is a kindhearted and giving person who is a special brother and friend to his family.

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

a. On 21 February 1982, he enlisted in the Regular Army for 3 years. Following Advanced Individual Training he was awarded military occupational specialty 76Y (Unit Supply Specialist). He subsequently attained the rank of specialist 4/E-4.

b. On 26 August 1984, an interim flag was imposed against him on the basis of an investigation and pending special court-martial (SCM) for wrongful disposition of government property, larceny, and housebreaking. A DA Form 268 (Report for Suspension of Favorable Personnel Action) reflects a new investigation was initiated on 26 August 1983. The investigating officer's final report is not contained in the available records.

c. On 1 November 1983, a subsequent DA Form 268 was issued showing that on 28 October 1983, a SCM adjudged reduction to private/E-1, confinement for 6 months, forfeiture of \$367.00 (should show \$382.00), and a bad conduct discharge.

d. Special Court-Martial Order Number 7, dated 12 January 1984, shows he was sentenced to forfeit \$382.00 pay per month for 6 months, confinement at hard labor for 6 months, and to be discharged from the service with a bad conduct discharge. The sentence was adjudged on 28 October 1983. The charges upon which he was arraigned and tried included:

(1) Charge I: in that he did at Muldraugh, Kentucky, on or about 19 August 1983, sell to (Pawn Shop) 25 sets of battle dress uniforms, more or less, of a value in excess of \$100.00 military property of the United States.

(2) Charge II: in that he did at 2nd Squadron, 6th Cavalry, Armor Center/School Brigade, Fort Knox, on or about 18 August 1983, steal 50 sets, more or less, of battle dress uniforms, of a value in excess of \$100.00, property of the United States.

(3) Charge III: in that he did at 2nd Squadron, 6th Cavalry, Armor Center/School Brigade, Fort Knox, on or about 18 August 1983, unlawfully enter the warehouse building number 92, property of the United States, with intent to commit larceny.

e. On 12 January 1984, the Special Court-Martial Convening Authority approved the sentence and forwarded the record of trial to the Judge Advocate General of the Army for review by a Court of Military Review.

f. U.S. Army Correctional Activity (USACA), Fort Riley Orders 37-3, dated 23 February 1984, relieved him from USACA and assigned him to USACA, Fort Riley for pre-release training.

g. On 29 March 1984, he declined to undergo a separation medical examination.

h. On 30 March 1984, he underwent a mental status evaluation. A DA Form 3822-R reflects the examining psychiatrist noted his behavior was normal, he was fully alert and fully oriented; his mood was unremarkable with clear thinking process and normal thought content. He had the mental capacity to understand and participate in the proceedings and was mentally responsible. The examining psychiatrist noted he met the retention requirements of chapter 3, Army Regulation 40-501 (Standards of Medical Fitness).

i. On 2 April 1984, he was approved for and placed on involuntary excess leave.

j. On 13 July 1984, the U.S. Army Court of Military Review found the findings of guilty and the sentence correct in law and fact and having determined on the basis of the entire record, including the errors specified personally by the appellant in his request for appellate representation, that they should be approved; the findings of guilty and the sentence were affirmed.

k. Special Court-Martial Order Number 432, issued by USACA, dated 23 October 1984, approved the sentence to a bad conduct discharge, confinement at hard labor for 6 months, and forfeiture of \$382.00 pay per month for 6 months, adjudged on 28 October 1983. Article 71(c) having been complied with; the sentence would be duly executed. The portion of the sentence pertaining to confinement had already been served.

l. Special Court-Martial Order Number 448, issued by USACA, dated 9 November 1984, rescinded Special Court-Martial Order Number 432, issued by USACA, dated 23 October 1984, due to the accused having petitioned the U.S. Army Court of Military Appeals. This petition and its appeal are not contained in the available records.

m. Special Court-Martial Order Number 27, issued by USACA, dated 22 January 1986, approved the sentence to a bad conduct discharge, confinement at hard labor for 6 months, and forfeiture of \$382.00 pay per month for 6 months, adjudged on 28 October 1983. Article 71(c) having been complied with; the sentence would be duly executed. The portion of the sentence pertaining to confinement had already been served.

n. On 31 January 1986, he 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, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), as the result of court-martial with a bad conduct discharge. He completed 4 years, 5 months, and 18 days net active service this period with 5-month time lost due to confinement and 670 days of excess leave. It further shows in:

(1) Block 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – Expert Marksmanship Qualification Badge with Rifle Bar, Army Service Ribbon, and Overseas Service Ribbon;

(2) Block 24 (Separation Code) – JJD; and

(3) Block 27 (Reenlistment Code) – 4.

5. By law (Title 10, U.S. Code, Section 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.

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 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, 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 of larceny, and housebreaking.

2. The Board applauds the applicant's post service achievements and character letters attesting to his character, his work ethic and the man he has become today. However, the Board determined that the character of service the applicant received upon separation was not in error or unjust based on the misconduct. 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. Based on the preponderance of evidence, 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 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. Army Regulation 15-185 (Army Board for Correction of Military Records) 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. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. By law (Title 10 U.S. Code, Section 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.

4. 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.

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//