

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 October 2024

DOCKET NUMBER: AR20240003540

APPLICANT REQUESTS: in effect,

- Upgrade of his bad conduct discharge (BCD)
- Reinstatement of his rank to staff sergeant (SSG)

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

DD Form 149 (Application for Correction of Military Record)

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 he needs to know what happened to all his paperwork after he made it to staff sergeant (E-6). All of his military personnel record jacket disappeared and awards after nine years of service. He lost his rank and everything. He was not treated fairly. Eight years of being a good soldier and nothing to show for it. He would like all his benefits he is entitled to trying to get his upgrades. He has been trying to get this done. He spoke with Veterans Affairs in Roanoke, VA and they said he was entitled to benefits and they helped start his paperwork.
3. The applicant enlisted in the Regular Army on 2 May 1975.
4. Orders 258-12 (M) shows he was discharged on 3 November 1977 for immediate reenlistment. His available records do not contain a DD Form 214 (Report of Separation from Active Duty) for this period.
5. He reenlisted on 4 November 1977 for a period of 6 years.
6. Orders 120-41 shows he was discharged on 21 June 1982 for immediate reenlistment.

7. His DA Form 2-1 (Personnel Qualification Record) shows in item 18 (Appointments and Reductions) he was promoted to staff sergeant on 23 December 1981.

8. He reenlisted on 22 June 1982 for a period of 6 years.

9. His records contain a DA Form 2627-2 (Record of Supplementary Action Under Article 15, Uniform Code of Military Justice) which shows on 14 September 1983, vacation of suspension, punishment of reduction to the grade of E-5 (suspended until 19 February 1984) and forfeiture of \$500.00 pay per month for two months (suspended until 19 February 1983) [Sic] 1984 imposed on 19 August 1983. The reason for the vacation is based on disobeying an officer.

10. His DA Form 2-1 shows in item 18 he was reduced to sergeant (E-5) on 19 August 1983.

11. His DA Form 2-1 shows in item 21 (Time Lost) he was absent without leave (AWOL) from 13 September 1983 to 3 May 1984. Item 35 (Record of Assignments) shows he was dropped from the rolls (DFR) on 15 October 1983.

12. DA Form 4187 (Personnel Action) shows his duty status was changed from DFR to present for duty (PDY) on 4 May 1984. His duty status was changed again from PDY to confined to military authorities (CMA) on 7 May 1984, signed on 29 June 1984.

13. On 11 May 1984, a special court martial (SPCM) convened and found the applicant guilty of:

a. AWOL and its specification of on or about 13 September 1983, without authority, absent himself from his unit, and did remain so absent until on or about 4 May 1984.

b. Having been duly restricted to the limits of the Combat Support Company, on or about 27 August 1983, break said restriction.

c. He was sentenced to a BCD, to be confined at hard labor for 75 days; to be reduced to the grade of private (E-1); and to forfeit \$300.00 per month for three months.

14. Special Court-Martial Order Number 26, issued by Headquarters, 8th Infantry Division, (Mechanized), APO, NY on 8 June 1984, shows only so much of the sentence as provides for a BCD, confinement at hard labor for two months, forfeiture of \$300 pay per month for two months, and reduction to the grade of private (E-1) was approved.

15. DA Form 4187 shows his duty status was changed from CMA to PDY on 27 June 1984. It was then changed from PDY to excess leave on the same date pending an appellate review of an approved BCD.

16. On 15 October 1984, after appellate review, the Court 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, such finding and the sentence was affirmed.

17. SPCM Order Number 29, issued by United States Army Correctional Activity, Fort Riley, KS on 1 March 1985, shows the approved sentence to a BCD, confinement at hard labor for two months, forfeiture of \$300 pay per month for two months (forfeitures applying to pay becoming due on and after the date of the convening authority's action), and reduction to the grade of E-1, adjudged) on 11 May 1984, as promulgated in SPCM Order Number 26, Headquarters, 8th Infantry Division (Mechanized), APO, NY on 8 June 1984, has been affirmed pursuant to Article 66. Article 71(c) having been complied with; the sentence will be duly executed.

18. Accordingly, he was discharged on 26 March 1985, with a BCD. He completed 1 year, 11 months, and 20 days net active service this period. He also had 7 years, 1 month, and 18 days total prior active service. He was awarded or authorized: Expert Marksmanship Qualification Badge (M-16), Army Commendation Medal (2d award), Expert Infantryman Badge, Army Service Ribbon, Overseas Service Ribbon, NCO Professional Development Ribbon. His DD Form 214 also shows:

- Item 25 (Separation Authority): Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 3, Section IV
- Item 26 (Separation Code): JJD
- Item 27 (Reenlistment Code): RE-4
- Item 28 (Narrative Reason for Separation): as a result of court-martial
- Item 29 (Dates of Time Lost During this Period): 830913-840503 (13 September 1983 – 3 May 1984); 840507-840626 (7 May 1984 – 26 June 1984)

19. 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.

20. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, United States Code, section 1552, the authority under which this Board acts, the Army Board for Correction of Military Records 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.

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.
2. The Board carefully considered the applicant's statement, the length and record of his service, the frequency and nature of his misconduct, the record of non-judicial punishment, the outcome of the Special Court-martial and the reason for his separation. The Board found insufficient evidence of in -service mitigating factors and the applicant did not provide evidence of post-service achievements or reference letters for the Board to consider in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service he received and the rank shown upon separation was not in error or unjust. The Board concurs with the correction in the administrative notes below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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| : | : | : | 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, except for the correction shown in the Administrative Notes that follow, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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):

A review of the applicant's records shows his DD Form 214 omitted administrative entries in the Remarks block. As a result, amend the DD Form 214 by adding in item 18 the entry "Continuous honorable service 2 May 1975 to 21 June 1982."

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 (AR) 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for 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 a special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.
 - b. Paragraph 3-7 states 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.

c. 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.

3. 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.

4. AR 635-8 (Separations Processing and Documents), currently in effect, provides for the preparation and distribution of the DD Form 214. It states for item 18 (Remarks) to Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable", enter "Continuous Honorable Active Service from" (first day of service for which DD Form 214 was not issued) until (date before commencement of current enlistment).

5. AR 27-10 (Military Justice) prescribes the policies and procedures pertaining to the administration of military justice and implements the Manual for Courts-Martial. Paragraph 5-28e states pursuant to Article 58a(a), UCMJ, the automatic reduction to the lowest enlisted pay grade will be effected in the Army only in accordance with this paragraph. (1) The trial court may adjudge a reduction to the grade of Private (E-1) or any intermediate grade or no reduction at all. (2) Reduction to the lowest enlisted pay grade will be automatic only in a case in which the approved sentence includes, whether or not suspended, either(a) A dishonorable or bad-conduct discharge.

6. 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 on the basis of 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//