

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 November 2024

DOCKET NUMBER: AR20240003565

APPLICANT REQUESTS: Upgrade of his bad conduct discharge (BCD) to honorable and a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- Character reference letter

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 regretfully committed his infraction when he was 20 years old. He was struggling desperately to find his way. He had been raised by his mother and stepfather and suffered an abusive upbringing; which made it difficult for him to maintain meaningful relationships with others. He is now 61 years old and has learned from his mistakes. He loves America because she is the only nation to have gone to war with herself to abolish slavery. Since leaving the military, he has taken care of his mother. He had been a father figure to his nephew until his tragic death. Whatever the circumstances he perseveres and relishes the opportunity to help others.

3. On 9 August 1979, the applicant enlisted in the Regular Army for 3 years. Upon completion of training, he was awarded military occupational specialty 19E (Armor Crewman). The highest grade he attained was E-3.

4. On 17 July 1981, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) for going from his appointed place of duty, on or about 7 July 1981. His punishment included reduction to E-2 and forfeiture of \$100.00 pay for one month.

5. On 1 August 1981, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military authorities on 2 August 1981.
6. On 3 August 1981, the applicant accepted NJP under Article 15 of the UCMJ, for going AWOL. His punishment included reduction to E-2, forfeiture of \$30.00 pay for one month, and five days extra duty and restriction.
7. Before a special court-martial on 26 March 1982, at Fort Riley, KS, the applicant was found guilty of five specifications of, with the intent to unlawfully obtain an unspecified amount of money, communicating a threat to do bodily harm to a Soldier on five separate occasions; one specification of unlawfully pushing a Soldier, on or about 15 April 1981; one specification of unlawfully kicking a Soldier, on or about 15 September 1981; and one specification of stealing U.S. currency of a value of \$150.00, the property of a Soldier, on or about 2 February 1982.
8. The court sentenced him to a BCD, confinement at hard labor for four months, and forfeiture of \$367.00 pay per month for four months. The sentence was approved on 4 June 1982, and the record of trial was forwarded for appellate review.
9. On 14 July 1982, the applicant was reported as AWOL a second time, and remained absent until he returned to military authorities on 16 July 1982.
10. On 22 July 1982, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
11. The U.S. Army Court of Military Review affirmed the findings and sentence on 10 December 1982.
12. Special Court-Martial Order 23, issued by Headquarters, 1st Infantry Division (Mech) and Fort Riley, Fort Riley, KS, on 24 March 1983, noted the applicant's sentence had been affirmed and ordered the BCD duly executed.
13. The applicant was discharged on 6 April 1983. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11, as a result of court-martial. His service was characterized as bad conduct. He was credited with 3 years, 4 months, and 19 days of net active service this period with 99 days of time lost.
14. The applicant provides a character reference letter from his brother that speaks to the applicant's character, ambition, and leadership within his community. His brother affirms that the applicant's juvenile infraction was completely out of character.

15. 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.

16. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency 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. 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 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.

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.



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 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.
  - a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
  - b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
  - a. 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. 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. Chapter 11, provided that a member would be given a BCD pursuant only to an approved sentence of a general court-martial or special court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed.
4. 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.

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/NR) 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.

//NOTHING FOLLOWS//