

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 November 2024

DOCKET NUMBER: AR20240003796

APPLICANT REQUESTS: upgrade his bad conduct discharge to general, under honorable conditions.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release of Discharge from Active Duty) ending on 27 November 1984
- DD Form 214, ending on 11 March 1994

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 served honorably for four years in the Marine Corps and was then discharged. After attempting Marine Corps Officer Candidate School, he joined the Army at thirty years of age and served as an Infantryman. In 1991, he was involved in a unit fight at Fort Carson, CO, and a Military Policeman (MP) was injured. He was the subject of a General Court Martial and given a bad conduct discharge. He believes this punishment was too extreme as he was the lowest ranking Soldier involved. He has been a model citizen since this incident with no Police Record. He was embarrassed by this chain of events and court-martial, especially with Operation Desert Storm going on. He tried to move on with his life even though he knew the punishment was too extreme. He just began to speak of what happened and he honestly does not know if someone else was injured, MP or otherwise. He is requesting leniency and an upgrade to his discharge.
3. Review of the applicant's service record shows:
 - a. The applicant served on active duty in the U.S. Marine Corps from November 1980 to November 1984.

b. He enlisted in the Regular Army on 9 April 1991 and held military occupational specialty 11B, Infantryman.

c. On 25 August 1992, the applicant was arraigned and tried at a special court-martial at Fort Carson, CO. He was found guilty and convicted as follow:

- Charge I, one specification of resisting apprehension on or about 3 July 1992. Pled Guilty, Found Guilty.
- Charge II: three specifications of assaulting a Soldier in the execution of military duties on or about 3 July 1992 (Pled Not Guilty, Found Guilty)

d. The court sentenced him to a bad conduct discharge, confinement for 4 months, forfeiture of \$800 pay per month for 4 months, and reduction to E-1.

e. On 24 November 1992, the convening authority approved the sentence and except for the bad conduct discharge ordered it executed. The record of trail was forwarded to the appellate authority or review.

f. Special Court-Martial Order Number 9, issued by Headquarters, U.S. Army Armor Center, Fort Knox, KY on 28 January 1994, shows after Article 71(c) was complied with the sentence pertaining to confinement was affirmed, ordered the bad conduct discharge executed.

g. On 11 March 1994, the applicant was discharged from active duty with a bad conduct discharge characterization of service. His DD Form 214 shows he was discharged in accordance with chapter 3 of Army Regulation 635-200 (Personnel Separations). He completed 2 years, 8 months, and 3 days of active service with 92 days lost time. He was assigned separation code JJD and the narrative reason for separation listed as "Court-Martial, Order," with reentry code 4. It also shows he was awarded or authorized the following:

- Army Good Conduct Medal
- Marine Corps Good Conduct Medal
- National Defense Service Medal
- Sea Service Deployment Ribbon
- Army Service Ribbon
- Sharpshooter Qualification Badge, Rifle M-16
- Marksman Qualifications Badge, M-16
- First Class Qualification Badge, Hand Grenade
- Meritorious Mast

5. By regulation, 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.

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

BOARD DISCUSSION:

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 DoD guidance for liberal consideration of discharge upgrade requests. The applicant's trial by a court-martial was warranted by the gravity of the offense charged (one count of resisting apprehension and three counts of assaulting a Soldier in the execution of military duties). The applicant's conviction and discharge were conducted in accordance with applicable laws and regulations and the discharge appropriately characterizes the misconduct for which he was convicted. He 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. The Board found no error or injustice in his separation processing. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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.

11/18/2024

X

CHAIRPERSON

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 (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a (Honorable discharge) states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality

of the member's service generally has met the standards of the 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) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-7c (Under Other Than Honorable Conditions) 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, homosexuality, security reasons, or for the good of the service.

d. Paragraph 3-11 (DD Form 259A (Bad Conduct Discharge Certificate) 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//