

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 October 2024

DOCKET NUMBER: AR20240003861

APPLICANT REQUESTS: an upgrade of his bad conduct discharge to honorable.

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 it has been over 35 years since his discharge.
3. The applicant enlisted in the Regular Army on 23 November 1981. He reenlisted on 19 June 1984 for four years.
4. He was promoted to sergeant (E-5) on 7 December 1986 with an effective date of 1 January 1987.
5. He reenlisted again on 22 March 1988.
6. On 9 January 1989, he was convicted by special court martial (SPCM) and sentenced to a bad conduct discharge for:
 - assault of unlawfully striking Specialist (SPC) R.A.S. in the face with his hand on 17 August 1988
 - fraternizing with a female enlisted soldier on terms of military equality on 6 June 1988
 - wrongfully communicating a threat to injure SPC R.A.S. on 17 August 1988
7. SPCM Order number 3, issued by Headquarters, United States Army Support Command, Fort Shafter, HI on 9 March 1989, shows the sentence adjudged on 9 January 1989, was approved.

7. The applicant was placed on excess leave on 25 March 1989.

8. On 30 May 1989, after appellate review, the findings of guilty and the sentence as approved by the convening authority were correct in law and fact. Accordingly, those findings of guilty and the sentence were affirmed.

9. SPCM Order Number 141, issued by Headquarters, US Army Armor Center, Fort Knox, KY on 6 September 1989, shows the sentence to a bad conduct discharge, adjudged on 9 January 1989, as promulgated in SPCM Order Number 3, Headquarters, United States Army Support Command, Fort Shafter, HI on 9 March 1989, has been finally affirmed. Article 71(c) having been complied with; the bad conduct discharge will be executed.

10. Accordingly, he was discharged on 20 October 1989, with a bad conduct discharge. He completed 7 years, 10 months, and 28 days active service this period. He was awarded or authorized: Army Service Ribbon, Expert Marksmanship Qualification Badge (M-16), Marksman Marksmanship Qualification Badge (Hand Grenade), Good Conduct Medal (2d award), Army Achievement Medal (1OLC), NCO Professional Development Ribbon, Overseas Service Ribbon (2). His DD Form 214 also shows:

- Item 25 (Separation Authority): AR 635-200 (Personnel Separations – Enlisted Personnel), Section IV, Chapter 3
- Item 26 (Separation Code): JJD
- Item 27 (Reenlistment Code): 3C, 3
- Item 28 (Narrative Reason for Separation): as a result of court martial, other

11. He did not qualify to have his case considered by the Army Discharge Review Board because his conviction was by a special court-martial.

12. 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.

13. 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. 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 special court-martial for striking a Soldier in the face and fraternization. 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 special 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 his DD Form 214 omitted his continuous honorable service remark. Therefore, the Board concluded as an administrative correction, this should be amended to show his continuous honorable service from 23 November 1981 to 18 June 1984.

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 was authorized an additional award not annotated on his DD Form 214. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 20 October 1989 to show in item 18 (Remarks): Continuous Honorable Active Service from 23 November 1981 to 18 June 1984.

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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 (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. 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//