

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 November 2024

DOCKET NUMBER: AR20240003864

APPLICANT REQUESTS: reconsideration of his previous request to upgrade his bad conduct discharge. He also requests a personal appearance.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Two character reference letters
- Social Security Administration Letter

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20220008218 on 7 March 2023.

2. The applicant does not make a statement in his current application. He previously stated that he was wrongly charged for something that he did not do. He feels like he was the only one who could be punished for this. He served proudly and loved being in the Army. He is only guilty of making a bad decision by trusting someone he did not really know, which then ruined his career in the Army.

3. The applicant enlisted in the Regular Army on 26 July 1984. He held military occupational specialty 16P, Chaparral Crewmember.

a. He served in Korea from November 1984 to November 1985, and he was promoted to specialist/E-4 on 1 October 1985.

b. He was honorably released from active duty on 25 May 1987 and was issued a DD Form 214 (certificate of Release or Discharge from Active Duty) that credited him with 2 years and 10 months of net active service this period.

4. After a break, the applicant enlisted in the Regular Army on 31 March 1988 for 4 years, in pay grade E-4.

a. He served in Korea from 14 August 1988 to 12 October 1989, during which he reenlisted on 5 July 1989. He then served in Germany beginning on or about 13 October 1989. He was promoted to sergeant/E-5 on 1 March 1990.

b. On 7 May 1993, before a general court-martial that convened by the Commander, V Corps, Germany, the applicant was found guilty and convicted of the Charge and its one specification of larceny of Army Air Force Exchange Service property of a value of about \$7,978.95 from 8 June 1991 to 20 August 1992.

c. The court sentenced him to discharge from the service with a bad conduct discharge, confinement for 15 months, forfeiture of all pay and allowances, and reduction to the grad of E-1.

d. The convening authority approved the sentence on 17 July 1993, and except for the bad conduct discharge ordered it executed. The record of trial was forwarded to the appellate authority for appellate review.

e. On 10 May 1984, the U.S. Army Court of Military Review affirmed the findings of guilty and the sentence.

f. General Court-Martial Order 290, issued by Headquarters, U.S. Army Center and Fort Knox, KY on 27 December 1994, noted that the applicant's sentence had been affirmed and ordered the bad conduct discharge executed.

g. The applicant was discharged on 31 January 1995. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 3, as a result of court-martial. His service was characterized as bad conduct (Separation Code JJD, Reentry Code 4). He was credited with 5 years, 10 months, and 22 days of net active service this period, with lost time from 7 May 1993 to 14 April 1994.

(1) He was awarded or authorized: Good Conduct Medal (2nd Award), National Defense Service Medal, Noncommissioned Officer Professional Development Ribbon (Primary Level), Army Service Ribbon, Overseas Service Ribbon (3rd Award), and Expert Qualification Badge, M-16 Rifle

(2) The Remarks block listed his reenlistment as well as his continuous honorable service from 31 March 1988 to 4 July 1989.

5. The applicant did not qualify to have his discharge reviewed by the Army Discharge Review Board (ADRB). By regulation (AR 15-180 (Army Discharge Review Board (ADRB))), service members convicted by a general court-martial are not eligible to apply to the ADRB. They may apply to the ABCMR.

6. On 7 March 2023, the ABCMR denied his request:

a. 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 Board considered the applicant's statement, the applicant's record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The evidence shows a general court-martial convicted the applicant of larceny. The adjudged and approved sentence is a bad-conduct discharge and reduction to E-1.

b. The evidence shows his trial by a court-martial was warranted by the gravity of the offense charged. His conviction and discharge were affected 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 general court-martial. The appellate review was completed, and the affirmed sentence was ordered duly executed. The applicant does not provide any evidence of post-service achievements or letters of reference to support 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.

7. The applicant provides his Social Security Administration Benefits Letter as well as two-character refence letters that read as follows:

a. One-person (an attorney) states he has known the applicant for 45 years and that he (the applicant is a well-respected young man in their hometown. During his time of service as a Police Officer, Town Commissioner, Fireman, and Mayor, he has never had an occasion to see the applicant in a negative light. He has the utmost respect for the way he conducts himself in his personal life.

b. Another person (retired police officer) states he has known the applicant for the last 45 years. He is a close personal friend. He is one of those guys that will help anybody out in a time of need. He is a great outdoorsman and loves to be outdoors. He is a stand-up guy and very trustworthy. He would be an asset to any organization.

8. By regulation (AR 635-200), 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.

9. 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. The Board determined the evidence of record was not sufficient to render a fair and equitable decision. 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 request and available military records, the Board determined there is insufficient evidence to support the applicant contentions for reconsideration of his previous request to upgrade his bad conduct discharge. The Board carefully weighed the applicant's character letters of support attesting to character, integrity and the over four decades that have known him and the man he is today.

2. The 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. The Board noted the applicant self-authored statement and his rationale and mistake. However, the Board found the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to a general under honorable conditions discharge. Therefore, the Board determined reversal of the previous decision is without merit and 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

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| : | : | : | GRANT FULL RELIEF |
| : | : | : | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| ■ | ■ | ■ | DENY APPLICATION |

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number Docket Number AR20220008218 on 7 March 2023.

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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) provides for the separation of enlisted personnel:

a. Paragraph 3-7a provides that 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. 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.

c. Paragraph 3-7c 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, security reasons, or for the good of service in selected circumstances.

d. Paragraph 3-11 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.

2. Title 10, U.S. Code, section 1552, provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the Uniform Code of Military Justice, action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the Uniform Code of Military Justice or action on the sentence of a court-martial for purposes of clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

3. 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. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, 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.

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//