

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 February 2025

DOCKET NUMBER: AR20240003906

APPLICANT REQUESTS: upgrade of his bad conduct discharge (BCD) to under honorable conditions (general) or honorable.

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

DD Form 293 (Application for the Review of Discharge)

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 was a young man and made a big mistake while serving in the Army. He would like to be given the opportunity to be gainfully employed in an effort to feed his family. The characterization of his discharge has not enabled him to move forward with his life. He has been turned down for numerous jobs which leaves him in a state of depression and causes him to isolate himself from the world. He knows he made a big mistake in relation to his conduct as a Soldier. He did not know that he would be punished for the rest of his life for that single incident.
3. On 7 June 1977, the applicant enlisted in the Regular Army for 3 years. The highest grade he attained was E-3.
4. On 9 August 1977, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for failing to go at the time prescribed to his appointed place of duty, on or about 7 August 1977. His punishment included forfeiture of \$75.00 for one month and 14 days extra duty and restriction.
5. On 16 November 1977, the applicant accepted NJP under Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty, on or about 15 November 1977. His punishment included forfeiture of \$50.00 and seven days restriction.

6. On 26 June 1979, the applicant accepted NJP under Article 15 of the UCMJ, for fighting in the barracks, on or about 14 May 1979; being incapacitated in the performance of his duties due to indulgence of liquor, on or about 24 April 1979; and failing to go at the time prescribed to his appointed place of duty, on or about 24 April 1979. His punishment included reduction to E-2, forfeiture of \$109.00, and 14 days extra duty and restriction.
7. On 6 September 1979, the applicant accepted NJP under Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty, on or about 12 August 1979. His punishment included reduction to E-1, forfeiture of \$97.00, and 14 days extra duty and restriction.
8. Before a special court-martial on 24 October 1979, at Fulda, Germany, the applicant was found guilty of one specification of committing an assault upon A_G_ by cutting him on the back and arm, thereby intentionally inflicting grievous bodily harm, on or about 22 June 1979.
9. The court sentenced him to a BCD and confinement at hard labor for 100 days. The sentence was approved on 10 December 1979, and the record of trial was forwarded for appellate review.
10. On 3 March 1980, the applicant was reported as absent without leave (AWOL) and remained absent until he surrendered to military authorities on 8 March 1980.
11. On 3 August 1981, the applicant accepted NJP under Article 15 of the UCMJ, for going AWOL; and assaulting V_C_D_ by striking her across the face, on or about 23 February 1980. His punishment included forfeiture of \$224.00 pay for two months, and 45 days extra duty and restriction.
12. Special Court-Martial Order Number 101, issued by Headquarters, U.S. Army Armor Center and Fort Knox, Fort Knox, KY, on 3 July 1980, noted the applicant's sentence had been affirmed and ordered the BCD to be duly executed.
13. The applicant was discharged on 1 August 1980. 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. His service was characterized as bad conduct. He was assigned Separation Code JJD and Reenlistment Codes 3 and 3B. He was credited with 2 years, 11 months, and 2 days of net active service this period with 85 days of time lost.
14. 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.

15. 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:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the short term of honorable service completed, the violent nature of the misconduct leading to the applicant's separation and the lack of mitigation for such misconduct, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

//SIGNED//
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 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.
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/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//