

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 December 2024

DOCKET NUMBER: AR20240004032

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 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Character reference letters (3)
- Name Change Court Documents

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 his service in the U.S. Army Reserve (USAR) was honorable. He went active and was stationed in Germany. He was young and inexperienced in life; he didn't know how to pay bills. He had a very bad attitude problem and didn't listen to authority. It has been over 35 years since he was kicked out of the Army. He is a changed man and has not been in any trouble. He now has a family and kids. He owns a business and is considered an upstanding citizen. He wants an upgrade so that he can apply for benefits to help his family.
3. Having previous honorable service in the USAR, the applicant enlisted in the Regular Army, on 30 July 1985 for 4 years. The highest grade he attained was E-2.
4. On 13 March 1986, the applicant received 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 20 February 1986. His punishment included reduction to E-1 and 14 days extra duty.

5. On 16 April 1986, the applicant received 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 April 1986. His punishment included forfeiture of \$100.00 pay per month for one month and 14 days extra duty.

6. Before a special court-martial on 4 August 1986, at Heidelberg, Germany, the applicant was found guilty of

- four specifications of failing to go to his appointed place off duty, on four occasions
- one specification of fraudulent enlistment, on or about 11 June 1985
- three specifications of failing to pay just debts, on three occasions.

7. The court sentenced the applicant to forfeiture of \$426.00 per month for six months, confinement for five months, and discharge from the service with a BCD. The sentence was approved on 3 September 1986, however only so much of the sentence as provided for a BCD, confinement for four months, and forfeiture of \$426.00 per month for four months was approved, and except for the BCD, would be executed. The record of trial was forwarded for appellate review.

8. On 29 August 1986, he underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

9. The U.S. Army Court of Military Review affirmed the findings of guilty and the sentence on 9 February 1987.

10. Special Court-Martial Order Number 89, issued by U.S. Army Correctional Facility, Fort Riley, KS, on 26 May 1987, noted that the applicant's sentence had been affirmed and ordered the BCD to be duly executed.

11. The applicant was discharged on 3 June 1987. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 3, section IV, as a result of court-martial. His service was characterized as bad conduct. He was assigned Separation Code JJD and Reenlistment Code 4. He was credited with 1 year, 6 months, and 17 days of net active service this period with 107 days of lost time.

12. The applicant provides three character reference letters that collectively attest to his professionalism, reliability, work ethic, and the support he provides his community.

13. 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, all supporting documents, and the evidence found within the military record, the Board found that relief was 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 (four counts of failing to go to his appointed place off duty, one count of fraudulent enlistment, and three counts of failing to pay just debts). 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. All Board members found no error or injustice in his separation processing.

a. A Board majority felt the bad conduct discharge is too harsh for the offenses that the applicant committed. Additionally, the Board also considered the character reference letters provided by the applicant in support of a clemency determination. One author attributes the applicant's misconduct to his youth, a lack of financial responsibility and other minor infractions, and that he is now a mature and responsible father, son, husband and friend, and a successful business owner. The author also states the applicant serves as a mentor at a local community church. Other authors are customers who provide favorable reviews of the applicant's work. The Board majority found these letters persuasive in support of a clemency determination. Therefore, the Board majority determined that while the applicant's service did not rise to the level required for an honorable discharge; however, a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board majority further determined that such upgrade did not change the underlying reason for separation and thus the narrative reason for separation and corresponding codes should not change.

b. The member in the minority found no evidence of error or injustice or for clemency consideration. The applicant was found guilty of four specifications of failing to go to his appointed place off duty, on four occasions; one specification of fraudulent enlistment, on or about 11 June 1985; and three specifications of failing to pay just debts, on three occasions. The character of service he received resulted from his misconduct.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant a DD Form 214 for the period ending 3 June 1987 as follows:

- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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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 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 3, Section IV provided that a member would be given a BCD pursuant only to an approved sentence of a general 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//