

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 August 2024

DOCKET NUMBER: AR20240004297

APPLICANT REQUESTS: Upgrade of his bad conduct discharge (BCD) to under honorable conditions (general) or honorable. Additionally, he requests compensation for lost pay and entitlements.

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 he is suffering from issues with his lungs and hearing. He is dying and wants his name cleared. A Soldier came into his room, a place where he should be safe. He was attacked with a belt buckle; all he did was defend himself.
3. The applicant enlisted in the Regular Army on 4 June 1980, for 4 years. Upon completion of training, he was awarded military occupational specialty 36C (Wire Systems Installer). The highest grade he attained was E-3.
4. On 9 January 1981, the applicant received non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for one specification of going from his appointed place of duty, on or about 15 or 16 December 1980; one specification of wrongfully appropriating a military vehicle, on or about 15 or 16 December 1980; and one specification of possessing 0.6 grams, more or less of marijuana, on or about 16 December 1980. His punishment included forfeiture of \$200.00 a month for two months, and 30 days in the Correctional Custody Facility.
5. A Military Police Report shows the applicant was arrested and charged for drunk and disorderly conduct and breach of the peace, on 29 April 1982.

6. On 1 June 1982, the applicant was given an oral reprimand for drunk and disorderly conduct and breach of the peace offenses.

7. On 13 July 1982, the applicant received NJP under Article 15 of the UCMJ, for one specification of disobeying a lawful order, on or about 10 June 1982; and two specifications of disobeying lawful commands from his superior commissioned officers, on or about 10 June 1982. His punishment included reduction in grade to E-2, forfeiture of \$150.00 pay for one month, and 14 days extra duty.

8. Before a general court-martial on 27 December 1982, at Darmstadt, Germany, the applicant was found guilty of one specification of assaulting Sergeant J_C_H_ by offering to cut him with a dangerous weapon, on or about 25 September 1982; one specification of attempting to assault Private First Class C_A_R_ by stabbing him with a switch blade knife, on or about 25 September 1982; and one specification of violating a lawful regulation by having in his possession a switch blade knife, on or about 25 September 1982.

9. The court sentenced the applicant to reduction to the grade of E-1, forfeiture of \$100.00 per month for 24 months, confinement at hard labor for 24 months, and discharge from the service with a BCD. The sentence was approved on 4 February 1983 and the record of trial was forwarded for appellate review.

10. The U.S. Army Court of Military Review affirmed the findings and sentence on 8 July 1983.

11. General Court-Martial Order Number 163, issued by U.S. Disciplinary Barracks, U.S. Army Combined Arms Center and Fort Leavenworth, Fort Leavenworth, KS on 2 March 1984, noted that the applicant's sentence had been affirmed and ordered the BCD to be duly executed.

12. The applicant was discharged on 15 March 1984. 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), paragraph 3-11, as a result of court-martial. His service was characterized as bad conduct. He was assigned Separation Code JJD and Reentry Code 4. He was credited with 2 years, 6 months, and 2 days of net active service this period with 487 days of lost time.

13. 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.

14. 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:

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 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 her characterization of service. Upon review of the applicant's petition and available military record, the Board determined there was insufficient evidence of in-service mitigating factors to overcome the misconduct of stabbing another Soldier. 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.

2. The Board found the applicant provided no post-service character achievements or letters of support to weigh a clemency determination. Furthermore, the Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested clemency to upgrade his bad conduct discharge. Based on this, the Board denied relief.

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.

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 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//