

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 November 2024

DOCKET NUMBER: AR20240004418

APPLICANT REQUESTS: upgrade of his dishonorable discharge to honorable, and a video or telephone hearing with the Board.

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

- DD Form 149 (Application for Correction of Military Record), 17 January 2024
- DD form 214 (Certificate of Release or Discharge from Active Duty), 2 May 1986

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, in effect, he requests an upgrade of his discharge.
3. The applicant provides a copy of his DD form 214.
4. A review of the applicant's available service records show:
 - a. On 9 April 1982, he enlisted in the Regular Army for 3 years.
 - b. On 9 April 1984, he was promoted to specialist 4/E-4.
 - c. A DA Form DA Form 1574 (Report of Proceedings by Investigating Officer/Board of Officers), showing the findings and recommendations of an investigating officer; a DD Form 458 (Charge Sheet) showing the charges and specifications pursuant to a General Court-Martial, and the associated Staff Judge Advocate review of an investigation findings and recommendations, are not contained in the available records.
 - d. General Court-Martial Order (GCMO) Number 35, issued by Headquarters, U.S. Army Armor Center and Fort Knox, dated 29 July 1985, reflects the applicant was arraigned and found guilty based upon his plea of guilty on the charge of violation of

Article 112a of the Uniform Code of Military Justice (UCMJ), of the following specifications:

(1) Specification 1: wrongful distribution of 3.0 grams of cocaine on 8 March 1985 (guilty by exceptions and substitutions of distribution of 2.81 grams);

(2) Specification 2: wrongful use cocaine between 15 February and 7 March 1985 (on motion by defense counsel, Specification 2 of the Charge was amended to reflect wrongful use of cocaine between 15 February and 5 April 1985)

e. On 29 July 1985, he was sentenced to be separated from the service with a dishonorable discharge, the total forfeiture of all pay and allowances, to be confined for 4 years, and to be reduced to the grade of private/E-1. The sentence was approved and except for the dishonorable discharge, would be executed; the execution of that part of the sentence adjudging confinement in excess of 3 years was suspended for 2 years from the date of this action (29 July 1985) subject to the probationer not violating any of the punitive articles of the UCMJ. The sentence was adjudged on 10 June 1985.

f. The U.S. Army Court of Military Review reflecting the findings of guilty and the sentence being correct in law and fact; affirming the findings of guilty and the sentence, as promulgated in GCMO Number 35, is not contained in the available records.

g. General Court-Martial Order Number 72, issued by U.S. Disciplinary Barracks (USDB), U.S. Army Combined Arms Center and Fort Leavenworth, dated 10 March 1986, affirmed the findings and the sentence to a dishonorable discharge, total forfeiture of all pay and allowances, confinement for 4 years (confinement in excess of 3 years suspended for 2 years, effective 29 July 1985), and reduction to private/E-1 as promulgated in GCMO Number 35. The provisions of Article 71(c) having been complied with the dishonorable discharge would be executed.

h. On 28 April 1986, USDB, U.S. Army Combined Arms Center, Fort Leavenworth, issued Order 075-10, discharging him from the Regular Army with an effective date of 2 May 1986.

i. On 2 May 1986, the applicant was discharged. His DD Form 214 shows he was discharged under the provisions of paragraph 3-10, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), as the result of court-martial with a dishonorable discharge. He completed 3 years, 2 months, and 1 day of net active service this period. He was confined for 312 days from 20 June 1985—2 May 1986 and he was retained in service for 389 days for convenience of the Government. It further shows in:

(1) Block 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – Army Service Ribbon, Overseas Service Ribbon, Sharpshooter Marksmanship Qualification Badge with Rifle Bar, and Marksman Marksmanship Qualification Badge with Hand Grenade Bar;

(2) Block 24 (Separation Code) – JJD; and

(3) Block 27 (Reenlistment Code) – 4.

5. By law (Title 10, U.S. Code, Section 1552), court-martial convictions stand as adjudged or modified by appeal through the judicial process. This Board 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. The ABCMR does not have authority to set aside a conviction by a court-martial.

6. 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 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.

2. 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 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 (possession, distribution). 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 dishonorable 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. The Board found no error or injustice in his separation processing. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of 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.

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.

11/18/2024

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 15-185 (Army Board for Correction of Military Records) 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. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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.
3. By law (Title 10 U.S. Code, Section 1552), court-martial convictions stand as adjudged or modified by appeal through the judicial process. This Board 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. The ABCMR does not have authority to set aside a conviction by a court-martial.
4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), then in effect, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.
 - a. Paragraph 3-7a Honorable discharge: 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.
 - b. Paragraph 3-7b. General discharge: 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

c. Paragraph 3-7c. Under other than honorable conditions. A discharge under other than honorable conditions is an administrative separation for the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or for the good of service.

d. Paragraph 3-10. Dishonorable discharge. A member will be given a dishonorable discharge pursuant only to an approved sentence of a general court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing staff judge advocate.

5. 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. 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 based on 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//