

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 December 2024

DOCKET NUMBER: AR20240004526

APPLICANT AND REPRESENTATIVE REQUESTS: an upgrade of his bad conduct discharge

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

- DD Form 149 (Application for Correction of Military Record)
- Letters of character
- Bachelor's degree

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 that during his active-duty service, he enlisted at a young age without proper adjustment to military life and its rules. While stationed in Germany, due to financial pressures of supporting his family, he became involved in selling illegal substances. Despite this, he continued to excel in his military duties and was on track for promotion. The applicant expresses deep regret and embarrassment over his actions, which led to a court-martial and a Bad Conduct discharge. He humbly requests the Department of Defense reconsider his case and upgrade his discharge, citing his steady employment and responsible citizenship over the past 33 years. He believes his past actions do not reflect his current character, having since worked hard to be a good husband, father, and member of society.
3. The applicant provides the following letters of character:
  - a. Mr. M.R. (CEO and Friend) Highlights the applicant's dedication, loyalty, and professionalism over 32 years at Century Metals and Supplies. Praises his strong work ethic, responsibility, positive attitude, interpersonal skills, and social responsibility, emphasizing his integrity and resilience. Offers to provide further information if needed.

b. Mr. C.W. (Co-Worker) Describes the applicant as reliable, morally upright, and committed to the success of Century Metals & Supplies during their 17 years of collaboration. Notes his teamwork, quality service, and personal qualities as a family-oriented, dependable friend.

c. Mr. W.J. and Ms. J.J.R (Applicant's Family) Reflects on the applicant's kindness, compassion, and dedication as a family member and professional. Highlights his 25+ years of stability and excellence as a sales executive, attributing his success to his ability to listen and meet others' needs. Expresses pride and admiration for his brother.

d. Mr. W.E. (Friend and Brother-in-Law) Commends the applicant as a responsible, loyal, and generous individual respected by friends and family. Acknowledges his musical expertise as a percussionist and his contributions to the music field. Notes his professional respect in the industry and emphasizes his honorable and generous nature.

e. Mrs. M.V. (Friend) Describes the applicant as a long-time friend and trusted Territory Manager of 33 years, with integrity, ambition, and responsibility. Praises his leadership qualities, good judgment, and logical approach to challenges, underscoring his mature and reliable character.

f. The applicant has completed his bachelor's degree in business administration dated June of 1993.

4. A review of the applicant's service record shows:

a. He enlisted into the Regular Army on 14 August 1980.

b. On 24 March 1983, General Court-Martial Order Number 15, shows the applicant was convicted by a general court-martial of:

- Specification 1 - on or about 29 September 1982 wrongfully having in his possession 6 grams more or less of marijuana.
- Specification 3 - on or about 29 September 1982 wrongfully sell 6 grams more or less of marijuana.
- Specification 4 - on or about 19 October 1982 wrongfully distribute approximately 3 grams of marijuana.
- Specification 5 - on or about 19 October 1982 wrongfully possess some marijuana.

- Specification 6 - on or about 29 October 1982 wrongfully distribute approximately 4 grams of marijuana.
- Specification 7 - on or about 29 October 1982 wrongfully possess approximately 19.5 grams of marijuana.
- his sentence included reduction to the private (E-1), forfeit \$382.00 pay per month for four months, confinement for 4 months, and a bad conduct discharge.

c. On 20 September 1983, the Court found the approved findings of guilty, and the sentence correct in law and fact and having determined on the basis of the entire record that they should be approved, such findings of guilty and the sentence are Affirmed.

d. On 24 March 1983, the convening authority approved the sentence and except for the bad conduct discharge, ordered it executed. The record of trial was forwarded to the Judge Advocate General of the Army for appellate review.

e. General Court-Martial Order Number 12, dated 28 March 1984, after Article 71(c) was complied with and the sentence was affirmed, ordered the bad conduct discharge executed.

f. On 12 April 1984, he was discharged from active duty with a bad conduct discharge characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 3 years, 4 months, and 21 days of active service with 98 days of lost time. He was assigned separation code JJD and the narrative reason for separation listed as "In Lieu of Trial by Court-Martial," with reentry code 3; 3B; 3C. It also shows he was awarded or authorized the Army Service Ribbon and the Expert Marksmanship Qualification Badge with M16 Riffle.

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

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

7. In reaching its determination, the Board can consider the applicant's petition and her service record in accordance with the published equity, injustice, or clemency determination 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 his characterization of service. Upon review of the applicant's request and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of illegal drug use and distribution.

2. The Board applauds the applicant's post service achievement in receiving his bachelor's degree in business administration and his character letters attesting to his character, leadership qualities, good judgment and being a trusted Territory Manager of 33 years, with integrity, ambition, and responsibility. The Board carefully considered the applicant's post service, awards and decorations and his total period of service with 3 years, 4 months, and 21 days. However, the Board found the applicant's misconduct of drug distribution could not be mitigated. Based on the preponderance of evidence, 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 (AR) 635-200 (Personnel Separation – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
  - a. Paragraph 3-7a (Honorable discharge) states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of the 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) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
  - c. Paragraph 3-7c (Under Other Than Honorable Conditions) 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, homosexuality, security reasons, or for the good of the service.

d. Paragraph 3-11 (DD Form 259A (Bad Conduct Discharge Certificate) 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.

3. 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 UCMJ, 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 UCMJ 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.

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.

a. 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.

b. 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//