

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 January 2025

DOCKET NUMBER: AR20240004608

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge 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 293 (Application for the Review of Discharge)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) on 21 April 1976.
2. The applicant states he was late two days returning to Fort Bragg, NC. He did nothing wrong. He did a lot of good things, but they were never considered because he was black. He was a great paratrooper. He should be entitled to benefits.
3. On 13 July 1972, the applicant enlisted in the Regular Army for 3 years. The highest grade he attained was E-3.
4. On 12 March 1973, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice, for failing to go at the time prescribed to his appointed place of duty, on or about 11 March 1973. His punishment included forfeiture of \$79.00 and 14 days extra duty and restriction.
5. On 10 January 1974, the applicant was reported as absent without leave and remained absent until he returned to military control on 8 February 1974.
6. Before a general court-martial on 27 February 1974, at Fort Bragg, NC, the applicant was found guilty of 24 specifications of writing and presenting without sufficient funds, 21 checks for \$50.00 each, two checks for \$25.00 each, and one check for \$7.64, between 21-31 July 1973.

7. The court sentenced him to a Bad Conduct Discharge (BCD), forfeiture of all pay and allowances, confinement at hard labor for two years, and reduction to the lowest enlisted grade. The sentence was approved on 18 March 1974, however, only so much of the sentence that provided for confinement at hard labor for 15 months. The record of trial was forwarded for appellate review.

8. The U.S. Army Court of Military Review affirmed the findings and sentence on 14 November 1974.

9. General Court-Martial Order Number 1350, issued by Headquarters, U.S. Disciplinary Barracks, Fort Leavenworth, KS, on 25 November 1974, noted the applicant's sentence to confinement at hard labor in excess of one year was remitted by the Secretary of the Army. The applicant's sentence, as thus modified, had been affirmed and ordered the BCD to be duly executed.

10. The applicant was discharged on 27 November 1974. His DD Form 214 (Report of Separation from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 11-2. His service was characterized as UOTHC. He was assigned Separation Code JJD and Reenlistment Code RE-4. He was credited with 5 months and 24 days of net active service this period with 681 days of time lost.

11. The applicant petitioned the ABCMR for consideration of his request for upgrade of his UOTHC discharge. On 21 April 1976, the Board voted to deny relief and determined insufficient evidence had been presented to indicate probable material error or injustice.

12. A DD Form 215 (Correction to DD Form 214), dated 1 October 1976, shows the following corrections:

- item 10 (Reenlistment Code) – CORRECTED TO READ: RE-3, RE-3B
- item 27 (Remarks) – CORRECTED TO READ: Appendix C, Army Regulation 601-210 (Personnel Separations – Regular Army Enlistment Program) applies

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:

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 multiple specifications of bad checks and the pattern of misconduct in the record, 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
■	■	■	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.

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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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

2. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

3. 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, paragraph 11-2, 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.

4. 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.

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.

//NOTHING FOLLOWS//