

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 January 2025

DOCKET NUMBER: AR20240004794

APPLICANT 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)
- Self-Authored Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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, that he is requesting an upgrade of his discharge character from Bad Conduct to a more favorable status. He claims he was not properly represented by his appointed military lawyer during his case. He admits to smoking marijuana, but denies involvement in selling or transporting illegal substances. He explains that his involvement stemmed from following another soldier into the base in a privately owned vehicle carrying marijuana, and he regrets not exiting the car at the base gate when the driver proceeded. He acknowledges responsibility for his actions and does not offer excuses, describing the incident as isolated.

a. The applicant reflects on his youth, poor decision-making, and the negative influence of his peers at the time. He asserts that after his separation from the Army, he began to turn his life around and has since made significant efforts to live responsibly. He notes that his military service included personal challenges due to his background and identity but expresses deep regret for his actions and the embarrassment caused to his family, the Army, and his country.

b. He states that he now has two sons who retired from the military and several other family members who served honorably. Currently, he is on disability due to a back

injury and is also battling prostate cancer, which has motivated him to address unresolved matters in his life. He regrets not pursuing a discharge upgrade earlier and not reenlisting, citing family and life circumstances as obstacles. For these reasons, he respectfully requests an upgrade of his discharge character, stating that it would allow him to achieve his goals and contribute positively to society.

3. The applicant provides his DD Form 214.

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

a. He enlisted in the Regular Army on 30 January 1981.

b. On 24 August 1982, he accepted nonjudicial punishment for

- specification 1, willfully disobey a lawful order on or about 18 August 1982.
- specification 2, failure to go at the time prescribed appointed place of duty on or about 20 August 1982.
- specification 3, failure to go at the time prescribed appointed place of duty on or about 20 August 1982.
- specification 4, was disrespectful to a senior non-commissioned officer on or about 20 August 1984.
- His punishment included reduction to private first class (PFC)/E-3 and forfeiture of \$180.00 pay per month for one months.

c. On 10 January 1983, Special Court-Martial Order Number 1 shows he was convicted by a special court-martial of one specification accepting the words of figures, "97 grams," and the word, "use". Two specifications wrongfully have in his possession 97 grams more or less of marijuana. His sentence included reduction to the private (E-1), forfeiture \$300.00 per month for four months and to be confined to hard labor for four months and to be discharged from service with a bad conduct discharge. On 10 January 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.

d. On 30 January 1984, a Special Court-Martial Order Number 34 shows, after Article 71(c) was complied with and the sentence was affirmed, ordered the bad conduct discharge executed.

e. On 9 February 1984, orders 28-2 shows the applicant was discharged on 14 February 1984.

f. On 14 February 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 4 years, 2 months, and 18 days of active service with 419 days of lost time. He was assigned separation code JJD and the narrative reason for separation listed as "As a result of Court-Martial," with reentry code 4. It also shows he was awarded or authorized:

- Army Service Ribbon
- Marksman Marksmanship Qualification Badge with M16 Rifle
- Marksman Marksmanship Qualification Badge with Hand Grenade

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:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the two years of service completed, the misconduct leading to the applicant's separation, and the post-service character evidence showing the applicant has learned and grown from the events of his separation, the Board concluded there was sufficient evidence to grant clemency by upgrading the applicant's characterization of service to General, Under Honorable Conditions.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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|---|---|---|----------------------|
| ■ | ■ | ■ | 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 reissuing the applicant a DD Form 214 showing:

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

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 (AR) 635-200 (Personnel Separations – 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//