

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 February 2025

DOCKET NUMBER: AR20240005443

APPLICANT REQUESTS: an upgrade of his bad conduct discharge to honorable.

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, in effect, following the separation, he was told that his discharge would be upgraded. Securing this upgrade would unlock access to a range of veteran resources and benefits that are available.
3. The applicant did not provide any documentary evidence in support of his application.
4. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 7 November 2000.
 - b. Headquarters, XVIII Airborne Corps and Fort Bragg, North Carolina 28310-5000, Special Court-Martial Order Number 24, dated 16 August 2004, reflects the following:

Charge. Article 86. Plea: Guilty. Finding: Guilty
Specification: Without proper authority, absent himself from his unit from on or about 21 December 2001 until on or about 10 December 2003. (After arraignment and prior to entry of please, the government amended the specification by deleting the words "Headquarters and Rear Detachment" substituting therefor the words "Battery B"). Plea: Guilty. Finding: Guilty

Sentence: Sentence was adjudged on 23 March 2004: To be discharged from the service with a bad conduct discharge, to be confined for 11 months, and to be reduced to the grade of E-1.

Action: Only so much of the sentence as provides for a bad conduct discharge, confinement for 6 months, and reduction to the grade of E-1 is approved and, except for that part of the sentence extending to a bad-conduct discharge, will be executed.

c. DA Form 4187 (Personnel Action), dated 20 August 2004, reflects the applicant's duty status changed from Confined by Military Authorities to Present for Duty, with an effective date of 19 August 2004.

d. U.S. Army Court of Criminal Appeals Notice of Court-Martial Order Correction, dated 27 January 2005, states, "It is ordered that, to reflect the true proceedings at the trial of the above-captioned case, Special Court-Martial Order Number 24, Headquarters, XVIII Airborne Corps and Fort Bragg, Fort Bragg, North Carolina 28310-5000, dated 16 August 2004, is corrected as follows:

By deleting in line three of The Specifications of The Charge the words "(After arraignment and prior to entry of pleas, the government amended the specification by deleting the words 'Headquarters and Rear Detachment' and substituting therefor the words 'Battery B')."."

e. U.S. Army Court of Criminal Appeals Decision, dated 27 January 2005, states, "Per Curiam: On consideration of the entire record, we hold the findings of guilty and the sentence as approved by the convening authority correct in law and fact. Accordingly, those findings of guilty and the sentence are AFFIRMED."

f. Headquarters, XVIII Airborne Corps and Fort Bragg, North Carolina 28310-5000, Special Court-Martial Order Number 58, dated 25 March 2005, states, the sentence to a bad-conduct discharge, confinement for 6 months, and reduction to the grade of E1, adjudged on 23 March 2004, as promulgated in Special Court-Martial Order Number 24, Headquarters, XVIII Airborne Corps and Fort Bragg, Fort Bragg, North Carolina 28310-5000, dated 16 August 2004, as corrected by U.S. Army Court of Criminal Appeals Notice of Court-Martial Order Correction, dated 27 January 2005, has been finally affirmed. That portion of the sentence pertaining to confinement has been served. Article 71(c) having been complied with, the bad-conduct discharge will be executed.

g. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 10 June 2005, under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 3, court-martial

(other), with a character of service of bad conduct. He completed 2 years, 2 months, and 6 days of net active service this period. It also shows the following:

- Item 4a (Grade, Rate or Rank): PV1
- Item 12h (Effective Date of Pay Grade): 2004 04 06
- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): National Defense Service Medal, Army Service Ribbon
- Item 29 (Dates of Time Lost During this Period): Under 10 USC 972:
21 December 2001 thru 9 December 2003 and 23 March 2004 thru 18 August 2004

5. AR 635-200 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.

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. 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 to support the applicant's contentions for an upgrade of his bad conduct discharge to honorable.

2. The Board noted the applicant was convicted by a special court-martial for violating Article 86 of the Uniform Code of Military Justice (UCMJ) due to an extended unauthorized absence from 21 December 2001 to 10 December 2003. The Board noted that the applicant did not provide any documentation of post-service achievements, rehabilitation efforts, or character references to support a clemency determination. Furthermore, the Board agreed that the applicant has not demonstrated by a preponderance of the evidence that an error or injustice occurred in the discharge process. In light of the seriousness of the misconduct and absence of mitigating factors, the Board determined that the characterization of service remains appropriate. Therefore, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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.

X //SIGNED//

 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 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel, as a result of court-martial.

a. Paragraph 3-7a provides that 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. Paragraph 3-7b provides that 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. Paragraph 3-10 states that a Soldier will be given a bad conduct 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.

3. 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. 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//