

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 December 2024

DOCKET NUMBER: AR20240005965

APPLICANT REQUESTS: reconsideration of his request for upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. Additionally, he requests an appearance before the Board via video/telephone.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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) in Docket Number AC81-01296 on 18 November 1981.
2. The applicant states he was wrongfully accused and charged for crimes that he did not commit. The acts were committed by fellow Soldiers, who were in turn released from responsibility for the crime. He was unable to afford legal representation. He was used as a scapegoat to bear all responsibility in the matter. He simply looks for closure to his service, which was unjustifiably taken from him.
3. On 10 December 1962, the applicant was inducted into the Army of the United States. The highest grade he attained was E-2.
4. On 28 December 1963, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice, for leaving his post before he was properly relieved, on or about 20 December 1963. His punishment included seven days extra duty and restriction.
5. Before a special court-martial at Fort Richardson, AK, on 2 January 1964, the applicant was found guilty of one specification of being disrespectful in language toward his superior noncommissioned officer, on or about 27 November 1963; and one specification of disobeying a lawful order from his superior noncommissioned officer, on or about 27 November 1963.

6. The court sentenced him to confinement at hard labor for six months, and forfeiture of two-thirds of one month's pay per month for six months. The sentence was approved on 15 January 1964. However only so much of the sentence as provided for confinement at hard labor for six months and forfeiture of \$28.00 per month for six months was approved and duly executed, but the execution thereof adjudging confinement in excess of three months was suspended for three months, at which time, unless the suspension was sooner vacated, the suspended portion of the sentence would be remitted without further action. The record of trial was forwarded for appellate review.

7. Before a general court-martial at Fort Richardson, AK, on 19 June 1964, the applicant was found guilty of:

- two specifications of unlawfully entering two stores with intent to commit a criminal offense, on or about 13 April 1964
- two specifications of stealing various items, of a cumulative value over \$1200.00 on or about 13 April 1964.

8. The court sentenced him to forfeiture of all pay and allowances, reduction to E-1, confinement at hard labor for 5 years, and to be dishonorably discharged from the service. The sentence was approved on 22 July 1964, and the record of trial was forwarded for appellate review.

9. On 11 September 1964, the Office of the Judge Advocate General, affirmed the findings and so much of the sentence as provided for dishonorable discharge, total forfeitures, and confinement for two years.

10. On 5 November 1964, the U.S. Court of Military Appeals denied review.

11. General Court-Martial Order 906, issued by Headquarters, Fort Leavenworth, KS, on 20 November 1964, noted the applicant's sentence had been affirmed. The dishonorable discharge was ordered to be duly executed.

12. On an unspecified date, the Secretary of the Army substituted the applicant's dishonorable discharge for a bad conduct discharge.

13. The applicant was discharged on 5 December 1964. His DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge) confirms he was discharged under the provisions of Army Regulation 635-204 (Personnel Separations – Dishonorable and Bad Conduct Discharges), paragraph 1a, with Separation Program Number 292 (court-martial) and Reentry Code 3. His service was characterized as UOTHC and issued a Bad Conduct Discharge Certificate. He completed 1 year, 3 months, and 13 days of net

active service, with 255 days of lost time. He did not complete his first full term of service.

14. The applicant petitioned the ABCMR for consideration of his request to have his UOTHC upgraded. On 18 November 1981, the Board voted to deny relief and determined the applicant had failed to submit sufficient relevant evidence to demonstrate the existence of probable material error or injustice.

15. 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.

16. 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:

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 (two counts of unlawfully entering two stores with intent to commit a criminal offense, and two counts of stealing various items). The applicant's conviction and discharge were conducted in accordance with applicable laws and regulations and the discharge appropriately characterizes the misconduct for which she was convicted. He was given a dishonorable discharge (changed to a bad conduct 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 insufficient evidence of a persuasive nature of post-service achievements or letters of reference in

support of a clemency determination. Therefore, based on a preponderance of available 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 to amend the decision of the ABCMR set forth in Docket Number AC81-01296 on 18 November 1981.

■

■

■

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. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

c. 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.

2. Army Regulation 635-200 (Personnel Separation – General Provisions for Discharge or Release) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. An honorable discharge certificate will be furnished when the individual meets the following qualifications: Has conduct ratings of at least "Good"; Has efficiency ratings of at least "Fair"; Has not been convicted by a general court-martial; and Has not been convicted more than once by a special court-martial.

b. Individuals discharged under honorable conditions which do not qualify them for an honorable discharge will be furnished a general discharge. Officers effecting discharge are authorized and required to deviate from these criteria and furnish an honorable discharge when, after considering all aspects of the individual's service, it appears that furnishing a general discharge would not be in the best interest of the service or the individual.

3. Army Regulation 635-204 (Personnel Separations – Dishonorable and Bad Conduct Discharges), then in effect, provided for separation of enlisted personnel with dishonorable and bad conduct discharges. This regulation stated that an enlisted person would be discharged with a dishonorable discharge pursuant only to an approved sentence of general court-martial and a bad conduct discharge based on an approved sentence of a general court-martial or a special court-martial imposing a bad conduct discharge.

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//