

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 February 2025

DOCKET NUMBER: AR20240006084

APPLICANT REQUESTS:

- an upgrade of his characterization of service from bad conduct to general, under honorable conditions
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Decision, 7 April 2021
- VA Decision, 7 April 2021

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:

a. He did not get a copy of his DD Form 214 (Certificate of Release or Discharge from Active Duty) or the General Court Martial Number 7 and 20 to be able to fight the charges placed on his records. He only knew about the bad conduct discharge when he applied for compensation disability in March 2020. He received a VA letter dated 7 April 2021 showing periods of service from 11 July 1989 to 31 August 2020. He was not in the military during that timeframe. Another VA letter dated 7 April 2021 shows another period of service from 13 January 1982 to 31 May 1988. If mistakes were made with the period of service, then other errors could have been made on his records.

b. He was going to file a complaint against the first sergeant for racism. He was making racist remarks and treating the black noncommissioned officers (NCOs) different from the white NCOs. The applicant states he was never in trouble or been

written up during his time in the military. The first sergeant could have counseled him if there were problems or demoted him, but instead he was recommended for a General Court Martial for a first offense. The applicant thinks the first sergeant wanted to get rid of him fast.

3. The applicant provides:

a. VA decision dated 7 April 2021, which shows the VA decided that his military service for the period of 11 July 1989 through 31 August 2020 is dishonorable for VA purposes. The applicant and his dependents are not eligible for any VA benefits for this period of military service. Only veterans with honorable service are eligible for VA benefits.

b. VA decision dated 7 April 2021, which tells the applicant to disregard the prior letter sent with the same date as it was missing sections. The letter states that the VA decided that the applicant's military service for the period of 13 January 1982 through 31 May 1988 is dishonorable for VA purposes. The applicant and his dependents are not eligible for any VA benefits for this period of military service. Only veterans with honorable service are eligible for VA benefits.

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

a. He enlisted in the Regular Army on 13 January 1982. The highest rank/grade he held was specialist four (SP4)/E-4.

b. The applicant reenlisted on 9 August 1984, for a period of three years.

c. General Court-Martial Order Number 7, issued by Headquarters, U.S. Army Signal Center and Fort Gordon, Fort Gordon, GA on 19 March 1987 shows the applicant was found guilty of:

- Charge II, specification 4, with intent to defraud, utter a certain check, on or about 2 December 1986
- Charge II, specification 5, with intent to defraud, utter a certain check, on or about 3 December 1986
- Charge II, specification 6, with intent to defraud, utter a certain check, on or about 5 December 1986

d. The court sentenced the applicant to a bad conduct discharge, forfeiture of all pay and allowances, and to be reduced to the grade of E-1.

e. On 19 March 1987, the sentence was approved and, except for the part of the sentence extending to a bad conduct discharge, would be executed.

f. General Court-Martial Order Number 20, issued by Headquarters, U.S. Army Signal Center and Fort Gordon, Fort Gordon, GA on 28 October 1987, shows the sentence had been affirmed. The provisions of Article 71(c) had been complied with; the bad conduct discharge would be duly executed.

g. The applicant was discharged on 31 May 1988. His DD Form 214 shows he was discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 3, by reason of court-martial, other, in the rank/grade of private (PV1)/E-1, and his service was characterized as bad conduct. He completed 6 years, 4 months, and 18 days of net active service this period. This form also shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon, Army Commendation Medal, Army Good Conduct Medal, Overseas Service Ribbon, and the Army Achievement Medal
- Item 26 (Separation Code): JJD
- Item 27 (Reentry Code): 3 and 3C

5. By regulation AR 635-200, a Soldier 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. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, 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.

7. In reaching its determination, the Board can consider the applicants 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 partial relief was 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 reviewing the applicant's request and available military records, the Board determined that there is insufficient evidence of in-service mitigating factors to outweigh the misconduct involving intent to defraud through the uttering of a check. Additionally, the Board noted that the applicant did not provide any post-service accomplishments or character references to support consideration for clemency.

2. The Board noted that the Army Board for Correction of Military Records (ABCMR) is authorized to modify the severity of a court-martial sentence only when clemency is deemed appropriate. In this case, the Board determined that the applicant has not demonstrated, by a preponderance of the evidence, an error or injustice warranting the requested clemency specifically, an upgrade of his bad conduct discharge to a general discharge under honorable conditions. However, during deliberation, the Board recognized that the applicant had a prior period of honorable service that is not currently reflected on his DD Form 214. As a result, the Board granted partial relief to correct the applicant's records to accurately reflect this honorable service.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 31 May 1988 to show in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE ACTIVE SERVICE FROM 19820113 UNTIL 19840808

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to an upgrade of his characterization of service from bad conduct to general, under honorable conditions.

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.

ADMINISTRATIVE NOTE(S): N/A

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 (Personnel Separations – Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 3 states a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or a special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

b. 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.

c. 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.

3. 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.

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been

denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, chapter 3, court-martial, other, would receive a separation code of "JJD."

6. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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.

7. 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. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. 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.

//NOTHING FOLLOWS//