

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 February 2025

DOCKET NUMBER: AR20240006150

APPLICANT REQUESTS: an upgrade of his characterization of service from bad conduct to under honorable conditions (General).

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 15 August 1985
- [REDACTED] Driver License, 7 June 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 he is requesting an upgrade of his characterization of service because he would like to receive benefits for the time he served.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 2 November 1982. The highest rank/grade he held was private (PV2)/E-2.
 - b. General Court-Martial Order Number 106, issued by Headquarters, U.S. Army Air Defense Artillery Center and Fort Bliss, Fort Bliss, TX, on 1 August 1983, shows the applicant was found guilty of Charge 1, specification one through 18 of with intent to defraud and for the procurement of lawful currency, wrongfully and unlawfully making and uttering to the Fort Bliss Exchange certain checks for payment of money on or about:
 - 29 March 1983 - \$100.00

- 30 March 1983 - \$100.00
- 31 March 1983 - \$100.00
- 1 April 1983 - \$100.00
- 2 April 1983 - \$100.00
- 3 April 1983 - \$100.00
- 4 April 1983 - \$100.00
- 6 April 1983 - \$100.00
- 7 April 1983 - \$100.00
- 8 April 1983 - \$100.00
- 9 April 1983 - \$100.00
- 10 April 1983 - \$100.00
- 11 April 1983 - \$100.00
- 12 April 1983 - \$100.00
- 13 April 1983 - \$100.00
- 15 April 1983 - \$100.00
- 16 April 1983 - \$100.00
- 17 April 1983 - \$100.00

c. The court sentenced the applicant to be discharged from the service with a bad conduct discharge. The sentence was adjudged on 15 September 1983.

d. The sentence was approved on 3 November 1983 and the record of trial was forwarded to Judge Advocate General of the Army for appellate review.

e. The applicant was placed on involuntary excess leave without pay, pending completion of the appellate review.

f. General Court-Martial Order Number 25, issued by Headquarters, U.S. Army Air Defense Artillery Center and Fort Bliss, Fort Bliss, TX on 21 June 1984, 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 15 August 1985. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), as a result of court-martial, in the rank/grade of private (PV1)/E-1, and his service was characterized as bad conduct. He completed 2 years, 9 months, and 13 days of active service. This form also shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon, Expert Marksmanship Qualification Badge (hand grenade), and Sharpshooter Marksmanship Qualification Badge (M-16 rifle)

- Item 26 (Separation Code): JJD
- Item 27 (Reentry Code): 4

4. 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.

5. 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.

6. The Board should consider the applicant's overall 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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for conviction by court-martial. The Board found no error or injustice in the separation proceedings. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. The applicant was given 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.

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.

6/6/2025

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 635-200 (Personnel Separations – Enlisted Personnel) 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

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.

//NOTHING FOLLOWS//