

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 February 2025

DOCKET NUMBER: AR20240006330

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 letter

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 was a young black man whose entire life was destroyed during this time in service to his country. He enlisted to serve his country and to create a life worth living. These incidents that occurred to him during his service is a great travesty and injustice to a soldier who enlisted to give his life for his country. Furthermore, this not only a great injustice to any human being it is a slap in the face to our founding father that states, (We hold these truths to be self-evident that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights Governments are instituted among men, deriving their just power from the consent of the governed, in part. It is your duty to right the wrong and injustices that are in part upon the people. In a self-authored letter, he states:

a. While serving at Fort Gordon GA. during his advanced individual training with bravo unit under Captain (CPT) [REDACTED] he suffered sexual, racial, threatening, hostile and deliberately frightening his well-being during his entry time in bravo unit.

b. So, much so, he was told by CPT [REDACTED] that he would pay for being an inspirational influence over the young troops. He even went as far as to promise him that the clan as always get its n***a (meaning Ku Klux Klan), in hearing these things, he was terrified beyond his imagination.

c. Thus, his entire mind set, and attitude was altered. He was walking on eggshells the entire time in bravo unit. He spoke with his top (first sergeant) to no avail, his response was they are too strong here and his hands are tied. He was moved out of his two-man room into a 6-man room shortly after having this conversation with CPT [REDACTED] a few days into moving to this room a soldier by the name [REDACTED] was assigned to the bed next to him.

d. Day one he asked him if he smoked weed (marijuana) he said no. He then said if you know anyone send them to him (He's holding). This soldier is the person that stated that he was holding marijuana which was a lie. He had nothing to do with any of that stuff. Later on, he came to find out from a few Military Police friends on the base he was requested to be sent there from Fort Bragg by CPT [REDACTED]

e. It is his opinion/belief he was lied on because he was liked by many of his fellow soldiers. On several occasions CPT [REDACTED] would call him into his office and insinuate that he was cute and had a big ass, he sees why everyone likes him. When can he get to know him like that. He was shocked, flabbergasted, and astonished that he was put into this position with the captain of bravo unit.

f. He spoke with several soldiers concerning this matter. All that was said that he is very powerful here. What else was there for a private to do with such powers before him. His only way out was to say he did something he had nothing to do with, do the time and go home. He then never spoke of this again and stuffed all of it for the next 40yrs. The only justice is an honorable discharge for this injustice and travesty of justice.

3. The applicant enlisted in the Regular Army on 25 March 1981.

4. He received nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for on or about 0001 hours, 16 October 1981, without authority, absent himself from his unit and did remain so absent until on or about 1200 hours, 17 October 1981.

5. DA Form 4187 (Personnel Action) shows his duty status was changed:

- From present for duty (PDY) to absent without leave (AWOL) on 15 April 1982
- AWOL to confined to military authorities on 22 April 1982

6. On 22 April 1982, a general court-martial convened and found him guilty of the following specifications:

- On or about 10 January 1982, wrongfully sell marijuana
- On or about 11 January 1982, wrongfully sell marijuana

- On or about 15 January 1982, wrongfully sell marijuana
- On or about 3 February 1982, wrongfully sell marijuana to another service member

He was sentenced to confinement at hard labor for one year, forfeiture of all pay and allowances, and to be discharged from the Army with a dishonorable discharge

7. On 7 July 1982, the convening authority approved the sentence. The record of trial was forwarded to The Judge Advocate General of the Army for review by a Court of Military Review.

8. On 31 August 1982, counsel for the appellee declined to file pleadings. The Court found the approved findings of guilty, and the sentence correct in law and fact, and determined the entire record that should be approved, such findings of guilty and the sentence were affirmed.

9. On 21 September 1982, the applicant was notified of his right to petition the U.S. Court of Military Appeals for a grant of review with respect of any matter of law. He acknowledged receipt of said notification.

10. General Court-Martial Order Number 10, issued by U.S. Army Correctional Facility, Fort Riley, KS, on 21 January 1983, shows his approved sentence, having been affirmed, as modified, will be duly executed.

11. A Periodic Medical Examination completed on 9 February 1983, shows the applicant underwent a medical examination on or about 3 December 1982, and to the best of his knowledge there had been no significant change in his medical condition since.

12. On 9 February 1983, he was discharged with a bad conduct characterization of service. His DD Form 214 shows he completed 1 year and 15 days of active service. It also shows in:

- Item 25 (Separation Authority): Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), section IV
- Item 26 (Separation Code): JJD
- Item 27 (Reenlistment Code): 4
- Item 28 (Narrative Reason for Separation): As a result of court-martial
- Item 29 (Date of Time Lost During this Period): 811016 – 811016; 820415 – 820421; 820422 - 830207

13. During the processing of this case a request was made to U.S. Army Criminal Investigation Division requesting for sanitized copies of law enforcement reports from the Department of the Army, Criminal Investigation Division. A reply was received on 4 December 2024, stating a search of the Army criminal file indexes, utilizing the information provided, revealed no CID/MP/MST records pertaining to the applicant. Be advised that records at this agency are Criminal Investigative and Military Police Reports and are indexed by personal identifiers such as names, social security numbers, dates and places of birth and other pertinent data to enable the positive identification of individuals.

14. He did not qualify to have his case considered by the Army Discharge Review Board because his conviction was by a general court-martial.

15. 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.

16. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, United States Code, section 1552, the authority under which this Board acts, the Army Board for Correction of Military Records 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.

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

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CHAIRPERSON

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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) sets forth the basic authority for 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. Paragraph 3-7 states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the soldier'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. 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.

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. 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 on the basis of 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//