

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 November 2024

DOCKET NUMBER: AR20240006714

APPLICANT REQUESTS: upgrade of his bad conduct discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- U. S. Army Judiciary letter
- U. S. Army Court of Criminal Appeals appellate decision

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 requests the upgrade of his bad conduct discharge as he has paid his debt to society. He also feels that he was not treated fairly during his military service. When his pay stopped, he requested assistance and he was told that there was nothing he could do. The reason he was absent without leave (AWOL) was because his fiancé was pregnant and he needed money because his military pay stopped and no one would help him.

Even today, his social security disability is being garnished for money that he never received. He could not have received the money because his direct deposit account was closed.

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

- a. On 1 October 2002, the applicant enlisted in the Regular Army.
- b. On 22 June 2004, the applicant's duty status was changed from present for duty to AWOL.

b. On 21 July 2004, the applicant's duty status was changed from AWOL to present for duty.

c. On 4 August 2004, the applicant's duty status was changed from present for duty to confined by military authorities for pre-trial confinement.

d. On 7 October 2004, Orders Number 281-723, issued by Headquarters (HQs), 7th Infantry Division (ID) and Fort Carson, the applicant was assigned to the Personnel Control Facility, Fort Knox, KY with confinement at the North-Eastern Regional Corrections Facility, Quantico, VA

e. On 7 December 2004, the applicant's duty status was changed from confinement by military authorities to present for duty upon completion of his sentence.

f. On 16 December 2004, Special Court-martial Orders Number 40, issued by HQs, 7th ID and Fort Carson, the applicant was arraigned on the following charges:

- one specification of theft of property of another Soldier valued at more than \$500.00 for which he was found guilty
- two specifications of AWOL for which he was found guilty

The applicant was sentenced to forfeiture of \$795.00 per month for 5-months, confinement for 5-months and discharged from the Army with a bad conduct discharge. The sentence was adjudged on 5 October 2004. The sentence was approved except for the portion of the sentence extending to the bad conduct discharge. The applicant was credited with 62-days of confinement against the confinement sentence.

g. On 13 March 2003, the U. S. Army Court of Criminal Appeals found the findings of guilty and sentence as approved by the convening authority was correct in law and fact and was affirmed.

f. On 31 August 2006, Special Court-martial Orders Number 194, issued by HQs, U. S. Army Armor Center and Fort Knox, the sentence of a bad conduct discharge, confinement for 5-months and forfeiture of \$795.00 per month for 5-months which was adjudged on 5 October 2004 as promulgated in HQs, 7th ID and Fort Carson Special Court-martial Orders Number 40 had been affirmed. The applicant was credited with 62-days of confinement against his sentence of confinement has been served. The bad conduct discharged will be executed.

g. On 21 December 2006, Orders Number 355-0161, issued by HQs, U. S. Army Armor Center and Fort Knox, the applicant was assigned to the U. S. Army transition point for discharge effective 27 December 2006. The additional instructions stated the applicant was not entitled to payment of unused leave.

h. On 27 December 2006, the applicant was discharged from active duty under provision of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 3 (Bad Conduct Discharge). DD Form 214 shows the applicant completed 3 years, 9 months and 25 days of active service. It also shows in:

- Item 18 (Remarks): excess leave (Creditable for all Purposes Except Pay and Allowances) 751-days during the period of 7 December 2004 through 27 December 2006
- Item 29 (Dates of Time Lost During This Period) under Title 10 United States Code, section 972 – 22 June through 20 July 2004 and 8 August through 6 December 2004

4. The applicant provides the notification of the U. S. Army Court of Criminal Appeals decision and was advised if he wanted to petition the Court of Appeals for the Armed Forces, he would have to do so within 60-days from the date the notice was mailed.

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.

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 (Active Duty Enlisted Administrative Separations) in effect at the time, sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of soldiers for a variety of reasons.

a. Paragraph 3-7a (Honorable discharge), 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.

b. Paragraph 3-7b (General discharge), 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

c. Paragraph 3-7c (Under other than honorable conditions discharge), a discharge under other than honorable conditions is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, homosexual conduct, security reasons, or in lieu of trial by court martial in the following circumstances: when the reason for separation is based upon a pattern of behavior that constitutes a significant departure from the conduct expected of soldiers of the Army. When the reason for separation is based upon one or more acts or omissions that constitutes a significant departure from the conduct expected of soldiers of the Army.

d. Paragraph 3-10 (Dishonorable discharge), a Soldier will be given a dishonorable 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.

e. Paragraph 3-11 (Bad conduct discharge), 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.

//NOTHING FOLLOWS//