

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 January 2025

DOCKET NUMBER: AR20240006845

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored Statement dated 28 February 2024
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Four Character Reference Letters
- Criminal Record Search

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 joined the Army in 1977 with the intentions of making a career of the Army. However, he ran across some bad company of individuals who stole things from the rooms of other Soldiers. The person who he claims took the stereo told the applicant the stereo belonged to them, and he did not know any different. The individual and one other person came to him for a ride to the sell the stereo equipment. He was subsequently charged with stealing a stereo which led to the end of his career aspirations. The applicant has turned age 65 and he would like to be buried with honors in the event of his death.
3. The applicant provides:
  - a. Four character statements from family friends and members of his congregation which describe the applicant as enthusiastic, strong moral character, committed and dedicated to community service, kind, caring, and always willing to go the extra mile. He currently serves as a pastor, is happily married, and is an exemplary servant and spiritual leader. The below listed letters are available for review by the Board.

- Ms. [REDACTED] 25 September 2022
- Mr. [REDACTED] 10 October 2022
- Ms. [REDACTED] 10 October 2022
- Reverend [REDACTED] undated

b. A Criminal Record Search from the State [REDACTED] dated 23 January 2023, lists minor infractions and traffic offenses available in the database.

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

a. He enlisted in the Regular Army on 10 January 1978.

b. His DA Form 2-1 (Personnel Qualification Record) shows the applicant had one period of absence without leave (AWOL) from 23 June 1979 through 25 June 1979 (3 days).

c. Four DA Forms 2627 (Record of Proceedings Under Article 15, UCMJ) show the applicant accepted nonjudicial punishment for the following:

- 16 March 1979 – failure to go to his appointed place of duty
- 12 April 1979 – breaking restriction
- 2 May 1979 – failure to be at his appointed place of duty
- 16 July 1979 – one specification of AWOL, one specification of operating a vehicle in a reckless manner, one specification of failure to be at his appointed place of duty, and one specification of absenting himself from his place of duty

d. On 21 June 1979, he was convicted by a special court-martial of one specification of wrongfully possessing drug paraphernalia on or about 28 October 1989, one specification of stealing the property of another Soldier to include a television set, a stereo, an amplifier, two speakers, and a turntable, a value of about \$1900.00, and one specification of unlawful entry. His sentence included forfeiture of \$100.00 pay per month for 2 months, confinement for 2 months, and a bad conduct discharge.

e. On 23 July 1979, the convening authority approved so much of the sentence as provides for forfeiture of \$100.00 pay per month for 2 months and confinement for 2 months; and except for that part of the sentence extending to bad conduct discharge, ordered it executed. The record of trial was forwarded to the Judge Advocate General of the Army for appellate review.

f. Special Court-Martial Order Number 81 dated 4 December 1979, after Article 71(c) was complied with and the sentence was affirmed, ordered the bad conduct discharge executed.

g. On 19 December 1979, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 11 months, and 12 days of active service with 3 days of lost time. He was assigned separation code JJD and the narrative reason for separation listed as "As a Result of Court-Martial, Other," with reentry code 3. It also shows he was awarded or authorized the Marksman Marksmanship Qualification Badge with Rifle Bar (M-16).

5. By law, with respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

6. 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.

#### 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 for possessing drug paraphernalia. 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.

5/12/2025

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), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable discharge) states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of the 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) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-7c (Under Other Than Honorable Conditions) states 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, homosexuality, security reasons, or for the good of the service.

d. Paragraph 3-11 (DD Form 259A (Bad Conduct Discharge Certificate) states a member 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.

3. Title 10, U.S. Code, section 1552, provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

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.

a. 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 based on 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.

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//