

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 March 2025

DOCKET NUMBER: AR20240007637

APPLICANT REQUESTS: Upgrade of his bad conduct discharge (BCD) to under honorable conditions (general) or honorable.

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

DD Form 149 (Application for Correction of Military Record)

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 did not submit a statement in support of his request.
3. Having had prior honorable service in the Regular Army, the applicant reenlisted in the Regular Army on 28 February 1984, for 4 years.
4. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice; however, the relevant DD Form 458 (Charge Sheet) is not available for review.
5. The applicant's record is void of orders or case documents containing the specific facts and circumstances surrounding his court-martial. However, a DA Form 4187 (Personnel Action) reflects that on 25 April 1986, the applicant's duty status changed from present for duty to confined by military authorities as a result of court-martial.
6. The U.S. Army Court of Military Review affirmed the findings of guilty and the sentence on 11 August 1986.
7. The applicant was discharged on 30 January 1987. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel),

Chapter 3, Section IV, as a result of court-martial. His service was characterized as bad conduct. He was assigned Separation Code JJD and Reenlistment Code 4. He was credited with 2 years, 1 month, and 23 days of net active service this period with 2 years, 7 Months, and 6 days of prior active service. He had 280 days of lost time.

8. Additionally his DD Form 214 shows he was awarded or authorized the Rifle M-16 (Marksmanship) Badge, Hand Grenade (Expert) Badge, Army Service Ribbon, Noncommissioned Officer Professional Development Ribbon (1), and Army Good Conduct Medal (1st Award).

9. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the lack of any knowledge related to the misconduct leading to the applicant's separation, as well as the lack of any statement from the applicant to provide justification for potentially upgrading the applicant's discharge, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

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

//SIGNED//

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. The version in effect at the time provided that:
 - a. 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.
 - b. 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.
 - c. Chapter 3, Section IV provided that a member would be given a BCD pursuant only to an approved sentence of a general or special court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed.

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/NR) 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.

//NOTHING FOLLOWS//