

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 March 2025

DOCKET NUMBER: AR20240007695

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).

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 the supply sergeant for his unit, during which time his commander wanted him to falsify or clear individual without turning in all of their signed for equipment, he took this situation to the head of maintenance. He believes his commander retaliated against him by pursuing a court-martial. He was charged with buying too many items, his trial was delayed and continuously postponed which did not give him a fair and speedy trial. This was against the Sixth Amendment. He was unaware he was able to request to have his character of service upgraded.
3. A review of the applicant's service record shows:
 - a. On 24 September 1976, the applicant enlisted in the U. S. Army Reserve. He had continuous service through reenlistment.
 - c. On 1 July 1985, the applicant accepted nonjudicial punishment for wrongful use of marijuana. His punishment included reduction in grade to E4, forfeiture of \$475.00 per month for 2-months and 45-days of restriction and extra duty. The applicant appealed and submitted additional matters in his own behalf. The appeal was denied.
 - d. On 9 September 1985, General Court-martial Orders Number 27, issued by Headquarters (HQs), 2nd Infantry Division, pursuant to Court-martial Convening Orders Number 10, the applicant was convicted of:

- charge I; one specification of absent without leave during the period of 16 through 19 June 1985
- charge II; one specification of wrongfully purchasing goods brought into Korea free of duty or sold free of tax in quantities exceeding anticipated personal needs

The applicant plead guilty to charge I and its specification and charge II, specification I and was found guilty. He plead not guilty of charge II specification II. The military judge adjudged the sentence on 26 August 1985 of reduction to E1, forfeiture of all pay and allowances and a bad conduct discharge. On 9 September 1985, the sentence was approved except for the part of the sentence extending to the bad conduct discharge will be executed.

e. On 12 February 1986, The U. S. Army Court of Military Review, considered the entire record, including consideration of the issued personally specified by the appellant, the findings of guilty and the sentence was held as approved by the convening authority to be correct in law and fact. Accordingly, the findings of guilty and the sentence was affirmed.

f. On 3 September 1986, General Court-martial Orders Number 45, issued by HQs, U. S. Army Armor Center and Fort Knox, the sentence to bad conduct discharge, total forfeiture of all pay and allowances and the reduction to E1 was adjudged on 26 August 1985 as promulgated in corrected General Court-martial Orders Number 27, HQs, 2nd Infantry Division dated 9 September 1985 had been finally affirmed. The bad conduct discharge will be executed.

g. On 28 September 1986, the applicant was discharged from active duty as a result of the court-martial with a bad conduct character of service. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant completed 7-years, 11-months and 27-days of active service. The applicant had lost time during the period of 16 through 18 June 1985.

4. 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 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 being absent without leave during the period of 16 through 19 June 1985 and for wrongfully purchasing goods brought into Korea free of duty or sold free of tax in quantities exceeding anticipated personal needs, which the Board noted were non-violent offenses and determined an upgrade to under other than honorable conditions was warranted.

2. The applicant was given a bad conduct discharge pursuant to an approved sentence of a general 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

:XX	:XX	:XX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 28 September 1986 to show an under other than honorable conditions characterization of service.


X //SIGNED//

CHAIRPERSON
Signed by:

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), in effect at the time, sets policies, standards, and procedures to insure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

a. Paragraph 3-7a (Honorable Discharge), 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 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 member whose military records is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-7c (Under Other Than Honorable Conditions), 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 3-10 (Dishonorable Discharge), a member 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.

3. Title 10, U.S. Code, section 1552, provides that the Secretary of a Military Department may correct any 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 Uniform Code of Military Justice, 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 Uniform Code of Military Justice 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 the 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 Corrections of Military/Naval Records regarding equity, injustice or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence and BCMRs 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 discharge, which may be warranted on equity or relief from injustice grounds, BCMRs shall consider the twelve stated principles in the guidance as well as eighteen individual factors related to an applicant. These factors include the severity of the misconduct and the length of time since the misconduct.

//NOTHING FOLLOWS//