

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 March 2025

DOCKET NUMBER: AR20240007977

APPLICANT REQUESTS: reconsideration of his earlier request for upgrade of his bad conduct discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 20 May 2024
- DD Form 214 (Report of Separation from Active Duty), 23 September 1976

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20090009068 on 10 November 2009.

2. The applicant states he was young and extremely intoxicated on the night of the incident leading to his discharge.

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

a. On 1 October 1973, the applicant enlisted in the Regular Army for 3 years. He attained the rank of private first class (PFC) on 1 March 1974.

b. On 12 April 1974, he accepted nonjudicial punishment for being absent without leave (AWOL) from 5 April 1974 to 9 April 1974. He received a reduction to private 2, which was suspended for 1 month; extra duty, and restriction for 14 days.

c. General Court Martial Orders (GCMO) Number 15, dated 25 October 1974, reflect he was convicted of willfully and maliciously setting a fire to an inhabited dwelling, knowing that a human being was therein at the time, the value of about \$24,700.00. He was found guilty and sentenced to a bad conduct discharge. The sentence was adjudged on 23 July 1974.

d. On 25 October 1974, the record of trial was forwarded to the Judge Advocate General of the Army for review by a Court of Military Review.

e. On 29 March 1976, the U.S. Army Court of Military Review affirmed the findings of guilty and the sentence.

f. On 26 April 1976, the applicant acknowledged receipt of the decision and understood his right to petition the Court of Military Appeals for a grant of review within 30 days.

g. General Court-Martial Order Number 21, dated 25 August 1976, issued by the General Court Martial Convening Authority, Fort Polk, reflects the applicant's sentence, to be discharged from the service with a bad conduct discharge, as promulgated in GCMO Number 15, had been affirmed pursuant to Article 66. The provisions of Article 71c having been complied with, the sentence would be duly executed.

h. On the same date, and as a result of the execution of his sentence, he was reduced to private 1.

i. On 23 September 1976, he was discharged. His DD Form 214 shows he was discharged under authority of Chapter 11 of Army Regulation 635-200 (Personnel Separations – Enlisted Separations), and GCMO Number 15 by reason of court-martial conviction with a bad conduct discharge. The characterization of his service was under other than honorable conditions. He completed 2 years, 11 months, and 23 days of total active service.

4. On 10 November 2009 and in ABCMR Docket Number AR20090009068, the Board found no reason to change the discharged based upon clemency.

5. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's request and available military records, the Board determined there is insufficient evidence of mitigating factors to overcome the serious misconduct. Evidence in the records shows the applicant was convicted by general court-martial for willfully and maliciously setting fire to an inhabited dwelling, knowing that a human being was present. The severity of the offense, which involved endangering lives and causing substantial property damage, was affirmed through multiple levels of judicial review.

2. The Board acknowledged the applicant's claim of intoxication and youth at the time of the offense, these factors do not mitigate the gravity of the misconduct. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board determined that the applicant's bad conduct discharge resulted from a lawful court-martial conviction and appropriately reflects the gravity of the offense committed. The applicant has not presented sufficient evidence to demonstrate an error or injustice in the original proceedings or to warrant a change in the character of service. Therefore, relief is denied.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20090009068 on 10 November 2009.

X //SIGNED//

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, 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 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 that Military Department.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set 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. Chapter 1-9 provided:

(1) 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. Only the honorable characterization may be awarded a member upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty training or where required under specific reasons for separation unless an entry level status separation (uncharacterized) is warranted.

(2) 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.

b. Chapter 11 provided that an enlisted person will be given a bad conduct discharge 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.

//NOTHING FOLLOWS//