

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 February 2025

DOCKET NUMBER: AR20240008175

APPLICANT REQUESTS:

- an upgrade of his bad conduct discharge to honorable
- a personal, video and/or telephonic appearance before the Board

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 is requesting his bad conduct discharge be upgraded to an honorable discharge. He was charged in an incident that he had no part in but witnessed the incident and he was taken in with everyone else; this has affected him all these years.
3. A review of the applicant's official record shows the following:
 - a. He enlisted in the Regular Army on 27 November 1979.
 - b. He accepted nonjudicial punishment:
 - 24 September 1980 for being disrespectful in language towards a superior noncommissioned officer on 7 September 1980; his punishment included reduction to private E-1 (PV1), forfeiture of \$200.00 pay for one month and was sent to the Disciplinary Correctional Facility (DCF) for 20 days
 - 14 April 1981 for wrongful appropriation of an M15A2 1/4 ton truck, of value of about \$10,355.00, the property of the U.S. government; his punishment included correctional custody for 21 days and forfeiture of \$200.00 pay per month for two months

- 21 January 1982 for assaulting a specialist four by striking him in the eye; his punishment included reduction to private E-2 (PV2); suspended for 60 days, and extra duty for 14 days and restriction for 14 days

c. DA Form 2-2 (Record of Court-Martial Conviction) show on 3 September 1982, he was convicted by Special Court-Martial Order Number 84 of Charge I (three specifications of assault on or about 10 April 1982) and charge II (two specifications of communicating a threat on or about 10 April 1982). His sentence included to be reduction to the grade of E-1; to be confined at hard labor for six months; to forfeit \$367 pay per month for six months and to be discharged from the service with a bad-conduct discharge. His findings of guilty of specification 1 of charge I and charge II and its specification set aside, and charges dismissed per opinion of court dated 22 December 1983.

d. Special Court-Martial Orders Number 84, dated 3 September 1982, shows the convening authority approved only so much of the finding of guilty of specification 2 of charge I is approved as finds that the accused did, at the time and place alleged, and in concert with the persons alleged, unlawfully strike PV2 [REDACTED] by hitting him repeatedly in the face and head with his fists, an offense occurring outside the United States and not cognizable in a United States civilian court. The sentence is approved. The record of trial is forwarded to The Judge Advocate General of the Army for review by a Court of Military Review.

e. Special Court-Martial Order Number 7 dated 25 March 1986, another review pursuant to the Uniform Code of Military Justice having been completed, the following is the convening authority's action on the record of trial. Only so much of the finding of guilty of specification 2 of charge I is approved as finds that the accuse did, at the time and place alleged, and in concert with the persons alleged, unlawfully strike PV2 [REDACTED] by hitting him repeatedly in the face and head with his, an offense occurring outside the United States and not cognizable in a United States civilian court. The sentence is approved. The sentence was adjudged on 2 June 1982.

f. Special Court-Martial Orders Number 19 dated 1 September 1988 after Article 71(c) was complied with and the sentence will be duly executed and ordered the bad conduct discharge executed.

g. 28 October 1988, he was discharged from active duty with a bad conduct discharge characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 8 years, 4 month, and 14 days of active service with lost time during the period of 14 April through 30 October 1982. He was assigned separation code JJD and the narrative reason for separation listed as "As a result of court-martial, other", with reentry code 4. It also shows he was awarded or authorized the Army Service Ribbon.

- 4. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.
- 5. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination 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 justification for the requested upgrade and evidence showing the applicant was legally convicted of such misconduct at a court-martial, 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.
 - a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
 - b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
3. Army Regulation 635-8 (Separation Processing and Documents), prescribes policy and procedural guidance relating to transition management; it explains separation document preparation, distribution, and correction. Paragraph 5-6 (Rules for Completing the DD Form 214 (Certificate of Release or Discharge from Active Duty) provides

detailed instructions for data required in each block of the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge. The DD Form 214 is a historical document that should reflect the record as it existed at the time the DD Form 214 was created.

4. 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. 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. 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. Under Other Than Honorable Conditions states a discharge under other than honorable conditions are 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. 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.

5. 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.

6. 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. 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//