

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 March 2025

DOCKET NUMBER: AR20240008732

APPLICANT REQUESTS: upgrade of his Bad Conduct Discharge (BCD) to 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 states this incident occurred in the 1970s when racial discrimination was prevalent. He is African American man, and the officer was a Caucasian male. He raised his voice to him and cursed at him. He made the decision to charge him with bad conduct. Prior to his judgement he had an impeccable record with the U.S. Army.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 28 November 1975. He reenlisted on 6 September 1977. His record is void of a DD Form 214 (Report of Separation from Active Duty) for this period of service.
 - b. He served in Germany from 13 January 1978 until 29 October 1980.
 - c. He reenlisted again on 9 June 1981.
 - d. On 5 January 1983, at Fort Polk, LA, the applicant was found guilty by a special court-martial (SPCM) of four specifications of:
 - On or about 2 October 1982, wrongfully possess some amount of marijuana

- On or about 2 October 1982, wrongfully distribute some amount of marijuana, to the dependent son of a member of the U.S. Army
- On or about 2 October 1982, wrongfully distribute some amount of marijuana to Military Police Investigator, a member of the U.S. Army
- On or about 5 October 1982, wrongfully use marijuana
- The court sentenced him to reduction to the grade of E-1, forfeiture of \$375.00 pay per month for four months, confinement at hard labor for four months, and to be discharged from the service with a BCD

e. On 9 February 1983, the convening authority approved only so much of the sentence as provides for confinement at hard labor for three months, forfeiture of \$375.00 pay per month for three months, reduction to the grade of E-1, and a BCD, was approved.

f. The Record of Trial was forwarded to The Judge Advocate General of the Army for review by a Court of Military Review.

g. SPCM Order Number 20, issued 7 March 1983, shows the unserved portion of the approved sentence to confinement at hard labor for a period of three months and the unapplied forfeitures, were deferred effective date of this order until such time as the sentence is ordered into execution, unless the deferment is sooner rescinded.

h. On 7 April 1983, the Court having found the approved findings of guilty, and the sentence correct in law and fact and having determined on the basis of the entire record that they should be approved, such findings of guilty and the sentence were affirmed.

i. On 7 May 1983, the applicant acknowledged receipt of the decision of the US Army Court of Military Review and his right to petition the US Court of Military Appeals for a grant of review within 60 days.

j. SPCM Order Number 55, issued on 1 September 1983, shows the appellate review had been finally affirmed; Article 71(c) having been complied with; the sentence will be duly executed.

k. Accordingly, the applicant was discharged with a BCD on 7 October 1983. His DD Form 214 shows he was discharged in the rank/grade of private/E-1 as a result of court-martial in accordance with SPCM Order Number 55 and Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 3. It also shows he completed 6 years and 1 month of active service; His DD Form 214 also shows:

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:

After reviewing the application and all supporting documents, to include the Dod guidance on liberal consideration when reviewing discharge upgrades, the Board determined partial relief was warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the pattern of misconduct leading to the applicant’s separation and the lack of mitigating and/or clemency evidence provided by the applicant, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant’s characterization of service.

The Board did note that the applicant completed a period of military service which is not currently annotated on his DD Form 214. Therefore, the Board concluded making the correction annotated below in the administrative notes.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by making the correction annotated below in administrative notes.
2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading the applicant's characterization of service.

//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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows his DD Form 214 omitted administrative entries in the Remarks block. As a result, amend the DD Form 214 by adding in item 18 the entry "Continuous honorable service 19770906 to 19810608."

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) 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. AR 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for separation of enlisted personnel.

a. Chapter 3 states a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or a special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

b. 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.

c. 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.

d. A Soldier 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.

4. AR 635-8 (Separations Processing and Documents), currently in effect, provides for the preparation and distribution of the DD Form 214. It states for item 18 (Remarks) to Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable", enter "Continuous Honorable Active Service from" (first day of service for which DD Form 214 was not issued) until (date before commencement of current enlistment).

5. 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.

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. 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 on the basis of 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. 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//