

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 April 2025

DOCKET NUMBER: AR20240008881

APPLICANT REQUESTS:

- an upgrade of his bad conduct discharge to under honorable conditions (General)
- a personal appearance before the board

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

- DD Form 149 (Application for Correction of Military Record)
- Orders 280-30, dated 7 October 2003
- VA Form 21-526EZ (Application for Disability Compensation and Related Compensation Benefits), dated 12 July 2024
- VA Form 21-4138 (Statement in Support of Claim), dated 12 July 2024
- DD Form 4/3 and 4/1 (Enlistment Contract), dated 26 September 1996
- Self-Authored Statement, dated 10 June 2024
- Character References (three)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 the circumstances surrounding his general court-martial (GCM) are vague. He was convicted of adultery; however, he does not believe the standard for adultery was met. There was no clear and convincing evidence which is required and goes beyond mere rumors or innuendo. This evidence must show that sexual relations occurred and that it was to the detriment of military order, discipline, or brought discredit to the armed forces. The person who he was accused of committing adultery with was never found. Lastly, his court-martial had no bearing on the order and discipline of the unit. He knows of several Soldiers in extra martial affairs at the time and using drugs.
3. A review of the applicant's service record shows:

- a. He enlisted in the Regular Army on 26 September 1996.
- b. General Court-Martial Order Number 197, Headquarters, U.S. Army Field Artillery Center and Fort Sill, dated 6 March 2003 shows:
 - the sentence to forfeiture of all pay and allowances, confinement for 42 months, and a dishonorable discharge, adjudged on 25 February 1999, as promulgated in Corrected General Court-Martial Order Number 1 has been affirmed
 - Article 71(c) having been complied with, the dishonorable discharge will be executed
 - That portion of the sentence extending to confinement has been served
- c. The applicant was discharged with a bad conduct discharge on 20 October 2003, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), as a result of court-martial. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his service characterized as bad conduct. He completed 4 years. 8 months, and 2 days of active service.

5. The applicant provides:

- a. A statement in support of claim, dated 10 June 2024. The applicant states it has been almost 21 years since he was discharged. There were no clear and convincing evidence that he committed adultery or broke confinement by attending a party in the barracks. Further, his confinement ensured that he paid his debt to society; therefore, the effects of the court martial should be removed. In addition, his DD Form 214 reflects his entire service as bad conduct; however, he served honorably until 9 August 2001 and should be given credit for this honorable service. Lastly, he believes he is being punished twice and this will forever have an impact on his ability to receive compensation for the honorable service. He is still receiving treatment for his service-connected disabilities prior to confinement.
- b. Three letters of support, which speak highly of his character, attendance and participation in church and bible study, participation with the youth, his maturation, dependability, feeding the homeless, and his father speaking of his son's difficulties adjusting to society after his deployment.
- c. The applicant provided a copy of his Application for Disability Compensation, dated 2 July 2024. The document shows the applicant states that he was exposed to mustard gas and radiation, between January 1997 and March 1998, while deployed.

6. 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 petition and available military records, the Board determined there was insufficient evidence of in-service mitigating factors to overcome the misconduct. ABCMR 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.

2. The Board considered the applicant's deployment and his character letters of support attesting to his integrity, community support with feeding the homeless, reliability and the challenges after his return from deployment. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust. Therefore, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

██████████ 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.

[REDACTED]

[REDACTED]

[REDACTED]

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, USC, 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. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
3. Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) 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. 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.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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.

//NOTHING FOLLOWS//