

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 April 2025

DOCKET NUMBER: AR20240009104

APPLICANT REQUESTS:

- reconsideration of his previous request for upgrade of his under other than honorable conditions discharge
- personal appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Request for and authorization to release health information for the Department of Veterans Affairs

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 AR20120017319 on 9 April 2013

2. The applicant requests to have his discharge character changed or upgraded from under other than honorable conditions to honorable.

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

- a. He enlisted in the Regular Army on 3 August 1973.
- b. He received non-judicial punishment on 14 November 1974, for on or about 1430 hours, 9 November 1974, fail to go at the time prescribed to his appointed place of duty.
- c. He served overseas in Germany from 21 July 1975 to 14 July 1976.

d. On 15 July 1976, at Drake Kaserne, Frankfurt, Germany, the applicant was found guilty by a general court-martial (GCM) of two specifications of violation of Article 134, by possessing .03 grams, more or less and selling .01 grams, more or less, of heroin.

e. The court sentenced him to reduction to private/E-1, confinement at hard labor for two years, and a Bad Conduct Discharge (BCD).

f. On 18 August 1976, the convening authority approved the sentence and, except for the BCD, directed the sentence be executed. That portion of the sentence adjudging confinement in excess of 15 months was suspended for 15 months. The Record of Trial was forwarded to The Judge Advocate General of the Army for appellate review.

g. On 26 October 1976, the US Army Court of Military Review having found the findings of guilty, and sentence as approved by proper authority 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 sentence were affirmed.

h. General Court-Martial Order Number 1050, Headquarters, U.S. Army Disciplinary Barracks, Fort Leavenworth, Kansas, dated 21 December 1976, shows the sentence was affirmed. Article 71(c) having been complied with; the BCD will be duly executed.

i. Accordingly, he was discharged under other than honorable conditions on 11 February 1977. He completed 2 years, 11 months, and 2 days net service this period.

4. In his previous request (AR20120017319) on 9 April 2013, after reviewing the application and all supporting documents, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned. The application submitted was denied by the ABCMR.

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:

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 misconduct leading to the applicant's separation and the lack of any mitigation and/or post-service evidence submitted 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.

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 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//

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

a. Chapter 11 states a member will be given a dishonorable discharge pursuant only to an approved sentence of a general court-martial, after completion of appellate review and after such affirmed sentence has been 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.

2. 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.

3. 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//