

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 March 2025

DOCKET NUMBER: AR20240009447

APPLICANT REQUESTS: upgrade of his under conditions other than honorable discharge to honorable.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Support letter, M.W. his pastor since 23 October 2011, speaking on his character (Letter is available for the Board's review in supporting documents)
- Social Security Administration (SSA) Benefit verification letter showing his benefits
- CA Department of Motor Vehicles receipt

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 claims racial bias. He was one of three black men accused of a crime that he did not commit.
3. A review of the applicant's service record shows:
 - He enlisted in the Regular Army on 12 February 1979
 - He received non-judicial punishment on:
 - 12 October 1979, for having in his possession a switchblade knife and resisted being lawfully apprehended; he was reduced to private/E-1 (suspended 180 days)

- 31 March 1980, suspended punishment was vacated the reason is unknown
 - DD Form 458 (Charge Sheet) shows court martial charges were preferred on 17 June 1980, for on or about 10 May 1980:
 - destruction, damage, or spoilage of non-military property
 - larceny and wrongful appropriation
 - 3 specifications of assault, aggravated assault, and assault with intent to commit specific offenses
 - On 30 June 1980, he requested separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10 in lieu of court-martial
 - His chain of command recommended approval
 - On 8 July 1980, the separation authority approved separation under the provisions of AR 635-200, chapter 10; he directed he be reduced to the lowest enlisted grade
 - Accordingly, he was discharged under conditions other than honorable on 18 July 1980; His DD Form 214 shows he completed 1 year, 5 months, and 7 days net active service this period
4. On 7 April 1982, the Army Discharge Review Board after careful consideration of his military records and all other available evidence, determined that he was properly and equitably discharged. Accordingly, his request for a change in the type and nature of his discharge was denied.
5. During the processing of this case a request was made to the Department of the Army Inspector General (DAIG) for an un-redacted copy of “all IG records pertaining to the applicant. The DAIG Records Release office searched the Army IG database—the Inspector General Action Request System—and did not locate any records responsive to this request.
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:

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 short term of honorable service completed prior to a pattern of misconduct, including some of a criminal nature, as well as the lack of any mitigation and/or clemency 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//

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 (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel, it states:

a. Chapter 10 is applicable to members who had committed an offense or offenses for which the authorized punishment included a bad conduct or dishonorable discharge could submit a request for discharge for the good of the service. The request could be submitted at any time after the charges had been preferred. Although an honorable or general discharge was authorized, an under other than honorable conditions discharge was normally considered appropriate.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service has generally met standards of acceptable conduct and performance of duty for Army personnel.

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.

3. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards 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. 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//