

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 April 2025

DOCKET NUMBER: AR20240009574

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions (UOTHC) discharge.
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Legal brief, 14 pages
- Self-authored statement, 4 pages
- Character reference letter from [REDACTED] a hospice Spiritual Counselor, who attests to the care the applicant provided a friend in hospice
- Character reference letter from [REDACTED] an Army Veteran who attests to the applicant's integrity, family values and the support he provides the community
- Memorandum from Under Secretary of Defense; subject: Guidance to Military Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NR) regarding Equity, Injustice, or Clemency Determinations, dated 25 July 2018
- Letter dated 8 August 1989, informing him that his application to the Army Board for Correction of Military Records (ABCMR) was misplaced during processing
- Letter from the U.S. Army Reserve Personnel Center, dated 22 July 1987, acknowledges receipt of the Army Discharge Review Board application; however, he was advised he would have to apply to the ABCMR
- various documents pertaining to enlistment, assignments, training, civilian and military education, qualifications, performance, awards, medals, and disciplinary actions

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 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. Counsel states:

a. The applicant enlisted in the Army in January 1975, as a Medical Specialist, expecting to gain medical experience and better his life. However, his experience at Fort Hood, TX, did not align with the recruiter's promises. Despite frustrations with his assigned duties, including work outside his job description, the applicant remained committed to his three-year contract, reaching the rank of specialist/E-4 and receiving positive performance evaluations.

b. Counsel argues the ABCMR has the power to "correct any military record" when it is "necessary to correct an error or remove an injustice" or "for purposes of clemency." The applicant respectfully requests this Board to exercise its authority to correct his military records to remove an injustice, and for purposes of clemency. Counsel elaborates the following areas:

- he requested a discharge upgrade within the 3 year statute of limitations but was never called to appear before the Board nor received a decision
- he demonstrates genuine remorse and atonement for his misconduct
- his consequences are unduly harsh; he was disproportionately penalized compared to others involved in the activities
- there are mitigating facts in the record: he was impaired by alcohol consumption at the time of the offense; the length of time since the misconduct is crucial, almost a half century ago
- his character, growth and positive references warrant a discharge upgrade

c. Counsel concludes stating the applicant received an UOTHC discharge after youthful indiscretion, alcohol consumption and temporary camaraderie resulted in him making bad choices that he deeply regrets. Pursuant to the Wilkie Memorandum, the applicant requests that the ABCMR correct injustice and grant him clemency. The applicant has successfully rehabilitated and has paid the price for his mistakes. As such, he requests a discharge upgrade from UOTHC to Honorable, or alternatively, General.

3. The applicant states he made a terrible decision that December day in 1977, which drastically changed his potential for a more prosperous life. He had to take responsibility for that mistake and learned to live with it. Getting a discharge upgrade with benefits earlier in his life would have been most beneficial and still would be now. Not only with Veterans' healthcare, housing, and possible job training but with a personal sense of satisfaction and accomplishment. He is now asking for the Board's consideration of an upgrade to an honorable discharge. The applicant explains in his 4 pages statement which the following:

- his childhood while growing up

- his decision to enlist as a medical specialist as opportunity to better himself
- his recruiter misled him on the job description
- despite other co-conspirators, he was the only one charged with grand larceny
- he fulfilled his three-year contract
- his post service life
- his faith and acknowledgement of his actions

4. A review of the applicant's available service records reflect the following:

a. On 28 January 1975, the applicant enlisted in the Regular Army for 3 years.

b. On 23 August 1977, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice, for being disrespectful in language toward his superior noncommissioned officer, on or about 14 August 1977. His punishment included forfeiture of \$50.00 and seven days extra duty.

c. Before a general court-martial on 8 May 1978, at Baumholder, Germany, the applicant was found guilty of:

- one specification of conspiring with two other Soldier to commit larceny of stereo equipment, the property of the Army and Air Force Exchange Service, on or about 21 December 1977
- one specification of stealing stereo equipment, of a total value in excess of \$265.00, on or about 21 December 1977
- one specification of unlawfully entering the Army and Air Force Exchange Service, on or about 21 December 1977

d. The court sentenced him to reduction to E-1, confinement at hard labor for one year, forfeiture of all pay and allowances, and to be discharged from the service with a bad conduct discharge (BCD). The sentence was approved on 4 August 1974, and the record of trial was forwarded for appellate review.

e. General Court-Martial Order Number 135, issued by Headquarters, U.S. Disciplinary Barracks, Fort Leavenworth, KS on 20 March 1979, noted the applicant's sentence had been affirmed and ordered the BCD to be duly executed.

f. He was discharged on 8 May 1979. His DD Form 214 (Report of Separation from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 11-2 by reason of court-martial. His service was characterized as UOTHC. He was credited with 3 years, 8 months, and 1 day of net active service this period with 220 days' time lost. Extension of his service was at the request and for convenience of the government.

g. A DD Form 215 (Correction to DD Form 214), dated 6 April 1981, shows the following corrections to:

- item 15 (Date Entered Active Service Duty This Period) – CORRECTED TO READ: 750128
- item 27 (Remarks) – CORRECTED TO READ: 220 days' time lost under 10 U.S. Code 972 subsequent to normal expiration term of station from 8 May 1978 thru 13 December 1978

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. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency 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 through counsel 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. The 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. The Board noted the applicant received an under other than honorable conditions discharge on his DD Form 214 and did not receive the bad conduct discharge. Upon review through counsel of the applicant's petition and available military record, the Board found insufficient evidence of in-service mitigating factors that would outweigh the gravity of the misconduct leading to court-martial, specifically the offense of larceny.

2. The Board recognized the applicant's acceptance of responsibility and expressed remorse, as well as his acknowledgment that his actions did not represent the values upheld by all Soldiers. Additionally, the Board considered his post-service accomplishments, his efforts to overcome personal and family adversity, and character references attesting to his compassion, integrity, and community involvement. However,

after weighing the applicant's statement, post-service conduct, and letters of support against the severity of the misconduct and its impact on good order and discipline, the Board determined that the Under Other Than Honorable Conditions (UOTHC) characterization at separation was not in error or unjust. Based on a preponderance of evidence, 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.

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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. 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.

a. 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.

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 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member'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.

b. 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.

c. Chapter 11, paragraph 11-2, provided that a member would be given a BCD pursuant only to an approved sentence of a general court-martial or special court-martial, after completion of appellate review, and after such affirmed sentence has been 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//