

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 March 2025

DOCKET NUMBER: AR20240009736

APPLICANT REQUESTS:

- in effect, an upgrade of his bad conduct discharge to under other than honorable conditions 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).

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 he believes his bad conduct discharge was downgraded further to dishonorable. He was sentenced to 10 years confinement for .9 grams of marijuana and 3 of 4 counts of consumption without a positive urinalysis. On 19 October 2023, his request for disability was denied. He paid his time and was in jail since 1996, he simply wants the bad conduct or an upgrade to under other than honorable conditions.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 22 August 1989.
 - b. The applicant's foreign service periods include:
 - Korea – 7 January 1986 to 6 January 1987
 - Germany – 17 October 1990 to 17 September 1992
 - Turkey – 13 September 1991 to 3 October 1991

c. On 18 September 1992, while on assignment in Germany, he was convicted by a general court-martial for:

- one specification of distribution of approximately .9 grams of marijuana on or about 7 November 1991
- one specification of wrongful use of marijuana on or about 24 December 1991
- one specification of distribution of 1 gram of marijuana on or about 31 January 1992
- one specification of wrongful use of marijuana between on or about 7 January 1992 and 7 February 1992

d. His sentence included reduction to the lowest enlisted grade, forfeiture of all pay and allowances, confinement for 60 months, and a bad conduct discharge.

e. On 16 December 1992, the convening authority approved the sentence and except for that part of the sentence extending to the bad conduct discharge, ordered the sentence executed.

f. General Court-Martial Order Number 202, dated 28 July 1994, as provides for a bad conduct discharge, forfeiture of all pay and allowances, confinement for thirty-six months, and reduction to private, E-1, thus modified, after Article 71 (c) was complied with and the sentence was affirmed, ordered the bad conduct discharge executed.

g. On 26 August 1994, he was discharged from active duty with a bad conduct characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 3 years and 26 days of active service with 738 days (24 months and 8 days) of lost time due to confinement. It also shows he was awarded or authorized:

- National Defense Service Medal
- Southwest Asia Service Medal
- Army Service Ribbon
- Overseas Service Ribbon

6. By regulation, (AR 15-185) an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

7. 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 her characterization of service. 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. Upon review of the applicant's petition and available military record, the Board found insufficient evidence of in-service mitigating factors for the misconduct to weigh a clemency determination.
2. The Board considered the entirety of the applicant's service record, including his foreign service in Korea, Germany, and Turkey, as well as his awards and decorations. However, the Board determined that the nature and severity of the misconduct leading to his conviction by general court-martial warranted retention of the existing characterization. Evidence shows the applicant was convicted of multiple offenses involving the wrongful use and distribution of marijuana over a sustained period. The Board recognized the applicant's prior honorable service and foreign deployments but finds that the offenses for which he was convicted particularly the repeated distribution of controlled substances represent a serious breach of military discipline and values. The applicant's record reflects 738 days of lost time due to confinement, further underscoring the gravity of the misconduct. Based upon a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.
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.
4. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction be completed to more accurately depict the military service of the applicant.

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:

Except for the correction addressed in Administrative Note(s) below, the Board found 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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's service records shows he is authorized an additional award not annotated on his DD Form 214. As a result, amend his DD Form 214 for the service period ending 25 August 1994, to show award of the Korea Defense Service Medal.

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 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states 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.

b. Paragraph 3-7b (General Discharge) states 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. Paragraph 3-7c (Under other than honorable conditions discharge) states a discharge under other than honorable conditions in an administrative separation from the service under conditions other than honorable.

d. Paragraph 3-11 (Bad conduct discharge) states 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.

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. 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. Title 10, U.S. Code, section 1552, provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

4. 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.

a. 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 based on 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.

b. 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//