

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 June 2025

DOCKET NUMBER: AR20240011050

APPLICANT REQUESTS:

- upgrade of his characterization of service
- 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), 27 July 2024
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 26 April 1988
- medical documentation
- two certificates of achievement

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 has been out for over 30 years and has not been in trouble since his discharge. He additionally was unaware he could file a request for an upgrade of his discharge.
3. A review of the applicant's service record shows the following:
 - a. He enlisted in the Regular Army on 26 January 1983, for a 3-year period. He reenlisted on 17 December 1985, for an additional 3-year period.
 - b. He received nonjudicial punishment on 19 May 1987, for wrongfully using some amount of marijuana on or between 15 March 1987 and 15 April 1987. He was reduced to private/E-2.

c. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ); the relevant DD Form 458 (Charge Sheet) is void in his service record.

d. Special Court-Martial Order (SCMO) Number 32 dated 6 November 1987 shows he was convicted by a special court-martial for two specifications of wrongfully distributing marijuana in the hashish form on or about 27 May 1987 and on or about 13 June 1987. The court sentenced him to confinement for 45 days, forfeiture of \$400.00 pay per month for two months, reduction to the grade of E-1, and discharged from the service with a bad-conduct discharge. The sentence was adjudged on 5 October 1987. The sentence was approved, and the record of trial was forwarded to the U.S. Court of Military Review for appellate review.

e. On 16 December 1987, the U.S. Army Court of Military Review affirmed the findings of guilty and the sentence.

f. SCMO Number 77 dated 4 April 1988, shows his sentence was finally affirmed and the bad-conduct discharge was ordered to be duly executed.

g. Accordingly, he was discharged on 26 April 1988, in the grade of E-1. His DD Form 214 shows he received a bad conduct character of service. He was credited with 5 years, 1 month, and 21 days of net active service, with time lost from 7 September 1987 to 10 September 1987 and from 5 October 1987 to 10 November 1987.

4. The applicant additionally provides medical documentation that shows while in service he had medical symptoms to include but not limited to treatments for ear pain, back pain, vertigo, strep throat, and a rash from his flu shot. He additionally submits two certificates of achievements for his fifth and six years of service to Toyota Industries Compressor Parts America.

5. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

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 partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct leading to the applicant's separation involving multiple drug offenses, to include

distribution to others, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

2. The Board did note the applicant completed a period of honorable service which is not properly annotated on his DD Form 214 and recommended that change be completed to more accurately reflect the military service of the applicant.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:XXX	:XXX	:XXX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 by adding in Remarks the statements:

- "Continuous Honorable Service 830126 to 851216" and
- "Soldier has completed first full term of service"

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading the applicant's characterization of service.

//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, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a states that 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 states that a general discharge (GD) 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 3-10, section IV, of this chapter, states a soldier will be given a dishonorable discharge pursuant only to an approved sentence of a general court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing staff judge advocate.

3. 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.

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/NR) 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-

artial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

//NOTHING FOLLOWS//