

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 June 2025

DOCKET NUMBER: AR20240011369

APPLICANT REQUESTS: Upgrade of his bad conduct discharge (BCD).

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. On 5 July 1978 the applicant enlisted in the Regular Army for 3 years.
3. He accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice in April 1980, for wrongful possession of marijuana and a quaalude tablet, on or about 23 March 1979. His punishment included forfeiture of \$97.00, reduction to E-1, and 14 days extra duty.
4. Before a general court-martial at Wurzburg, Germany, on 7 February 1980, the applicant was found guilty of:
 - two specifications of committing a lewd and lascivious act upon females under 16 years of age, on or about 7 September 1979
 - two specifications of willfully and wrongfully exposing his penis to four individuals under 16 years of age, on or about 7 September 1979
5. The court sentenced him to reduction to the grade of E-1, forfeiture of all pay and allowances, confinement at hard labor for two years, and to be discharged from the service with a BCD. The sentence was approved on 6 May 1980, and the record of trial was forwarded for appellate review.

6. The U.S. Army Court of Military Review affirmed the findings and sentence on 25 July 1980.

7. General Court-Martial Order 659, issued by Headquarters, U.S. Disciplinary Barracks, Fort Leavenworth, KS on 28 October 1980, noted the applicant's sentence had been affirmed and ordered the BCD duly executed.

8. The applicant was discharged on 9 December 1980. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 11-2. His service was characterized as bad conduct. He completed 1 year, 7 months, and 2 days of net active service this period with 307 days of time lost.

9. 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:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The Board considered the applicant's record of service, the frequency and nature of the applicant's misconduct, and the reason for separation. The applicant was separated for conviction by court-martial for lewd acts. The Board found no error or injustice in the separation proceedings. Based on a preponderance of the evidence and the nature of the misconduct, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XX	:XX	:XX	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.

X //signed//

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

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.

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-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//