

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 August 2025

DOCKET NUMBER: AR20240011697

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

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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, in effect, he was a compulsive alcoholic and drug addict, and he is still under the influence. He does not believe he would have committed the offenses he committed if he had been sober.
3. On 21 July 1977, he enlisted in the Regular Army. He held military occupational specialty (MOS) 16R (Short Range Air Defense Artillery Crewman). On 16 December 1977, he was assigned to Fort Stewart, GA, with duties in his MOS.
4. General Court-Martial Order 8, Headquarters 24th Infantry Division, Fort Stewart, GA, shows on 10 December 1979, the applicant pled guilty, and he was convicted of one specification of house breaking and one specification of larceny of government property from the Pro Golf Shop, Fort Stewart, of a value of \$464.85, on 7 July 1979. He was sentenced to reduction from pay grade E-4 to pay grade E-1, forfeiture of \$300 pay for 7 months, confinement at hard labor for 7 months, and a bad conduct discharge.
5. On 14 February 1980, the U. S. Army Court of Military Review recommended, among other things, that the individual values of the items listed in the larceny specification be deleted and that the aggregate value be changed to allege "in excess of

\$100. The recommendations were approved and the amended. The findings of guilty and the sentence were affirmed.

6. On 29 February 1980, the applicant petitioned the United States Court of Military Appeals for grant of review.

7. General Court-martial Orders 326, published by Headquarters United States Discipliner Barracks, Fort Leavenworth, KS, dated 27 May 1980, shows the provisions of Article 71(c) having been complied with, the sentence, as thus modified, would be duly executed.

8. On 4 June 1980, the applicant was discharged, in pay grade E-1, pursuant to his conviction by court-martial after completing 2 years, 4 months, and 19 days of creditable active service with 177 days of lost time due to being in military confinement from 10 December 1979 to 4 June 1980. His DD Form 214 shows in:

- Character of Service, Under Other Than Honorable Conditions
- Separation Authority, Paragraph 11-2, AR 635-200 [Chapter 11, Army Regulation 635-200]
- Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized, the Expert Marksmanship Qualification Badge (Hand Grenade), and Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and 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 house breaking and larceny of government property. The Board found no error or injustice in the separation proceedings and designated characterization of service.

2. 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. Based on the preponderance of evidence, including the applicant's statement that he is still under the influence, the Board determined that the circumstances do not support a finding of

climency or justify an upgrade of the applicant's discharge. Therefore, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.



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, in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 11 of that regulation provided, in pertinent part, that a member will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial, after completion of appellate review and after such affirmed sentence has been ordered duly executed.

b. 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.

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. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

3. Title 10 United States Code, section 1552 governs operations of the ABCMR. Section f of this provision of law essentially states the authority of the ABCMR only extends to correction of a record. 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/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-

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

//NOTHING FOLLOWS//