

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 August 2025

DOCKET NUMBER: AR20240011948

APPLICANT REQUESTS: an upgrade of his dishonorable discharge.

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 correction of his record is warranted due to racial conflict, and he did not understand his counsel. He did not understand the severity of the crime because of his youth and ignorance. He would have testified against the other two criminals who had threatened him. He only intended to serve honorably.
3. A review of the applicant's service record reflects the following:
  - a. He enlisted in the Regular Army on 23 August 1979.
  - b. He accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) on 17 September 1979, for being disrespectful in deportment toward his superior noncommissioned officer, on or about 15 September 1979. His punishment included forfeiture of \$97.00 per month for a one month, and seven days confinement.
  - c. Before a general court-martial at Fort Riley, KS, on 17 June 1980, he was found guilty of:
    - two specifications of committing sodomy with Private K\_O\_, by force without consent, on or about 8 April 1980

- one specification of unlawfully striking Private K\_O\_, on the head and body with his fists and feet, on or about 21 March 1980
- one specification of committing an assault upon Private K\_O\_, by holding a means likely to produce grievous bodily harm, on or about 21 March 1980
- four specifications of committing an assault upon Private K\_O\_, by holding a means likely to produce grievous bodily harm, on or about 8 April 1980
- one specification of committing an assault on Private K\_O\_, with the intent to commit sodomy, on or about 21 March 1980
- one specification of wrongfully communicating a threat to Private K\_O\_, on or about 21 March 1980
- one specification of wrongfully communicating a threat to Private K\_O\_, on or about 8 April 1980
- one additional specification of committing sodomy with Private K\_O\_, by force without consent, on or about 8 April 1980

d. The court sentenced him to confinement at hard labor for 12 years, forfeiture of all pay and allowances, reduction to E-1, and a dishonorable discharge. The sentence was approved on 3 September 1980, and the record of trial was forwarded for appellate review.

e. The U.S. Army Court of Military Review affirmed the findings of guilty and the sentence on 29 May 1981.

f. General Court-Martial Order Number 696, issued by Headquarters, U.S. Disciplinary Barracks, Fort Leavenworth, KS, on 19 October 1981, noted his sentence had been affirmed and ordered the dishonorable discharge duly executed.

g. The applicant was discharged on 16 November 1981. 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 11-1. His service was characterized as dishonorable. He completed 7 months and 17 days of net active service this period with 586 days of time lost.

4. 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/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 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 several serious offenses. The Board found no error or injustice in the separation proceedings. Based on this, the Board denied the requested relief.

2. The applicant was given a dishonorable discharge pursuant to an approved sentence of a general court-martial. The appellate review was completed, and the affirmed sentence was ordered duly executed. All requirements of law and regulation were met with respect to the conduct of the court-martial and the appellate review process, and the rights of the applicant were fully protected.

BOARD VOTE:

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

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X //SIGNED//

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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 635-200 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. An under other than honorable conditions discharge is an administrative discharge from the service under conditions other than honorable. It may be issued for misconduct, for homosexuality, for security reasons, or for the good of the service.
  - d. An enlisted person 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.
  - e. Chapter 11, paragraph 11-1 provided that a member would be given a dishonorable discharge pursuant only to an approved sentence of a general 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//