

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 October 2024

DOCKET NUMBER: AR20230005149

APPLICANT REQUESTS:

- an upgrade of his bad conduct discharge
- retroactive pay and allowances
- retired pay

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 3881 (Rights Warning Procedure/Waiver Certificate) (Exhibit 25)
- Memorandum for record (Exhibit 26)
- Coversheet, DD Form 490 (Record of Trial) (Exhibit 29)
- Staff Judge Advocate (SJA) Letter to U.S. Representative (Exhibit 31)
- Memorandum for Record (Exhibit 32)
- Three U.S. Representative Letters (Exhibits 34, 35, and 38)
- Applicant's Letter to U.S. Representative (Exhibit 36)
- President of the United States Letter (Exhibit 37)
- Office of The Judge Advocate General (OTJAG) Letter (Exhibit 39)
- White House Note (Exhibit 41)
- Two Court-Martial Convening Orders (Exhibits 42 and 43)
- Three information sheets (Exhibits 44, 45, 49, and 50)
- U.S. Soldier Targeted: Letter
- Command Influence:
 - Question
 - Agent's Investigation Report, dated April 2014
 - Brigade commander's letter to U.S. Representative
 - Extract of DD Form 458 (Charge Sheet)
- Juror Panel Switched:
 - Notes
 - Two Courts-Martial Orders

- Extract, SJA Recommendation
- Memorandum for Record (MFR)
- Charged For False Official Statement Written by an NCO (Noncommissioned Officer) with Compromised Integrity:
 - Continuation Sheet, DD Form 458
 - First and Second pages, DA Form 2823 (Sworn Statement)
 - Online Article
 - Extracts from Record of Trial, pages 132, 134, 142, 146, 158, 165, 166
 - Text message screenshot
 - Three Emails
- Inconsistencies and Perjury:
 - Agent's Investigation Reports, respectively dated 16 October 2013 and 27 January 2014
 - DA 2823, first and second pages (First Sergeant (1SG) K__ K. C__)
 - Email
 - MFR
 - DA 2823, second page (L__ L. G__)
 - Extract, Summary of Proceedings, page 7
 - Extract from Record of Trial, page 275
 - Soldier's Personal Data Sheet
 - Two DA Forms 2166-8-1 (NCOER (NCO Evaluation Report) Counseling and Support Form)
 - DA Form 4856 (Developmental Counseling Form)

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 is asking the Board to act in the interest of justice; he attaches to his application numerous items that will demonstrate how his basic human rights and freedoms were violated. Between 2014 to present, the applicant has reached out to the President of the United States, members of Congress, the Department of Defense Inspector General (IG), and the Secretaries of Defense and the Army. He now seeks relief from the Board.

a. Concerning which laws have been broken, they are the Administrative Procedure Act (referring to Title 5, U.S. Code, subchapter II); Due Process (Brady Violation; the "Brady Rule" is based on a 1963 Supreme Court case, which states the government must disclose evidence that is material to a defendant's guilt or punishment, regardless of the prosecutor's intent); and numerous violations of Army policies. Applicant contends the persons who violated the aforementioned laws were the commanders authorized to administer justice.

b. After reviewing his evidence, the applicant believes the Board will see the harm that was done to the applicant. These include the loss of his family and the requirement to register as a sex offender. The applicant maintains it is the Army's obligation to stand by its mission statements: specifically, to promote equal opportunity and fair treatment for all Soldiers, their family members, and civilian employees, regardless of race, color, religion, gender, national origin, or sexual orientation, and to provide an environment free from unlawful discrimination and offensive behavior.

c. "All personnel are obligated to promote fair treatment based on merit, fitness, capability and potential. Discrimination, in any form, will not be tolerated. I'm seeking justice according to natural law to right a wrong I endured. The board will have a chance to see the wrongdoings. I pray that relief is warranted based on equity, injustice, and clemency. Most important equity. That in the interest of justice the ABCMR must grant approval of such waiver."

d. The applicant offers additional arguments in a self-authored statement. In his statement, he references numerous court cases and cites exhibits 1-24, 27-28, 30, 33, 40,46-48, and 51-54; however, none of the foregoing have been included with his application. The applicant states, "On or about 23 October 2014, I endured a gross miscarriage of justice by GCM (general court-martial) at Fort Polk, LA while assigned to 4th Brigade 10th Mountain Division due to the following: (a) Unlawful Command Influence (b) Due process violation (c) Retaliation/Reprisal, and (d) Discrimination. I'll attempt to put the injustices in chronological order, detail the abovementioned with policy and law, and explain as to why the application wasn't filed within three-year(s)."

(1) Pre-Trial. "I was accused of sexual assault by a subordinate in 2013 at FOB (forward operating base) W___, Afghanistan. She alleged (that) the incident of her buttocks being groped to(ok) place in April 2013. On 28 September 2013, CPT C___ M. B___, acting as a battalion level (Army Regulation (AR)) 15-6 investigating officer (IO) formally read me the rights warning procedure/waiver certificate DA FORM 3881. In October of 2013, the Brigade (BDE) Commander, COL (colonel) M___ D___, initiated (an AR) 15-6 investigation; the IO was MAJ (major) P___.",

(a) After introducing himself and providing his appointment memorandum, MAJ P___ stated he would be conducting interviews and would remain in the area until

he completed his investigation. "Since I elected under DA FORM 3881 not to disclose any information, all the IO could do was introduce himself and (perform the) task at hand. Upon completion of his investigation MAJ P__ approached me; I rendered a salute and gave him a proper greeting. He pulled me aside to inform me of COL M__ D__ (brigade commander) leaning on the Battalion Commander to pursue punitive action...(and) That he (MAJ P__) was going to speak to the Battalion XO (executive officer) to inform the Battalion Commander not to act on COL D__'s order."

(b) As MAJ P__ recommended, the applicant filed numerous Congressional inquiries; those communications "triggered the retaliatory action leading to a general court-martial." Days later, the chain of command conducted a search and seizure by entering the applicant's workspace; they downloaded/extracted materials from the applicant's laptop. The applicant filed a formal complaint with the Fort Polk IG.

(c) In November 2013, Sergeant First Class (SFC) J__ J__ called the applicant and told him COL D__ (brigade commander) had recommended the applicant's referral to a general court-martial. The applicant immediately informed 1SG W__ and Captain (CPT) B__ of the brigade commander's unlawful command influence, but CPT B__ did not seem surprised, and he acted as if he already knew and wondered how the applicant knew. The 1SG claimed no one had told him anything and asked what CPT B__ had heard; CPT B__ just left the room without answering.

(d) Between November 2013 and July 2014, the applicant continued to request any and all AR 15-6 investigation reports; also, during this period, the applicant's unit redeployed to Fort Polk, and the command assigned the applicant to a different unit and issued him a "no contact" order. The applicant spent most of his time at the Trial Defense Service (TDS) office.

(e) In May 2014, MAJ H__, Judge Advocate General (JAG) officer, entered the company area; MAJ H__ told the applicant's company commander and 1SG, "we can't get him on the sexual assault or touching charges, but we're going to try anyway." Having a JAG imply to a commander that charges are unfounded but would be pursued anyway violates AR 27-10 (Military Justice). MAJ H__ also mentioned that the polygraph test taken by the victim (SGT J__ H__) was not good; (during trial, the polygraph results were not presented as evidence). The applicant goes on to cite a 1993 court case, wherein a court reversed a lower court's affirmation of conviction because prosecutors did not disclose that a victim had failed a polygraph test.

(f) Between August and September 2014, "a Congressional rebuttal was warranted to address unlawful command influence, reprisal, and due process violation(s)." The applicant continued to request the IO reports so that he could fully defend himself against the contradictions and discrepancies in the victim's sworn statements. On 13 August 2014, he went to the military justice department and signed

an MFR, acknowledging receipt of referral documents; that MFR is "key to understanding the level of reprisal, discrimination, and unlawful command influence that follows days later." On 22 August 2014, he faxed documents to both Senate and House representatives requesting their assistance in securing complete copies of all investigations. The applicant goes on to cite additional court cases and a Department of Justice legal manual, arguing that the prosecution and the command were suppressing evidence and retaliating and discriminating against him.

(g) The applicant then draws the Board's attention to Court-Martial Convening Order Number 7, dated in August 2014 and signed by an NCO; "Not only does it raise a major violation, it's a definitive display of toxic unlawful command influence, discrimination, and reprisal." He notes the Army regulation (paragraph 5-19 (Referral of Charges), AR 27-10) prohibits a warrant or noncommissioned officer from authenticating a command line without prior signature authority. Additionally, the applicant maintains, in effect, that the panel named in Court-Martial Convening Order Number 7 was "stacked" against him. He points out that two other NCOs were tried under Court-Martial Order Number 16 (dated in August 2013), and he argues the prosecution only issued the replacement Court-Martial Order because of race and to increase the likelihood of a conviction.

(2) During Trial. The SJA, COL J__ E. A__, had a personal connection to the applicant's case; during trial, the SJA walked into the courtroom before the dismissal of the jury for deliberations, then headed towards the deliberation room. "Members in the courtroom said, 'Who is that?' others who knew him said, 'I know he's not in the courtroom.' The SJA's actions led the audience to believe it was a mock trial. As a result, (it) demonstrated and depict(ed) actual and apparent unlawful command influence." Applicant then draws a comparison to a previous court case and observes that the Army has several policies addressing unlawful command influence.

(3) After Trial. "On or about 1-24 November 2014, I requested assistance from the office of Secretary of Defense...of violations concerning the general court-martial. However, the correspondence was forwarded to the OTJAG because the case was currently in the post-trial phase and was pending review and action by the general court martial convening authority."

(a) In February 2015, the applicant states that a Congressional rebuttal was warranted to address command influence. The applicant advised his U.S. representative that SFC J__ had said the leadership was recommending trial by court-martial; the brigade commander (COL D__) provided the Congressional representative with misleading information, in that he claimed to have been briefed on all aspects of the investigation. The applicant also mentions that "the prosecution threatened to make me do push-ups inside the courtroom while going through general court-martial. The SJA affirmed the incident and took measure to rectify the situation"; the SJA additionally

stated the incident had not occurred in front of the panel members. The applicant requested a formal U.S House and Senate investigation into the matter.

(b) The applicant then states, "The following exhibits are Presidential, Congressional, and Department of Defense inquiries ranging from March 1, 2015 – present (Exhibit 17 (not provided), 31, 34-35, 37-39, 41). This is why it's so important for institutions to follow their own policies and regulations. The Supreme Court has interpreted this provision to mean that, in general, 'the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court.'"

(c) The applicant argues, at Exhibit 32, there is a Commander's Inquiry, dated 3 May 2012, and conducted by a First Lieutenant (1LT). The document lists appendices in paragraph 3 (Findings); however those documents were never made available to the defense because the SJA insisted they could not be located (referencing the document marked as Exhibit 31, SJA's letter to U.S Representative, dated 26 March 2015).

(d) On the second page of the Commander's Inquiry, the commander lists 12 enclosures: ten DA Forms 2823, one DA 4856 (Developmental Counseling Form) and one DA Form 4846 (likely a typographical error as form number is invalid). The applicant asks the Board to consider that, although the command made at least a part of the 2012 Commander's Inquiry available, it intentionally suppressed access to the remainder of the 2014 AR 15-6 report. The applicant contends this was because the report would have vindicated him. "Again, the military violated its own policy."

(e) The applicant asserts it is beyond a reasonable doubt that his leadership used unlawful command influence and intentionally withheld exculpatory evidence. When a Constitutional error occurs, the conviction must be reversed.

(4) Closing Remarks. The applicant acknowledges documents are missing and he states, "The Supreme Court of the United States has ruled that the denial of evidence was a violation from due process and the defendants right to confrontation." Concerning the Court-Martial Order used to convene his trial, the applicant maintains there is not a single document that confirms the NCO had authorization to sign the order. The applicant asks the Board to grant relief and adds, "I hope the board has more than enough evidence to find unlawful command Influence, due process violation, retaliation/reprisal, and discrimination to ensure fundamental fairness."

3. The applicant provides his correspondence with the Executive Branch, Congressional representatives, and the responses from his command; documents discussing situations requiring legal consultation, the rules for administrative investigations, a description of unlawful command influence, and a description of Uniform Code of Military Justice (UCMJ) Article 107 (False Official Statements); and

documents associated with investigations into allegations of sexual misconduct and the applicant's general court-martial. Further, he submits the following:

a. MFR dated 3 May 2012, subject: This Commander's Inquiry is to Investigate Reports of Potential Sexual Harassment against [applicant]. (Applicant] was Inappropriately Touching and Mistreating SPC (Specialist) C___, J___ Over an Extended Time While on Duty. The MFR was completed by the applicant's commander (1LT S___ D. A___, forward support company within the 94th Brigade Support Battalion). It states the following:

(1) Background. On 30 March 2012, the applicant's unit learned of a possible sexual assault and/or sexual harassment between SPC J___ C___ and [applicant], occurring in the (Dining Facility). On 2 April 2012, SPC J___ C___ filed an equal opportunity (EO) alleging inappropriate actions by [applicant]. There were two major instances between the two Soldiers during March 2012, but the exact dates were unstated; both cases involved inappropriate touching. The commander questioned possible witnesses; there had been no other complaints made against the applicant since his arrival in January 2012.

(2) Findings. After conducting 10 interviews (which included the applicant, SPC J___ C___ and 8 other Soldiers), the commander concluded there was no convincing evidence for a substantiated claim of sexual harassment/conduct; as such, the commander declared the complaint was an unsubstantiated EO complaint.

- Two possible witnesses, SGT (Sergeant) C___ B___ and PV2 (Private/E-2) D___ F___, reported seeing no signs that applicant sexually harassed SPC J___ C___
- Five senior NCOs all stated they had no witnessed any misconduct by the applicant
- SFC E___ J___ was the first supervisor to whom SPC J___ C___ reported the applicant's sexual harassment; SPC C___ then filed an EO complaint
- Prior to SPC J___ C___ meeting with the 1SG F___ and the EO representative, four senior NCOs sat down with SPC J___ C___ and asked if she wanted to file a complaint; SPC J___ C___ responded that she did not, she just wanted the harassment to stop
- After the aforementioned meeting, SFC K___ G___ sat down with the applicant and counseled him about the allegations; applicant denied ever harassing SPC J___ C___ or any other Soldier
- Upon hearing of SPC J___ C___'s allegations against him, applicant prepared a counseling statement for SPC J___ C___ about making slanderous statements; prior to issuing the counseling statement, SFC E___ J___ and SFC K___ G___ suggested it would be best if the applicant held off on the counseling
- It was not until after SPC J___ C___ met with the 1SG and the EO representative that she decided to file an EO complaint

(3) Recommendations. The commander recommended not conducting a formal investigation; instead, he advocated for classes to be conducted about sexual harassment and assault and the possible consequences of filing a false report.

b. DA Form 4856, dated in July 2013, indicating that the applicant gave SGT J__ H__ a potentially adverse counseling for speeding a vehicle while not wearing a seat belt and eye protection; (SGT J__ H__ was one of the female Soldiers who later reported the applicant for sexual harassment/assault). The document indicates that, at the time, both the applicant and SGT J__ H__ were assigned to the 3rd Squadron, 89th Cavalry Regiment.

c. Headquarters, Joint Readiness Training Center and Fort Polk issued Court-Martial Convening Order Number 16, on 27 August 2013. On 27 August 2014, Headquarters, Joint Readiness Training Center and Fort Polk replaced the foregoing order with Court-Martial Order Number 7; only two members (Lieutenant Colonel (LTC) M__ P. C__ and Command Sergeant Major (CSM) B__ S. W__) initially listed on Court-Martial Order Number 16 were also on Court-Martial Order Number 7. These documents are intended to show unlawful command influence based on a change in general court-martial panels after the applicant had already acknowledged trial per Court-Martial Order Number 16.

d. First page of an MFR, dated 2 October 2013 and subject: Sexual Assault [unit within 3rd Squadron, 89th Cavalry Regiment, then deployed to Afghanistan]. The MFR states:

(1) "Victim reported that she was groped on her buttocks, four months ago, on or about April 2013." "As of 27SEP2013 2230hrs, victim reported incident to Squadron SHARP (Sexual Harassment/Assault Response and Prevention)/VA (Victim's Advocate)...On the morning of 28SEP2013, victim reported incident to 1SG (K__ K.) C__, thereby turning this report from RESTRICTED to UNRESTRICTED."

(2) "The alleged offender is her first line supervisory and (this) has been an ongoing issue since April 2013. The victim claims that she has been groped by the offender several times, she has refused his passes and sexual innuendos, on a daily basis, while at Fort Polk, LA."

(3) "At this time, her chain of command has been made aware of the harassment and has put a "No Contact" order on the offender, until further notice. CID (U.S. Army Criminal Investigation Division) has been notified by the Brigade SARC (Sexual Assault Response Coordinator) and will arrive at FOB (Forward Operating Base) W__ in the morning of 29SEPT2013; an internal investigation will be conducted."

e. DA Forms 2823 (Sworn Statement), associated emails, and subsequent court testimony, by SPC C__ M. W__, a Soldier formerly supervised by the applicant, and 1SG K__ K. C__. The applicant offers multiple copies of the documents with different sentences highlighted in support of his contention that the aforementioned individuals made false or inconsistent statements.

4. A review of the applicant's service record shows the following:

a. On 26 July 2000, the applicant enlisted into the Regular Army for 4 years. Upon completion of initial entry training and the award military occupational specialty (MOS) 13F (Fire Support Specialist), orders assigned him to Hawaii, and he arrived at his new unit, on or about 13 February 2001.

b. The applicant continued his service through immediate reenlistments and deployed once to Afghanistan (12 February to 20 December 2004). Effective 1 June 2006, his chain of command promoted him to staff sergeant (SSG)/E-6.

c. On 8 October 2008, based on an early release policy, the Army honorably discharged the applicant. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 8 years, 2 months, and 13 days of active duty service. The report additionally reflects the following:

(1) Items 4a (Grade, Rate, or Rank) and 4b (Pay Grade) reflected SSG/E-6.

(2) Item 12f (Record of Service – Foreign Service) indicates the applicant served outside the continental United States (OCONUS) for 5 years, 10 months, and 6 days.

(3) Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized):

- Bronze Star Medal
- Army Commendation Medal (3rd Award)
- Army Achievement Medal
- Army Good Conduct Medal (2nd Award)
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Korea Defense Service Medal
- NCO Professional Development Ribbon with Numeral "2"
- Army Service Ribbon
- Overseas Service Ribbon with Numeral "3"

d. On 7 January 2009, following a 3-month break in service, the applicant reenlisted into the Regular Army for 3 years and 11 weeks; on his reentry, he held the rank/grade of SSG/E-6. On 12 March 2009, he graduated from MOS training for 92G (Food Service Specialist). Orders subsequently assigned him to Fort Hood, TX (now renamed Fort Cavazos), and he arrived at his duty station, on or about 23 March 2009.

e. On 18 January 2010, the applicant deployed to Afghanistan. On 18 October 2010, while still deployed, the applicant immediately reenlisted for 6 years; as part of his reenlistment, the applicant selected CONUS Station of Choice: Fort Polk.

f. On 12 January 2011, the applicant redeployed to Fort Hood. In or around February/March 2011, the applicant received reassignment instructions for Fort Polk. On or about 24 April 2011, the applicant arrived at his Fort Polk unit, a forward support company within an engineer battalion. On or about 1 November 2011, the applicant transferred to a forward support company within the 94th Brigade Support Battalion, also at Fort Polk.

g. On or about 2 April 2012, based on a document provided by the applicant filed a complaint against the applicant, accusing him of two incidents of inappropriate touching in March 2012. On 3 May 2012, the applicant's commander prepared an MFR recommending no formal charges against the applicant.

h. On or about 1 June 2012, the applicant transferred to the 3rd Squadron, 89th Cavalry Regiment, Fort Polk. Effective 1 September 2012, while attending the Senior Leader Course for his MOS, the Army promoted the applicant to SFC/E-7.

i. The applicant provides the first page of first page of an MFR, dated 2 October 2013 and subject: Sexual Assault [unit within 3rd Squadron, 89th Cavalry Regiment, then deployed to Afghanistan]. The MFR indicates a victim (apparently SGT J__ H__) reported that the applicant groped her in April 2013 and on numerous occasions thereafter; on 28 September 2013, she filed an unrestricted SHARP report. On 30 September 2013, CID opened an investigation.

j. In April 2014, CID completed its investigation and titled the applicant for cruelty and maltreatment of subordinates (Article 93, UCMJ), wrongful sexual contract (Article 120(m), UCMJ), and abusive sexual contact (Article 120(d), UCMJ).

k. On 24 October 2014, a general court-martial convicted the applicant of UCMJ violations.

(1) The command charged the applicant with the following:

(a) Article 93 (Cruelty and Maltreatment of Subordinates), four specifications; the applicant pleaded not guilty; the court found him guilty:

- Between 8 December 2012 and 1 July 2013, the applicant maltreated SPC T__ D__ by pressing his body on her while she performed her cooking duties
- Between 1 March and 1 July 2012, the applicant maltreated SPC J__ C__ by telling SPC J__ C__ that she reminded him of his ex-girlfriend, and by ordering SPC J__ C__ to stand at parade rest while he told her he loved looking into her eyes because they were "so beautiful"
- Between 2 July and 27 September 2013, the applicant maltreated SGT J__ H__ by berating her in front of other Soldiers and telling her she was a "f__ked up Soldier," and that he would "rip the rank off (her) chest"
- Between 27 September and 28 October 2013, the applicant maltreated SPC C__ W__ by calling him "Serena" and telling him he could not "be an officer because they don't allow b__ches" into officer candidate school

(b) Article 120 (Abusive Sexual Contact), one specification; the applicant pleaded not guilty; the court found him guilty: between 1 January and 30 April 2013, the applicant committed sexual contact against SGT J__ H__ by touching her buttocks and causing bodily harm.

(c) Article 120 (Wrongful Sexual Contact), one specification; the applicant pleaded not guilty; the court found him guilty: between 1 and 31 March 2012, the applicant engaged in wrongful sexual contact with SPC J__ C__, without her permission, by touching her breast with his finger.

(d) Article 128 (Assault), two specifications; the applicant pleaded not guilty; the court found him guilty:

- Between 10 December 2012 and 1 July 2013, the applicant assaulted SGT J__ H__ by unlawfully bumping her and rubbing her shoulders
- Between 1 and 31 March 2012, the applicant unlawfully rubbed SPC J__ C__'s back

(e) Article 128 (Assault), as an additional charge; one specification; the applicant pleaded not guilty; the court found him guilty: between 1 March and 30 April 2012, the applicant unlawfully rubbed SPC A__ J__'s back.

(2) The court sentenced the applicant to be reduced to private (PV1)/E-1 and separated with a bad conduct discharge.

(3) On 12 March 2015, the general court-martial convening authority approved the sentence and, except for the bad conduct discharge, ordered its execution. Also, effective 12 March 2015, the command involuntarily placed the applicant on excess leave.

I. On 7 June 2017, the Army separated the applicant with a bad conduct discharge. His DD Form 214 shows the following:

(1) Items 4a (Grade, Rate, or Rank) and 4b (Pay Grade) – PV1/E-1.

(2) Item 12 (Record of Service)

- Item 12a (Date Entered AD (active duty) This Period) – "2000/07/26"
- Item 12c (Net Active Service This Period) – "0016/10/12"
- Item 12f (Foreign Service) – "0007/06/03"
- Item 12i (Effective Date of Pay Grade) – "2014/11/07"

(3) Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized):

- Afghanistan Campaign Medal with three bronze service stars
- Bronze Star Medal
- Army Commendation Medal (3rd Award)
- Army Achievement Medal
- U.S. Navy Commendation Medal (2nd Award)
- Army Good Conduct Medal (4th Award)
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Korea Defense Service Medal
- Army Service Ribbon
- Overseas Service Ribbon with Numeral "4"
- North Atlantic Treaty Organization Medal
- Driver and Mechanic Badge with Mechanic Component Bar
- Certificate of Achievement (6th Award)

(4) Item 18 (Remarks) – "CONTINUOUS HONORABLE ACTIVE SERVICE: 20000726-20101017."

(5) Special Additional Information:

- Item 25 (Separation Authority) – AR 635-200, chapter 3 (Character of Service/Description of Separation)
- Item 26 (Separation (Separation Program Designator (SPD)) Code) – "JJD"
- Item 27 (Reentry (RE) Code) – RE-4
- Item 28 (Narrative Reason for Separation) – Court-Martial (Other)

6. On 19 September 2023, USACID provided redacted copies of the CID Report of Investigation, conducted into the allegations that resulted in the applicant's court-martial conviction; in addition, CID provided redacted copies of a DA Form 4833 (Commander's Report of Disciplinary or Administrative Action) and DA Forms 3975 (Military Police Report). On 20 September 2023, the Army Review Boards Agency forwarded copies of the reports to the applicant for his review and the opportunity to submit a statement or additional evidence on his own behalf; the applicant did not respond.

7. AR 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

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 general court-martial for maltreating Soldiers subject to his orders on three occasions, committing sexual contact on a Soldier by touching her buttocks with his hand, wrongfully engaging in sexual contact by touching a Soldier's breast with his finger without her permission, unlawfully rubbing two Soldier's on their back with his hands. The Board found no error or injustice in the separation proceedings. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. The applicant was given a bad conduct 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.

3. Upon review of the applicant's petition and available military records, the Board determined the applicant completed 16 years, 10 months, and 12 days and was discharged pursuant to a general court-martial with a bad conduct discharge prior to becoming retirement eligible. The Board concluded the applicant did not complete a qualifying period of service for eligibility of retired pay or entitlement to back pay and allowances based on his reduction pursuant to a general court-martial.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	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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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):

1. The applicant's DD Form 214, for the period ending 7 June 2017, inaccurately states the date he entered active duty, in item 12a (Record of Service Date Entered AD (active

duty) This Period), and, as a result, items 12c (Net Active Service This Period) and 12d (Total Prior Active Service) are also wrong.

2. In addition, item 12f (Foreign Service) reflects his foreign service from both his previous DD Form 214, ending 8 October 2008, and the term addressed in his last DD Form 214.

a. The applicant's DD Form 214, ending 8 October 2008, listed 5 years, 10 months, and 6 days of foreign service. His DD Form 214, ending 7 June 2017, shows 7 years, 6 months, and 3 days of foreign service.

b. The applicant's Enlisted Record Brief states the applicant served two tours in Afghanistan:

- 20100118 to 20110112 – equates to 11 months and 26 days
- 20130701 to 20170302 – equates to 8 months and 1 day
- Combining both tours results in 1 year, 7 months, and 26 days

3. On his first DD Form 214, the report listed his NCO Professional Development Ribbon with Numeral "2." During the period of his second report, he completed Senior Leader Course, qualifying him for a Numeral "3."

4. The applicant completed continuous honorable service from 9 January 2009 (the date of his reentry in the Regular Army) until his immediate reenlistment on 18 October 2010.

5. The following corrections should be made:

a. delete current entries in items 12a, 12c, 12d, and 12f and replace with:

- Item 12a – "2009/01/09"
- Item 12c – "0008/04/29"
- Item 12d – "0008/02/13"
- Item 12f – "0001/07/26"

b. Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – add Noncommissioned Officer Professional Development Ribbon with Numeral "3."

c. Item 18 (Remarks) – delete current entry and replace with "CONTINUOUS HONORABLE SERVICE FROM 20090109 UNTIL 20101017."

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides the following:

a. 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.

b. With respect to courts-martial, and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of a Secretary's Department may only extend to actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. The Secretary of the Army shall make such corrections by acting through boards of civilians within the executive part of the Army.

2. Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge). An honorable discharge was a separation with honor. The honorable characterization was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and duty performance.

b. Paragraph 3-7b (General Discharge) stated a general discharge was a separation from the Army under honorable conditions. When authorized, separation authorities issued the Soldier this character of service when their military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-11 (Bad Conduct Discharge) stated separation authorities could issue a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The regulation required the completion of appellate review and that proper authority had ordered the affirmed sentence duly executed.

d. Paragraph 5-3 (Secretarial Plenary Authority). Separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums. Secretarial separation authority is normally exercised on a case-by-case basis but may be used for a specific class or category of Soldiers.

e. Chapter 12 (Retirement for Length of Service).

(1) Soldiers of the RA must be on active duty when they retire. Per Title 10, U.S. Code, section 3914 (Twenty to Thirty Years: Enlisted Members), Soldiers may request retirement when they have completed 20 but less than 30 years of active Federal service in the Armed Forces of the United States.

(2) The Fiscal Year 2012 National Defense Authorization Act, Public Law 112-81, which was enacted 31 December 2011, authorized the military services to offer early retirement to Service members who had completed at least 15 years of active service (known as Temporary Early Retirement Authority (TERA)).

(a) TERA was a discretionary authority and not an entitlement, and the Army elected to use this limited program as part of a comprehensive force management strategy to shape the force.

(b) On 28 February 2018, the Army ended TERA. Service members eligible for TERA had to have submitted a request through their chain of command by 15 January 2018 for early retirement consideration.

3. AR 635-8 (Separation Processing and Documents), in effect at the time, included policies and procedures for DD Form 214 preparation. The regulation indicated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in items 26 (Separation Program Number) and 28 (Narrative Reason for Separation). For item 27 (Reentry (RE) Code), the regulation referred preparers to AR 601-210 (Regular Army and Reserve Component Enlistment Program).

4. AR 635-5-1, in effect at the time, stated Soldiers separated under AR 635-200 and as a result of a punitive discharge were to receive an SPD of "JJD" and have, "Court-Marial (Other)" entered in item 28 of their DD Form 214.

5. AR 601-210, in effect at the time, prescribed policies and procedures for the enlisting prospective and former Soldiers.

a. Table 3-1 (U.S. Army RE Codes) showed the following:

- RE-1 – Fully qualified for immediate reenlistment
- RE-3 – Not eligible for reenlistment unless waiver consideration was permissible and was granted
- RE-4 – Not eligible for reenlistment. Nonwaivable disqualification

b. Paragraph 4-23 (Nonwaiverable (sic) Disqualifying Separations and Discharges). The regulation identified former Soldiers separated due to a bad conduct discharge as having a nonwaivable disqualification for reentry into the Army.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 on the basis of 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.

7. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions).

(1) When an applicant has suffered reprisal under Title 10, U.S. Code, section 1034 and DODD 7050.6, the ABCMR may recommend to the Secretary of the Army that disciplinary or administrative action be taken against any Army official who committed an act of reprisal against the applicant.

(2) The ABCMR will decide cases on the evidence of record. It is not an investigative body.

b. Paragraph 2-11 (ABCMR Hearings) states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

c. Paragraph 3-1 (Claims/Expenses Authority). The Army, by law, may pay claims for amounts due to applicants as a result of correction of military records.

d. Paragraph 3-2 (Settlement of Claims). The ABCMR will furnish the Defense Finance and Accounting Service (DFAS) copies of decisions potentially affecting monetary entitlement or benefits. The DFAS will treat such decisions as claims for payment by or on behalf of the applicant, settle the claims on the basis of the corrected military record, and compute the amount due, if any. The applicant's acceptance of a settlement fully satisfies the claim concerned.

//NOTHING FOLLOWS//