

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 February 2024

DOCKET NUMBER: AR20230007963

APPLICANT REQUESTS:

- upgrade of his under other than honorable conditions (UOTHC) discharge to honorable
- amend his narrative reason for separation to secretarial authority
- a video/telephonic appearance before the Board

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

- Exhibit A - DD Form 149 (Application for Correction of Military Record)
- Letter from Law Firm
- Notice of Representation and Authorization
- Brief in Support of Military Upgrade
- List of Exhibits
- Exhibit A: Applicant's Application to the Board
- Exhibit B - DD Form 214 (Certificate of Release or Discharge from Active Duty) and DA Form 1059 (Service School Academic Evaluation) Primary Leadership Development Course (PLDC)
- Exhibit C - Self-Authored Statement
- Exhibit D - Separation Packet with Allied Documents
- Exhibit E - Page 2 of DA form 2166-7 (Noncommissioned Officer Evaluation Report) (NCOER)
- Exhibit F - Award Certificate and Airborne Course Certificate
- Exhibit G - Applicant's Concealed Weapons Permit
- Exhibit H - Character Reference Letters
- Exhibit I - Applicant's Resume
- Exhibit J - Photographs
- Exhibit K - Applicant's Biography

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, through counsel, states:

a. He retained the counsel's law firm regarding his military upgrade matter. The applicant authorized the government agencies, representatives, and staff to communicate with and discuss issues relative to his case with the law firm.

b. He is the petitioner in the military matter. He has personal knowledge of the facts set forth in the brief. If called upon as a witness, the applicant could and would testify competently thereto, except for those based upon information and belief, which are so stated.

c. He respectfully requests his military record be modified - the circumstances of the incidents and his support documentation support an upgrade. The applicant received an UOTHC discharge from the U.S. Army on 4 February 2000.

d. The applicant served honorably for 5 years and 2 months before his discharge, notwithstanding a single act of indiscretion. The applicant was an outstanding member and valuable asset to the U.S. Army with unlimited potential.

e. The applicant had one act of indiscretion where he made an uncharacteristically bad decision in trusting that the salesgirl was giving him a special discount. The applicant was discharged from the U.S. Army due to this single act of indiscretion.

f. The applicant was performing his duties with exemplary remarks and had been since entering the U.S. Army. During his time in the Army, he was a cargo specialist for 3 years from 1994 to 1997 and a supply specialist for 2 years from 1998 to 2000.

g. The applicant was young at the time of his enlistment and made an unwise choice in trust the salesgirl at the clothing store on base. The applicant admits he did accept items from the store that he assumed was given to him at a discounted price from the salesgirl who worked at the store. The applicant was not aware of the motives of the salesgirl and had no clue the goods were deemed stolen, at the time of the transaction. The applicant was aware that this is a violation of the Army's zero tolerance policy and would have never accepted the stolen goods had he known, prior to the transaction, that they were stolen.

h. The applicant is remorseful for his involvement in handling stolen goods. He did not realize the severity of the situation until he was home with the stolen merchandise. Being young, the applicant was unsure how to handle the situation. The applicant now realizes his actions were immature and irresponsible and he should have acted

forthright with the stolen merchandise. This resulted in him being called back from the Basic NCO Officer Course (BNCOC) to his unit for an investigation that involved a few other Soldiers.

i. Although the applicant's single act of indiscretion was found to violate Uniform Code of Military Justice (UCMJ) regulations, this single offense should not have been enough to prevent the applicant from obtaining an honorable discharge. The applicant has confessed his mistake and given the opportunity, would have corrected his mistake and continued to serve honorably.

j. Before this incident, he received many awards and positive marks on his record. He has received the Army Good Conduct Medal, National Defense Service Medal, Army Service Ribbon, Marksman Marksmanship Qualification Badge with Rifle Bar, and Parachutist Badge.

k. The applicant's discharge took place over 23 years ago. It is unjust to continue to characterize and punish him for this discharge.

l. The applicant admitted his mistakes and has received full punishment, both by society and by the U.S. Army, through his separation. The applicant has repaid his debts to society by fulfilling the terms of the nonjudicial punishment for his infraction. To this day, the applicant is still living with the consequences of his mistake.

m. The applicant has demonstrated his ability to overcome his mistakes and move forward in a positive light and takes full responsibility for his actions from that incident as the single incident does not illustrate the caliber of Soldier or man the applicant has become. Since his discharge, the applicant wants to continue his career to further his life goals and knowledge.

n. Since the applicant's discharge, he has developed himself as a model citizen of the United States. The applicant has no criminal record, no involvement with drugs, no type of alcohol abuse, or any run-ins with the laws, since his discharge.

o. Had the applicant been allowed to correct his mistake, a strong argument could be made that no punitive discharge would have been issued.

p. The applicant always considered himself to be a career Soldier. To this day, the applicant still loves the U.S. Army.

q. The applicant has grown much since his discharge from the military. He became an ordained minister in 2008 and used his spirituality for helping those in need. He teaches and preaches in hospitals, prisons, and elderly facilities. Throughout his ministries, he has fed the hungry and visited the sick. He has explored several careers

and found one that he and his wife work hand-in-hand. Together they run their small family business called The Seafood Spot. His vast career experience included selling cars, driving trucks, selling real estate, and finally opening a restaurant. The Seafood Spot is still currently owned and operated by the applicant and his wife.

r. The applicant aims to continue spreading the word of God, practicing his faith, and running his family business. He and his wife have a successful family business. With the military upgrade, he could expand his ministry services and family business. He would have access to veteran resources. These resources would help him not only reach but exceed his goals. It would open up venues and locations for him to practice his ministries and do community service as well as receive services.

s. The applicant has a foundational support system in place today that consists of faith, family, friends, and community. His faith is a pillar of support in his life, the community and his family are there by his side. His wife, kids, and grandkids are all there helping and supporting him. He and his wife run the family business. He is actively involved in community service events and in his faith, all these activities give him positive outlets. Upgrading his military discharge status would open doors to more opportunities for him to give and feel supported.

t. The review process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable military member. This is known as the whole-person concept. All available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a military upgrade determination.

u. In consideration of the whole-person concept, it is instructive to not only look at the recommendations of those who have witnessed the applicant's character and work performance first-hand, but also to see what his life is outside the reasons for discharge. The applicant has worked very hard throughout his life. He understands the obligations he subjects himself to. His long-term work ethic and dedication to serving his country are evidence of this.

v. The applicant is originally from Beaufort, South Carolina. He is currently residing in Greenville, South Carolina with his wife of 20 years and his four children. He has three grandchildren. He is an ordained minister. He graduated from Beaufort High School in 1992. He was not sure what he was going to do with his life, after high school, so he decided to work for a couple of years.

w. After working for a couple of years, he made the decision to enlist in the U.S. Army. He enlisted in 1994. He served in the U.S. Army for five and a half years. He had various duty stations such as Fort Carson, Colorado and New Port News, Virginia. He was discharged from the U.S. Army in 2000.

x. After he left the Army, he started a job at Stokes Honda Cars of Beaufort as a car salesman. Stokes employed him for 15 years in various role. His final role was a used car sales manager. He also obtained his insurance license, while working for Stoke Honda. He decided to leave and start his own transport business.

y. The applicant started J-Bird Transport in 2014 and did that for 2 years before deciding h no longer wanted to travel. He and his family moved to Greenville, South Carolina in 2016 and he decided to become a licensed realtor. In 2018, he and his wife decided to open a restaurant called The Seafood Spot, which they still currently own.

z. The reason for discharge against the applicant does not define who is as a person, nor does it accurately represent the strong values he has continuously lived by. As such, there should be no doubt case on the applicant. The aforementioned reason for discharge is not a threat to the U.S. military, nor does the reason reflect negatively on the U.S. Army. Therefore, the applicant respectfully requests his military discharge be upgraded.

aa. Although the applicant is still serving his country the best way possible, he has goals to advance and exceed at his job but cannot do so because of his undesirable discharge. The applicant loves his country and the U.S. Army and wishes to remain close to the Army and veterans who have served. This same respect, motivation, and devotion drive the applicant's request as he wishes to be counted among the U.S. Army's honorably discharged members, which he considers to be an enormous part of his life.

bb. There is no prejudice to the government allowing the applicant to be reevaluated and reconsidered by this honorable Board. In the interest of justice, such a request for reconsideration is appropriate and warranted. The applicant was not given a reasonable opportunity to mitigate or correct his mistake; instead, he was administratively separated.

cc. The applicant respectfully request the Board review his application and grant the applicant an upgrade of his discharge to honorable and an upgrade of his narrative reason for separation to secretarial authority.

3. The applicant provides the following documents:

- a. Exhibit A and B, which is the applicant's DD Form 149 and DD Form 214.
- b. Exhibit C - Self-authored letter, which states:

(1) The events that led to the applicant discharge happened in mid-1999. He was stationed at 10th Special Forces Group in Fort Carson, Colorado.

(2) During his time there, he met a young lady that worked at clothing and sales on base. They went on a couple of dates and the applicant told her he had to leave for BNCO. She said before he left to go by her job and she would give him a friends and family discount.

(3) The applicant went to clothing and sales and picked up the items he needed and went through the line. The girl rang him up for what he thought was a friends and family discount. After he got home, he realized what had been done.

(4) As a young Soldier, he did not know what to do. Shortly after, he went to BNCO in Virginia. After arriving, he was called back to his unit.

(5) When he returned to his unit, he was told he was under investigation for receiving stolen goods. The military police had the girl under investigation, during the time the applicant made his purchase. Other Soldiers were charged in the case also.

(6) The applicant does not remember exactly how much the items totaled, but he believes they were between \$500 and \$800. Although the applicant did not fight the case, he believed he was innocent. He was told he could go to jail if found guilty, so he did not fight this. His commander gave him an UOTHC discharge in lieu of (ILO) court-martial. If he had understood the implication of what an UOTHC was, he would have fought it. These are the unfortunate events that led to his discharge as he remembers them.

c. Exhibit C is the applicant's self-authored statement and separation packet.

d. Exhibit F:

(1) DA Form 4980-18 (The Army Achievement Medal (AAM) Certificate), dated 28 January 1998 shows the applicant received the AAM for exceptionally meritorious service from 4 May 1995 to 13 April 1998.

(2) Airborne Course certificate shows the applicant successfully completed the airborne course on 23 January 1998.

e. Exhibits G (Concealed Carry Permit) and H, which are character reference letters, which state:

(1) From a retired sergeant first class (SFC), dated 26 October 2022, the SFC served with the applicant from 1998 to 2000. They are still close to this day as friends, a mentor and providing spiritual guidance to the SFC as needed. The SFC has always been amazed at the applicant's level of enthusiasm and motivation for life, achievement, friendships, and especially his family. The applicant is one of the most dedicated,

hardworking and innovative person the SFC had the pleasure of working with. The applicant was always willing to go the extra mile to ensure the Soldiers were taken care of. The applicant was in charge of the barracks, served in the unit weapons room, and was responsible for delivery parachutes for airborne operations. The entire letter is available for the Board's consideration.

(2) From a retired Marine, dated 3 November 2022, who has known the applicant for 20 years. Shortly after meeting, the applicant joined the church where the author's family attended. Before long the applicant became a prayer leader, worship leader, and education, and then a minister. The applicant took care of the author's family while the author was on deployment. They raised their children together. The applicant's deeds speak for themselves. He has served God and this country with a great deal of integrity and the author is proud to call him a friend. The entire letter is available for the Board's consideration.

(3) From a friend who has known the applicant for over 20 years and has been church members as well as ministers in the same church. The author has always known the applicant to be an ambitious and highly motivated person. Over the years, the author and applicant have volunteered together in ministry particularly ministering monthly at a correctional facility. The author has known the applicant to be a devoted husband, father, and grandfather but more affectionately a good man. The entire letter is available for the Board's consideration.

f. Exhibit I - Applicant's resume, which shows his profile, education, work history, skills, entrepreneurial experiences, and volunteer experiences. The entire resume is available for the Board's consideration.

g. Exhibit J – Photos, presumably of the applicant/applicant's family and home.

h. Exhibit K - Applicant's biography, which is available for the Board's consideration.

4. The applicant's service record contains the following documents:

a. DD Forms 4 (Enlistment/Reenlistment Document Armed Forces of the United States), enlisted in the Army on 28 June 1994 and entered active duty on 10 November 1994 with reenlistments on 16 July 1997 and 15 September 1999.

b. DA Form 1059, dated 26 June 1998, which shows the applicant achieved course standards at PLDC.

c. DA Form 2166-7 covering the period of August 1998 through July 1999 shows the applicant received excellence ratings in competence and responsibility and accountability and received success ratings in physical fitness and military bearing,

leadership, and training. The applicant's senior rater stated select immediately for BNCOC and promote immediately.

d. DA Form 1059, dated 23 November 1999, shows the applicant was in attendance at BNCOC and was administratively relieved from the course due to unit recall.

e. DD Form 458 (Charge Sheet), dated 10 January 2000, shows the applicant's commander preferred a charge of conspiring with L- D- J- to commit an offense under the UCMJ, larceny of clothing, military insignia, field gear, and similar items of a value of about \$700 and a charge of larceny of clothing, military insignia, field gear, and other similar items of a value of about \$700. The allied papers supporting the charges are also available for the Board's consideration.

f. On 11 January 2000, the applicant voluntarily requested discharge in lieu of trial by court-martial. The applicant acknowledged he was making the request of his own free will and had not been subjected to coercion. He had been advised of the implications attached to his request. By submitting the request, he acknowledged he understood the elements of the offenses and was guilty of the charges against him or of a lesser included offense. Under no circumstances did the applicant desire further rehabilitation, for he had no desire to perform further military service. The applicant had been afforded the opportunity to consult with appointed counsel for consultation. He understood if his discharge was accepted he may be discharged UOTHC and the effects of that type of discharge. The applicant did not submit statements in his own behalf.

g. The applicant's chain of command recommended the request be approved and an UOTHC discharge. On 20 January 2000, the separation approval authority approved the applicant's request for discharge in lieu of trial by court-martial and directed he be issued and UOTHC discharge.

h. On 4 February 2000, the applicant was discharged accordingly. He had completed 5 years, 2 months, and 25 days of active service. He received an UOTHC discharge, with a separation code of KFS, and a reentry code of RE-4. The narrative reason for separation reflects "In Lieu of Trial by Court-Martial." He was awarded or authorized the:

- Army Good Conduct Medal
- National Defense Service Medal
- Army Service Ribbon
- Marksman Marksmanship Badge with Rifle Bar
- Parachutist Badge



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 applicant's contentions, the military record, regulatory guidance, and the published DoD guidance for liberal consideration of discharge upgrade requests were carefully considered.
2. Other than the corrections addressed in the Administrative Note below, the Board noted the applicant's contention that he was young at the time of his misconduct; however, based on a preponderance of the evidence, the Board determined the characterization of service and narrative reason for separation the applicant received was not in error or unjust.
3. The applicant's request for a video/telephonic appearance was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a video/telephonic appearance is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
█	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in the Administrative Note below, the Board found 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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█ of the  
Army Board for Correction of Military Records in this case.

ADMINISTRATIVE NOTE:

The applicant's records contain sufficient evidence to support corrections not shown on his DD Form 214. His DD Form 214, for the period ending 4 February 2000, will be administratively corrected without Board action to show the Army Achievement Medal, dated 28 January 1998 by Permanent Order Number 28-5.

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. AR 15–185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR will decide cases based on the evidence of record. It is not an investigative agency.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. AR 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

a. 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.

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 separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to AD.

d. A discharge UOTHC is an administrative separation from the Service under conditions other than honorable. It may be issued in lieu of trial by court martial.

e. Chapter 5 establishes policy and prescribes procedures for separating members for Secretarial authority convenience of the government. 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.

f. A Soldier who requests discharge as prescribed in chapter 10 may be discharged under other than honorable conditions if he/she has been afforded the opportunity (not less than 72 hours) to consult with a consulting counsel.

(1) The Soldier must certify in writing that he/she understands that he/she may receive a discharge under other than honorable conditions.

(2) The Soldier must understand the adverse nature and possible consequences of such a discharge.

(3) The Soldier must personally sign a request for discharge. A conditional request is not permitted.

(4) The consulting counsel will sign as a witness, indicating that he/she is a commissioned officer of The Judge Advocate General's Corps. A Soldier may waive consultation with a consulting counsel. Counsel will prepare a statement to this effect that will be attached to the file; the Soldier will state that the right to counsel has been waived.

g. A Soldier who has committed an offense or offenses, the punishment for which under the UCMJ and the Manual for Courts-Martial includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial.

4. AR 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities, reasons for separating Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows code KFS is used for discharge In Lieu of Trial by Court-Martial.

5. AR 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

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.

//NOTHING FOLLOWS//