

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 February 2025

DOCKET NUMBER: AR20230011508

APPLICANT REQUESTS: reconsideration of his previous request to upgrade his bad conduct discharge to general under honorable conditions.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
Applicant's reconsideration request letter

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR2003097743, on 22 July 2004.

2. The applicant states he has been a proud husband and a good father to his 10 children. His focal point and highest goal is to be better than he was the day before; his foremost passion in life is to be the best husband and father he can be.

a. The applicant notes he has been steadily employed since his adverse separation from the Army, and he has worked for his current employer for the last 17 years. In addition, he has actively mentored the youth in his church and has not had any negative encounters with law enforcement.

b. The applicant acknowledges there are consequences for one's actions, and he admits he lacked good judgment when he was 21. "As I am currently 53, it is my belief, in my heart of heart, I have suffered sufficiently with the embarrassment of my actions and the consequences in which followed...Having learned a valuable life lesson, in which I apply to my life every day."

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

a. On 2 August 1988, the applicant enlisted into the Regular Army for 4 years; he was 18 years old. Upon completion of initial entry and airborne training and, following the award of military occupational specialty 11B (Infantryman), orders assigned him to

Fort Bragg, NC (now renamed Fort Liberty). He arrived at his new unit, on 8 December 1988.

b. In or around April/May 1990, reassignment orders transferred him to Panama, and he arrived at his duty assignment, on 28 June 1990. Effective 1 October 1990, his leadership promoted him to specialist (SPC)/E-4.

c. On 2 April 1991, U.S. Army Criminal Investigation Command (CID) opened an investigation against the applicant after a dependent wife (Mrs. [REDACTED]) claimed an unknown male had committed indecent acts upon her. In a subsequent CID interview, Mrs. [REDACTED] acknowledged the "unknown male" was the applicant.

(1) During further re-interviews with Mrs. [REDACTED] she told CID that a friend had introduced the applicant to her, and that she had invited the applicant to her quarters. After Mrs. [REDACTED] had signed her sworn statement, she added that she had a previous encounter with the applicant.

(2) While initially denying the allegations, the applicant ultimately admitted to the conduct of which he was accused.

(3) On 29 May 1991, CID coordinated with the Staff Judge Advocate's (SJA) office. The SJA opined that CID should cite the applicant for the least serious of the alleged offenses (i.e., indecent acts), and this was because Mrs. [REDACTED] actions could have been interpreted by the applicant as an invitation. The trial counsel in the SJA's office added that he saw "no prosecutive merit" in the case.

d. On or about 17 June 1991, the applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for wrongfully committing an indecent act on Mrs. [REDACTED]. The imposing commander's punishment included reduction to private (PV1)/E-1.

e. On 31 July 1991, a general court-martial convicted the applicant of UCMJ violations.

(1) The applicant's command had charged the applicant with the following:

- Article 120 (Rape) – between 4 and 15 June 1991, the applicant raped a woman who was not his wife; the applicant pleaded not guilty, but pleaded guilty instead to Article 134 (General Article – Indecent Acts with Another); the court found him guilty of rape
- Article 134 (General Article – Adultery) – on 17 June 1991, the applicant had sexual intercourse with a woman who was not his wife; the applicant pleaded guilty and the court found him guilty

(2) The court sentenced the applicant to 5-years' confinement, forfeiture of all pay and allowances and a dishonorable discharge; the court immediately remanded the applicant to confinement.

(3) On 30 September 1991, the general court-martial convening authority (GCMCA) took action on the applicant's case. After considering matters submitted by the applicant, the GCMCA directed the charge of rape (Article 120, UCMJ) be changed to indecent assault (Article 134, UCMJ). Additionally, he approved only so much of the sentence as included the forfeiture of all pay and allowances, 30-months' confinement, and a bad conduct discharge.

f. On or about 13 November 1991, orders reassigned the applicant to the U.S. Army Correctional Holding Detachment at Fort Leavenworth, KS. On 15 June 1992, the U.S. Army Court of Military Review affirmed the findings and sentence in the applicant's case.

g. On 14 July 1992, Correctional Holding Detachment Orders announced the applicant's 3 August 1992 release from confinement after being granted a "Commandant's Parole." On 14 January 1993, the U.S. Court of Military Appeals affirmed the U.S. Army Court of Military Review's earlier decision.

h. On 4 June 1993, the Army separated the applicant with a bad conduct discharge. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 2 years, 11 months, and 29 days of active service. The report additionally reflected the following:

(1) Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized): National Defense Service Medal, Army Service Ribbon, Overseas Service Ribbon, Expert Infantryman Badge, and Parachutist Badge.

(2) Special Additional Information:

- Item 24 (Character of Service) – Bad Conduct
- Item 25 (Separation Authority) – Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 3-10 (Dishonorable Discharge) (sic)
- Item 26 (Separation Code (Separation Program Designator (SPD)) – "JJD"
- Item 27 (Reentry Code) – RE-4
- Item 28 (Narrative Reason for Separation) – "As a Result of Court-Martial – Other"

i. On 7 October 2003, the applicant petitioned the ABCMR.

(1) The applicant argued the inaccurate charge of indecent assault had caused him "tremendous difficulties in the employment process," and he pointed out that both his NJP and the CID ROI showed he had committed an "indecent act." He requested an upgraded character of service and asked the Board to correct the language used to describe what he had done.

(2) The Board denied the applicant's requests; the Board noted the "indecent acts" identified by the applicant occurred in March 1991, while the "indecent assault" (for which a general court-martial had convicted the applicant) took place in June 1991. After evaluating all available evidence, the Board did not find a sufficient basis to grant relief.

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 rape and adultery. The Board majority found no error or injustice in the separation proceedings and concluded that based on the egregiousness of the misconduct, the characterization of service the applicant received upon separation was appropriate. The Board minority determined some of the acts were consensual and therefore granted relief to upgrade the applicant's discharge from bad conduct to under honorable conditions (General).

2. The applicant was given a bad conduct discharge pursuant to an approved sentence of a 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
■	■	:	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 amendment of the ABCMR decision rendered in Docket Number AR2003097743, on 22 July 2004.

6/6/2025

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CHAIRPERSON

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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):

Item 25 (Separation Authority) on the applicant's DD Form 214, ending 4 June 1993, incorrectly identifies paragraph 3-10 (Dishonorable Discharge) in AR 635-200 as the basis for his separation; the correct cite is paragraph 3-11 (Bad Conduct Discharge). Delete the current entry in item 25 and replace with "AR 635-200, para 3-11."

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), states, 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 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7b (General Discharge). A general discharge was a separation from the Army under honorable conditions. When authorized, separation authorities could issue a general discharge to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

b. Paragraph 3-11 (Bad Conduct Discharge). A Soldier received a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate authority must have completed the review process, and the affirmed sentence ordered duly executed.

c. Section II (Secretarial Authority), chapter 5 (Separation for the Convenience of the Government) stated the separation of Soldiers was the prerogative of the Secretary of the Army. Except as otherwise delegated, such separations only occurred by the Secretary's authority, and were to be based on a determination that the separation was in the best interests of the Army.

3. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation.

a. The regulation stated 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 item 28 (Narrative Reason for Separation).

b. For item 27 (RE Code), the regulation referred preparers to the regulations governing enlistment/reenlistment.

4. AR 635-5-1, in effect at the time, stated Soldiers separated with a bad conduct discharge received an SPD of "JJD"; the associated narrative reason for separation was "As a Result of Court-Martial, Other."

5. AR 601-210 (Regular Army and Army Reserve Enlistment Program), in effect at the time, covered eligibility criteria, policies, and procedures for the Active Army and RC enlistment program. Table 3-6 (Armed Forces RE Codes, RA (Regular Army) RE Codes) included the following list of the RE codes:

- RE-1 – for Soldiers who completed their term of active service and were considered qualified to reenter the U.S. Army
- RE-3 – applied to Soldiers who were not considered fully qualified for reentry or continuous service at time of separation, but the disqualification was waivable
- RE-4 – pertained to Soldiers with a nonwaivable disqualification

6. The SPD/RE Code Cross Reference Table, in effect at the time, provided instructions for determining the RE code for Active Army Soldiers. This cross reference table showed the SPD code and a corresponding RE code. The SPD code of "JJD had a corresponding RE code of "4" when the Soldier received a bad conduct discharge.

7. 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.

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

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

//NOTHING FOLLOWS//