

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 August 2024

DOCKET NUMBER: AR20230013319

APPLICANT REQUESTS: upgrade of his dishonorable discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored
- ESC__ Letter
- Acceptance Letter
- Schedule
- Certificates (eight)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 after being released he has continued to improve himself by finishing an Information Technology (IT) program certifying himself in network security. He has also been blessed with an excellent job working on computers as well. He has been taking care of his family and doing his best to improve in everyday life. This upgrade will give him a better chance at helping to take care of his family and assisting his oldest in her journey through college.
3. The applicant enlisted in the Regular Army on 3 February 1995. His military occupational specialty was 13D (Field Artillery Automation).
4. He reenlisted on 4 August 1997, 4 September 2002, 4 December 2003, and again on 2 February 2005.
5. The applicant served in Germany on two occasions. He served in Iraq on four occasions and in Afghanistan from 30 November 2012 to 13 June 2013.

6. The applicant was honorably discharged on 4 February 2008 to accept commission or warrant in the Army. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 13 years and 2 days of active service this period. His awards include the:

- Joint Service Commendation Medal (JSCM)
- Army Commendation Medal (ARCOM) (3rd award)
- Army Achievement Medal (AAM) (11th award)
- Joint Meritorious Unit Award (JMU)
- Army Good Conduct Medal (GCM) (3rd award)
- National Defense Service Medal (NSDM)
- Armed Forces Expeditionary Medal (AFEM)
- Global War on Terrorism Expeditionary (GWOTE) Medal
- Global War on Terrorism Service Medal (GWOTSM)
- Armed Forces Service Medal (AFSM)
- Iraq Campaign Medal (ICM) (3rd)
- Noncommissioned Officer Professional Development Ribbon (NCOPDR) (2nd award))
- Army Service Ribbon (ASR)
- Overseas Service Ribbon (OSR)
- North Atlantic Treaty Organization (NATO) Medal
- Combat Action Badge (CAB)

7. The applicant was appointed as a U.S. Army Reserve Warrant Officer on 5 February 2008. His area of concentration was 131A (Field Artillery Targeting Technician).

8. U.S. Army Human Resources Command (USAHRC) letter, dated 15 January 2010 shows the applicant's appointment as a warrant officer in a Reserve Component is vacated.

9. The applicant served in Afghanistan from 30 November 2012 to 13 June 2013.

10. Before a general court martial on 24 March 2016, at Fort Hood, TX, the applicant was found guilty of violations of the Uniform Code of Military Justice (UCMJ) for:

- committing a sexual act upon a child who had attained the age of 12 years but had not attained the age of 16 years, by penetrating the vulva of TE__ with his tongue and finger, on divers occasions between on or about 28 June 2012 and 31 August 2012
- committing a sexual act upon a child who had attained the age of 12 years but had not attained the age of 16 years, by penetrating the vulva of TE__ with his

penis, on divers occasions between on or about 28 June 2012 and 31 August 2012

- commit a lewd act upon TE__ a child who had not attained the age of 16 years to wit: intentionally exposing his genitalia to TE__ via webcam between on or about 1 December 2012 and 15 December 2012
- wrongfully endeavor to have an adulterous relationship with a military dependent child under the age of 16 years by communicating with the child via text message, webcam, and telephonic communications, between on or about 1 September 2012 and on or about 15 October 2013
- wrongfully have sexual intercourse with TE__ a female not his wife between on or about 7 June 2012 and 1 September 2012

11. The court sentenced him to be reprimanded, confined for 4 years, and to be dismissed from the service. The sentence was approved on 10 February 2017, and except for the part of the sentence extending to dismissal will be executed.

12. General Court Martial Order Number 8, dated 15 June 2020, issued by Headquarters, Department of the Army, Washington, D.C. shows the offenses of which the applicant was convicted, the sentence, and the action dated 10 February 2017.

a. On 28 December 2018, the U.S. Army Court of Criminal Appeals, affirmed the findings of guilt and the sentence was approved by the convening authority. The conviction became final on 6 April 2020, when the U.S. Court of Appeals affirmed the decision of the U.S. Army Court of Criminal Court of Appeals.

b. Secretarial action pursuant to Article 57 of the UCMJ, as affirmed by the U.S. Army Court of Criminal Appeals is approved and the dismissal will be executed.

13. A memorandum issued by USAHRC, subject: Documented Sex Related Offense for [the applicant] directed the filing in the "Performance-Disciplinary" folder of the Army Military Human Resource Record of the applicant. He received adverse administrative action as a result of the offense(s), and he was given notice and opportunity to respond. Request the applicant's records be uploaded with the assignment consideration code of "L3-Documented Sex-Related Offense (DSRO)" in the appropriate HR system.

14. The applicant was dismissed or discharged on 1 June 2020. His DD Form 214 shows he was discharged under the provisions of Army Regulation (AR) 600-8-24 (Officer Transfers and Discharges), as a result of court-martial (other) with Separation Code JJD. His service was characterized as dishonorable. He completed 8 years, 3 months, and 28 days of net active service. He lost time from 24 March 2016 to 22 March 2020. He was awarded the:

- Meritorious Service Medal

- JSCM
- ARCOM (5th award)
- AAM (11th award)
- JMU
- GCM (4th award)
- NSDM (2nd award)
- AFEM
- GWOTEM
- GWOTSM
- AFSM
- ICM with 3 campaign stars
- NCOPDR (2nd award)
- ASR
- OSR (5th award)
- NATO Medal
- CAB

15. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

16. The applicant provides:

a. A character letter form ESC__ that attests to the applicant's sense of duty. ESC__ states he was present during the events of the applicant's separation and believes that he was swept up in an aggressive climate geared toward producing conviction numbers to serve as evidence of the military taking care of a real and serious issue without the need of elected civilian intervention. "Sometimes bad things happen to good people." By all professional and personal metric, he found the applicant to be an honorable man and veteran.

b. An acceptance letter, dated 20 April 2020 that shows the applicant's acceptance as an IT student.

c. A Troops to Tech Careers Schedule.

d. Certificates of training and completion of IT courses.

17. The applicant petitioned to have his discharge or dismissal upgraded on 28 December 2021 (AR20220004517). On 8 November 2023, the Army Review Boards Agency (ARBA) notified him that his request must be re-directed to the ABCMR for consideration.

18. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, 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.

19. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination 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 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 committed sexual acts and sexual contact upon a child who had attained the age of 12 years but not the age of 16 years, having an adulterous relationship with a military dependent child under the age of 16 years by communicating with the child via text message, webcam, or telephonic communications, and wrongfully engaging in sexual intercourse with a female not your wife. The Board found no error or injustice in the separation proceedings. The Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. The applicant was given a dishonorable 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:

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.

REFERENCES:

1. Title 10, USC, 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 600-8-24 provides for officer transfers from active duty to the Reserve component and discharge functions for all officers on active duty for 30 days or more.

a. Paragraph 1-22 provides, in pertinent part, that an officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearly for reasons that do not involve acts of misconduct.

b. Paragraph 1-22 provides, in pertinent part, that an officer will normally receive a general discharge when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Additionally, paragraph 1-22 provides, in pertinent part, that a discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. An officer will normally receive a discharge under other than honorable conditions when they resign for the good of the service, are dropped from the rolls of the Army, or are involuntarily separated due to misconduct, moral or professional dereliction, or for the final revocation of a security clearance as a result of an act or acts of misconduct, including misconduct for which punishment was imposed.

d. Chapter 4 (Eliminations), states an officer is permitted to serve in the Army because of the special trust and confidence the President and the nation have placed in the officer's patriotism, valor, fidelity, and competence. An officer is expected to display responsibility commensurate to this special trust and confidence and to act with the highest integrity at all times. However, an officer who will not or cannot maintain those standards will be separated.

e. Paragraph 4-2b (Reason for Elimination) states while not all inclusive, when one of the several listed or similar conditions exist, elimination action may be or will be initiated for misconduct, moral or professional dereliction, or in the interests of national security; acts of personal misconduct, conduct unbecoming an officer, or conduct or actions that result in the loss of a professional status.

f. Paragraph 4-5 (Separation date) states an officer approved for involuntary separation by the Secretary of the Army or his designee, or whose request for

resignation or discharge in lieu of elimination is approved for misconduct, moral, or professional dereliction, or in the interest of national security will be separated accordingly.

3. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, 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. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records (BCM/NR) on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, Boards 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//