

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 September 2024

DOCKET NUMBER: AR20240002355

APPLICANT REQUESTS: an upgrade of his bad conduct discharge (BCD) to honorable.

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

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (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, in effect, he was on an assignment, and it was his first time being alone and having tasks that he never performed, without any checks and balances in place. He admits he committed the offense; however, he did not receive any financial gain from his offense, and he did make restitution prior to his incarceration.

a. His time from 21 September 1993 to 14 October 2002 was a time where he learned and achieved three Army Good Conduct Medals, an Army Commendation Medal, four Army Achievement Medals, a Southwest Asia Service Medal with Bronze Star, and three overseas assignments. Being a Soldier was and still is the best part of himself.

b. He states, "yes he made a mistake" and has relived this while being incarcerated. His lapse in judgment caused him a battle of mental pain and anguish. He does feel his punishment was outside the scope of his offense and states this was the only trouble he was ever involved in. He is an active member of society, a grandfather, and he would love to hold his head up while telling his grandchildren of his time served in the United States Army. He thanks the Board for their time and consideration.

3. The applicant enlisted in the Regular Army on 21 September 1993 for a 4-year period. He extended his enlistment for a period of 3 months on 12 April 1996 in order to

change his permanent station to an overseas assignment. He also reenlisted on 1 October 1997, 15 October 1999, and again on 3 July 2001, for a 4-year period.

4. He was awarded the military occupational specialty of 92Y (Unit Supply Specialist) and the highest rank he attained was specialist/E-4.

5. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice; however, the relevant DD Form 458 (Charge Sheet) is not available for review.

6. Special Court Martial Order Number 24, issued by Headquarters, I Corps and Fort Lewis, Fort Lewis, WA on 16 June 2005 shows:

a. He was found guilty of the following charges:

- being derelict in the performance of duties by failing to pay the Recruiting Operations Officer official cell phone bills between on or about 9 January 2003 and 21 May 2004, which was his duty to do so
- failing to pay debt for cell phones and cell phone service in the sum of \$10,825.72 to NEXTEL P.I.
- pretending to NEXTEL P.I. that he was authorized to obtain cell phone services for the U.S. Army Reserve Officers' Training Corps under false pretenses and obtained services in the value of \$10,825.72 for cell phone services

b. He was sentenced to reduction to the grade of private/E-1, confinement for 140 days, and a BCD, which was adjudged on 17 September 2004.

c. The sentence was approved, and the record of trial was forwarded to the U.S. Court of Criminal Appeals for appellate review.

7. The appellate review was affirmed on 11 August 2006, the specification date in charge I was changed to 27 February 2003.

8. Special Court-Martial Order Number 25, issued by Headquarters, U.S. Army Field Artillery Center and Fort Sill, on 8 February 2007, shows the sentence was finally affirmed, the provisions of Article 71(c) had been complied with, and the sentence of BCD was ordered to be duly executed.

9. The applicant was discharged on 29 June 2007, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 3, by reason of court-martial, in the grade of E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his service was characterized as bad conduct. He

was credited with 13 years, 6 months, and 4 days of net active service, with lost time from 17 September 2007 to 21 December 2007. He was awarded or authorized the following decorations, medals, badges, citations, and campaign ribbons:

- Army Commendation Medal
- Army Achievement Medal
- Army Good Conduct Medal
- Southwest Asia Service Medal w/Bronze Service Star
- Southwest Asia Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Multinational Force and Observers Medal

10. 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.

11. Regulatory guidance provides a Soldier will receive a BCD pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

12. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

#### BOARD DISCUSSION:

The Board carefully considered the applicant's request, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and other than his own statement the applicant provided no evidence of post-service achievements, and he did not provide letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust. The Board concurs with the corrections described in the Administrative Note(s) below.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
█	█	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected as shown in Administrative Note(s) below.
2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any relief in excess of that described above.

3/6/2025

X

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

ADMINISTRATIVE NOTE(S): The applicant's DD Form 214 is missing required entries. Correct the DD Form 214 by adding the following to block 18 (Remarks):  
 "CONTINUOUS HONORABLE SERVICE FROM 19930921 TO 20010702//MEMBER HAS COMPLETED FIRST FULL TERM OF SERVICE."

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. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, set forth the basic authority for the separation of enlisted personnel.
  - a. Chapter 3 provided that an enlisted person would be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed.
  - b. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.
  - 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.
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. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NR) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

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//