

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 October 2024

DOCKET NUMBER: AR20240002487

APPLICANT REQUESTS: upgrade of his bad conduct discharge (BCD), and restoration of his rank/grade to sergeant first class (SFC)/E-7.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 throughout his military career he conducted himself in a professional manner with high standards and led by example. He advanced through the ranks, was promoted ahead of most of his peers with outstanding evaluations and received training certificates and awards. He trained his Soldiers to be better than him.

a. He takes full responsibility for his actions. His wife being unfaithful in their marriage was something he could not overcome, and it led him to becoming a person he could not recognize. He has since apologized to her, and they have moved on with separate lives.

b. His military career was impeccable, and his records show he was one of the best Soldiers. He is applying for Department of Veterans Affairs (VA) benefits and his current characterization of service is a statutory bar to benefits.

3. On 8 July 1981, the applicant enlisted in the Regular Army for a period of 3 years in the rank/grade of private (PV1)/E-1. He was promoted to specialist four/E-4 on 1 April 1983, and to specialist five/E-5 effective 1 May 1984 with a date of rank (DOR) of 3 April 1984.

4. On 5 April 1984, the applicant reenlisted for a period of 6 years under the overseas area of choice reenlistment option for assignment to Germany.
5. On 27 June 1989, he extended his current term of enlistment for 3 months in order to meet the service remaining requirement for promotion to staff sergeant (SSG)/E-6.
6. He was promoted to SSG effective 1 June 1989 with a date of rank of 1 July 1989.
7. On 27 October 1989, the applicant reenlisted for a period of 6 years.
8. On 2 November 1994, he extended his current term of enlistment for 11 months in order to meet the service remaining requirement for reassignment on a permanent change of station to the continental U.S.
9. He was promoted to SFC on 1 December 1995.
10. On 3 April 1996, the applicant reenlisted for a period of 6 years.
11. The applicant's service record is void of the complete facts and circumstances surrounding his trial by General Court-Martial (GCM), to include the DD Form 458 (Charge Sheet) depicting the offenses he committed in violation of the Uniform Code of Military Justice.
12. GCM Order Number 96, issued by Headquarters, U.S. Armor Center and Fort Knox, Fort Knox, KY on 29 April 1998 shows in the GCM case of the applicant, the sentence to reduction to PV1/E-1, forfeiture of \$500.00 pay per month for 12 months, confinement for 12 months, and a BCD, adjudged on 3 December 1996, as promulgated in GCM Order Number 2, U.S. Army Missile Command, Redstone Arsenal, AL 35898, dated 6 May 1997, had been finally affirmed. The accused was credited with 83 days of confinement against the sentence to confinement. That portion of the sentence pertaining to confinement had been served. Article 71(c) having been complied with; the BCD discharge was ordered to be executed.
13. Orders and the applicant's DD Form 214 show he was discharged on 17 June 1998 under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 3, Section IV, as a result of court-martial. His service was characterized as bad conduct. His Separation code was "JJD," and his Reentry code was "4." He was credited with 16 years, 1 month, and 29 days of net active service. He had lost time due to confinement from 11 September 1996 to 18 June 1997. He had continuous honorable active service from 8 July 1981 to 2 April 1996. The applicant was awarded or authorized the:
 - Army Commendation Medal (4th award)

- Army Achievement Medal (2nd award)
- Army Good Conduct Medal (4th award)
- National Defense Service Medal
- Noncommissioned Officers Professional Development Ribbon (Advance level)
- Army Service Ribbon
- Overseas Service Ribbon (3rd award)
- Expert Marksmanship Qualification Badge with M16 Rifle Bar
- Driver and Mechanic Badge with Wheeled Driver Bar

14. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, 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.

15. Army Regulation 635-200 provides that a Soldier would be given a BCD pursuant only to an approved sentence of a general or special court-martial and that the appellate review must be completed, and the affirmed sentence ordered duly executed.

16. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. The Board reviewed the applicant's petition and available military records. However, the facts and circumstances surrounding the applicant's BCD discharge were not present in the records. The Board recognized that the applicant accepted responsibility for his actions and expressed remorse in his application, demonstrating an understanding that his conduct did not reflect the values of all Soldiers. Despite this acknowledgment, the applicant did not provide post-service achievements or character letters of support for the Board to weigh in a clemency determination. Given its authority, the ABCMR is only empowered to alter the severity of the court-martial sentence and only in cases where clemency is deemed appropriate.

2. Additionally, the Board acknowledged the applicant's periods of honorable service and multiple promotions throughout his 16 years of service. However, after thorough review, the Board found insufficient evidence to support the applicant's request for restoration of rank/grade to sergeant first class (SFC)/E-7. Furthermore, the Board determined that the absence of facts and circumstances surrounding the applicant's misconduct and discharge provides no substantial in-service mitigating factors. Based on the preponderance of evidence, the Board denied relief.

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 correction of the records of the individual concerned.

6/20/2025

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.

REFERENCES:

1. Title 10, U.S. Code, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Title 10, U.S. Code, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Court-martial convictions stand as adjudged or modified by appeal through the judicial process, 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.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR, prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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. It is not an investigative body.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge was separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate.

b. 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.

c. A discharge under other than honorable conditions is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, homosexual conduct, security reasons, or in lieu of trial by court martial in the following circumstances.

(1) An under other than honorable conditions discharge will be directed only by a commander exercising general court-martial authority, a general officer in command who has a judge advocate or legal advisor available to his/her command, higher authority, or the commander exercising special court-martial convening authority over the Soldier who submitted a request for discharge in lieu of court-martial (see chapter 10) when delegated authority to approve such requests.

(2) When the reason for separation is based upon one or more acts or omissions that constitutes a significant departure from the conduct expected of Soldiers of the Army. Examples of factors that may be considered include the following:

- Use of force or violence to produce bodily injury or death
- Abuse of a position of trust
- Disregard by a superior of customary superior-subordinate relationships
- Acts or omissions that endanger the security of the United States or the health and welfare of other Soldiers of the Army
- Deliberate acts or omissions that seriously endanger the health and safety of other persons

d. A BCD will be given to a Soldier pursuant only to an approved sentence of a general or special court-martial. The appellate review had to have been completed and the affirmed sentence then ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing staff judge advocate.

5. 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, 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//