

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 January 2025

DOCKET NUMBER: AR20240003964

APPLICANT REQUESTS:

- Reconsideration for an upgrade of his bad conduct discharge to general under honorable conditions
- (new) remove claimed debt

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

DD Form 149 (Application for Correction of Military Record)

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 AR20150002322 on 20 October 2015.
2. The applicant states he is financially struggling, which is why he made removal of debt a top priority. He was initially recruited while in drug court [sic], where he was provided with the option of participating in the Alcohol Substance Abuse Program (ASAP) should the need arise. Unfortunately, after six months of successful training, he was transferred and unfortunately experienced a relapse, at which point he declined admission to ASAP. He was incarcerated and during his time in prison, he was given daily opiates.
3. The applicant did not provide new documentary evidence, nor that of the debts mentioned on his application.
4. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 30 March 2005.
 - b. Headquarters, U.S. Army Air Defense Artillery Center and Fort Bliss, Fort Bliss, Texas 79916-6816, General Court-Martial Order Number 8, dated 29 March 2007, reflects the following:

Charge I. Article 112. Plea: Not Guilty. Finding: Not Guilty

Specification 1: Plea: Not Guilty. Finding: Not Guilty.
Specification 2: Plea: None Entered. Finding: Dismissed.
Specification 3: Plea: Not Guilty. Finding: Not Guilty.
Specification 4: Plea: Not Guilty. Finding: Dismissed.
Specification 5: Plea: Not Guilty. Finding: Not Guilty.
Specification 6: Plea: None Entered. Finding: Dismissed.

Charge II. Article 80. Plea: Not Guilty. Finding: Guilty

Specification: Between on or about 1 February 2006 and on or about 1 March 2006, did attempt to wrongfully distribute some amount of Oxycodone and/or Percocet, Schedule II controlled substances, to SPC [REDACTED]
Plea: Not Guilty. Finding: Guilty.

Charge III. Article 121. Plea: Not Guilty. Finding: Guilty

Specification 1: Between on or about 17 February 2006 and on or about 24 February 2006, did, steal a checkbook, an ATM/Debit card, and private funds, of a value of over \$500.00, the property of [REDACTED] and/Wells Fargo Bank.
Plea: Not Guilty. Finding: Guilty, except the words and figures, "a checkbook, an ATM/credit card:, and the word, "over", and the figure "\$500.00", and substituting for the figure "\$500.00", the figure "\$400.00". Of the excepted words, Not Guilty. Of the substituted figure, Guilty.

Specification 2: On or about 20 February 2006, did, steal a purse containing cash money and various credit and identification cards, of a value of about \$200.00, the property of Mrs. [REDACTED] Plea: Guilty. Finding: Guilty.

Specification 3: On or about 21 February 2006, did, steal a DVD player, military property, of a value of about \$54.00, the property of the U.S. Government
Plea: Not Guilty. Finding: Guilty, except the words, "of a value of about \$54.00", and substituting therefore the words, "of some value". Of the excepted words, Not Guilty. Of the substituted words, Guilty.

Specification 4: Plea: Not Guilty. Finding: Dismissed.

Charge IV. Article 130. Plea: Not Guilty. Finding: Guilty

Specification: On or about 21 February 2006, did, unlawfully enter a store, the property of U.S. Government, with intent to commit a criminal offense, to wit: larceny, therein. Plea: Not Guilty. Finding: Guilty.

Sentence: Sentence was adjudged on 2 February 2006: To be discharged from the service with a bad-conduct discharge, to be confined for three years, to forfeit all pay and allowances, and to be reduced to private/E-1.

Action: The sentence is approved and, except for the bad-conduct discharge, will be executed. The accused will be credited with 205 days of confinement against the sentence to confinement.

c. U.S. Army Court of Criminal Appeals Notice of Court-Martial Order Correction, dated 17 August 2007, states, "General Cour-Martial Order Number 8, Headquarters, U.S. Army Air Defense Artillery Center and Fort Bliss, Fort Bliss, Texas 79916-6816, dated 29 March 2007, is corrected as follows:

- TO reflect the correct Plea in Specification 2 of Charge III as "Not Guilty."
- TO reflect in the Sentencing paragraph, the correct adjudged date as "8 September 2006"

d. Headquarters, U.S. Army Air Defense Artillery Center and Fort Bliss, Fort Bliss, Texas 79916-6816, General Court-Martial Order Number 30, dated 31 January 2008, shows the sentence to reduction to the grade of Private E1, forfeiture of all pay and allowances, confinement for 3 years, and a Bad-Conduct Discharge, adjudged on 8 September 2006, as promulgated in Special Court-Martial Order Number 8, Headquarters, U.S. Army Air Defense Artillery Center and Fort Bliss, Fort Bliss, Texas 79916-6816, dated 29 March 2007, as corrected by U.S. Army Court of Criminal Appeals Notice of Court-Martial Order Correction, dated 17 August 2007, has been finally affirmed. The accused was credited with 205 days of confinement against the sentence to confinement. That portion of the sentence extending to confinement has been served. Article 71(c) having been complied with, the Bad-Conduct discharge will be executed.

e. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 7 April 2008, under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 3, court-martial (other), with a character of service of bad conduct. He completed 1 year, 5 months, and 8 days of net active service this period. It also shows the following:

- Item 4a (Grade, Rate or Rank): PV1
- Item 12f (Record of Service, Foreign Service): 0000 00 00
- Item 12h (Effective Date of Pay Grade): 2006 09 22
- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): National Defense Service Medal, Army Service Ribbon

- Item 18 (Remarks): DD Form 214 Administratively reissued on 31 October 2015 per ABCMR Proceedings AR20150002322
- Item 29 (Dates of Time Lost During this Period): Under 10 USC 972: 8 September 2006 to 7 April 2008

5. Email correspondence between DFAS Cleveland representative and Command Management Branch representative, dated 21 November 2024, which states that there are no documents on record related to the individual.
6. AR 635-200 states, a member will be given a bad conduct discharge 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.
7. In reaching its determination, the Board can consider the applicant's petition and his 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 violations of the Uniform Code of Military Justice. The Board found no error or injustice in the separation proceedings. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.
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.
3. The applicant's request for removal of claimed debt was considered; however, the Board was unable to determine the type, amount, or general nature of the debt to which the applicant was referring. Therefore, the Board denied relief.

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 amendment of the ABCMR decisions rendered in Docket Number AR20150002322 on 20 October 2015.

5/12/2025



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. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel, as a result of court-martial.
 - a. Paragraph 3-7a provides that 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.
 - b. Paragraph 3-7b provides that 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.
 - c. Paragraph 3-10 states that a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general court-martial. The appellate review must be completed and the affirmed sentence ordered duly executed.
2. 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/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. 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 based on 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. 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//