

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 June 2025

DOCKET NUMBER: AR20240004185

APPLICANT REQUESTS: in effect, upgrade of his bad conduct character of service.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 10 January 2024
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 13 January 1993

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 he has had a clean record for over 30 years.
3. A review of the applicant's service record shows the following:
  - a. He enlisted in the Regular Army on 13 June 1984, for a 3-year period. He reenlisted on 30 December 1986, for an additional 4-year period.
  - b. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ); the relevant DD Form 458 (Charge Sheet) is void in his service record.
  - c. Special Court-Martial Order Number 18, dated 24 July 1989 shows he was convicted by a special court-martial for one specification of conspiracy with intent to defraud by burning an automobile on or about 5 February 1989, one specification of willfully and maliciously setting fire to an automobile with the intent to defraud an insurance company on or about 5 February 1989, and one specification of wrongfully and unlawfully subscribing under oath a false statement on or about 6 February 1989. The court sentenced him to confinement for three months and 29 days, reduction to the

grade of private/E-1, forfeiture of \$400.00 pay per month for four months, and a bad conduct discharge. The sentence was adjudged on 24 May 1989. The sentence was approved, and the record of trial was forwarded to the U.S. Court of Military Review for appellate review.

d. On 23 August 1990, the United States Army Court of Military Review affirmed the findings of guilty and the sentence.

e. Special Court-Martial Order Number 2, dated 13 January 1993, shows his sentence was finally affirmed and the bad conduct discharge was ordered to be duly executed.

f. Accordingly, he was discharged on 13 January 1993, in the grade of E-1. His DD Form 214 shows he received a bad conduct character of service. He was credited with 5 years, 12 months, and 2 days of net active service, with time lost from 24 May 1989 to 2 April 1990 and from 11 May 1990 to 13 January 1993.

4. 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:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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 setting fire to an automobile with the intent to defraud an insurance company and making a false statement. 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 not in error or unjust.

2. Upon review of the applicant's service record, the Board determined he served a period of continuous honorable service from 13 June 1984 to 29 December 1986 and his record should reflect that service accordingly.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>
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:	:	:	GRANT FULL RELIEF
:XX	:XX	:XX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 13 January 1993 to show in item 18 (Remarks):

- Soldier Has Completed First Full Term of Service
- Continuous Honorable Service From 840613 Until 861229

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 upgrading his characterization of service.

X //signed//

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 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 (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
  - a. Paragraph 3-7a states that an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 states that a general discharge (GD) 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, section IV, of this chapter, states a soldier will be given a dishonorable 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. Questions concerning the finality of appellate review should be referred to the servicing staff judge advocate.
3. 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.

//NOTHING FOLLOWS//