

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 February 2025

DOCKET NUMBER: AR20240004317

APPLICANT REQUESTS:

- reconsideration of his previous request for an upgrade of his Bad Conduct Discharge (BCD) to an Honorable Discharge
- to appear in person before the Board at his own expense

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Character Reference memorandum
- "Good Soldier Book" (43 pages)

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 AR20140020154 on 28 July 2015.

2. The applicant states his request is based upon clemency. He should be granted the requested relief because there is more to him than one isolated incident. Understanding his mistake has made him become a better person. We should believe that a bad chapter can still create a great story.

a. Since his discharge, he has worked to ensure a stable life for him and his children. He has done well in several jobs and is currently a coach in the Pop Warner football league in the Atlanta, GA, metropolitan region. As a coach, he thrives on kids being student-athletes. This program gives the kids so many opportunities to not only get on-field exposure, but the academic side that can possibly land them grants and scholarships. He is a huge fan of the kids, and it gives him joy to see the positive difference he has made in their lives.

b. Staying out of trouble is not difficult for him. He has much to lose, so he keeps himself focused on the bigger task at hand. He is not a troublemaker, so he ensures to obey all laws. He does not have a history of crimes, which exempts him as a habitual offender. He is also currently enrolled in college and using his Post 9/11 GI Bill to study Business Administration. Prior to his military career, he graduated from Columbus Technical College in Computer Aided Drafting and Design Engineering. He uses his platform to show his kids that anything is possible if you apply yourself. After losing his mother, stepfather, and younger brother, he is now the backbone for his other siblings.

3. On 30 October 2008, the applicant enlisted in the Regular Army in the rank/grade of private first class (PFC)/E-3 for a period of 4 years. Upon completion of training, he was awarded Military Occupational Specialty 92A (Automated Logistical Specialist) and assigned to a unit at Fort Campbell, KY.

4. On 14 March 2012, the applicant reenlisted for a period of 3 years.

5. General Court-Martial Order Number 20, issued by Headquarters, Fort Campbell, Fort Campbell, KY on 5 September 2013 shows the applicant was arraigned at Fort Campbell, KY at a General Court-Martial convened by Commander, Fort Campbell, Fort Campbell, KY.

a. He was found guilty of several charges and specifications in violation of the Uniform Code of Military Justice (UCMJ) for offenses that included:

(1) Maltreating Specialist (SPC)/E-4 D.W., a person subject to his orders, by making crude sexual remarks to her.

(2) Assault consummated by battery for on divers occasions between on or about 15 August 2011 and on or about 1 April 2012, unlawfully touching Sergeant (SGT)/E-5 K.H., to wit: grabbing her buttocks with his hand, and such sexual contact was without legal justification or lawful authorization and without the permission of SGT K.H.

(3) Assault consummated by battery for between on or about 15 February 2012 and on or about 15 March 2012, unlawfully touching SPC D.W., to wit: grabbing her wrist and pulling her arm toward his midsection and such contact was without justification or lawful authorization and without the permission of SPC D.W.

(4) Assault consummated by battery for between on or about 15 February 2012 and on or about 1 April 2012, unlawfully touching SPC D.W., to wit: rubbing her thigh

with his hand and such contact was without justification or lawful authorization and without the permission of SPC D.W.

b. The applicant's sentence consisted of reduction to private (PV1)/E-1; to be confined for 90 days; and to be discharged from the service with a BCD. The sentence was adjudged on 19 March 2013.

c. The sentence was approved and, except for that part of the sentence extending to the BCD ordered to be executed.

6. The applicant's duty status was changed from Present for Duty (PDY) to Confined by Military Authorities (CMA) effective 19 March 2013.

7. On 16 May 2013, the applicant rendered a written statement wherein he declined the opportunity to undergo a separation medical examination.

8. The applicant's duty status was changed from CMA to PDY effective 1 June 2013 upon his release from confinement.

9. Orders and his DD Form 214 show the applicant was discharged in the rank/pay grade of PV1/E-1 on 28 February 2014 under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 3, as a result of "Court-Martial." His service was characterized as "Bad Conduct." He was credited with completion of 5 years, 1 month, and 19 days of net active service. He had lost time due to confinement from 19 March 2013 until 31 May 2013. He completed his first full term of service. He had continuous honorable active service from 30 October 2008 until 13 March 2012.

10. The applicant petitioned the ABCMR for relief. On 29 July 2015, he was informed the Board had considered his application under procedures established by the Secretary of the Army and denied his application.

11. The applicant provides the following documents in support of his petition which are all available in their entirety for the Board's consideration.

a. Chief Warrant Officer Four D.L.J rendered a memorandum wherein he states he served with the applicant and has known him for over 12 years. The applicant was one of his most trusted Soldiers. He depended on him heavily, especially while they were deployed to Afghanistan in 2010. The applicant was an exceptional Soldier and leader. The applicant is one of the most dedicated, hardworking, and innovative people he has

had the pleasure of working with in any capacity. He is also compassionate, kind, and never misses the opportunity to help others. He's the type of person you can count on to keep a cool head in a stressful situation and his positive attitude is contagious. The applicant continues to work closely with the military today as a contractor and supports the mission to support and defend the United States of America. He is also a dedicated father and great role model for his children. For these reasons, he recommends the applicant's BCD be considered for upgrade. He gave our country honorable service during one of the hardest times in our country with the War on Terrorism. He deserves consideration on this matter.

b. The applicant compiled a "Good Soldier Book" containing copies of documentation for his:

- Awards and Certificates
- Military schools
- Civilian education
- Army Physical Fitness Test
- Weapons qualification
- Enlisted Record Brief
- Reenlistment

12. 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.

13. 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, the evidence found within the military record, and published Department of Defense guidance for consideration of discharge upgrade requests, the Board found relief was not warranted.

2. The Board carefully considered the applicant's contentions, his record of service to include deployment, the serious nature of the charges against him, the outcome of the court-martial proceedings and the character of service he was issued upon discharge. The Board considered the statements written on his behalf but found no additional evidence of post-service achievements in support of his request for clemency. The Board did not find, and the applicant did not provide evidence of mitigating factors for the applicant's misconduct. Based on a preponderance of evidence, the Board determined that the applicant's separation was not in error or unjust and there was insufficient evidence to render relief as a matter of liberal consideration or clemency.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

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, 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.
2. 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.
3. 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. 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. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable

discharge when subsequent honest and faithful service over a greater period outweighed disqualifying entries in the Soldier's military record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

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 (UOTHC) 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 bad conduct discharge 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.

e. A dishonorable discharge will be given to a Soldier 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.

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//