

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 December 2024

DOCKET NUMBER: AR20240005004

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge.

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

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

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 a female Soldier was sharing the same dwelling. She left her post without properly relief. She came over to his apartment willingly and had sexual intercourse with him. Another officer then came looking for her. She finally went back to her post. She told her supervisor sergeant that she had been sexually assaulted. The very next day he was taken into custody and given a lie detector test. In a self-authored statement, the applicant states:

a. He is struggling from several health conditions such as high blood pressure and diabetes type 2 as well as some mental health issues, which include the following depression and suicidal thoughts.

b. Joining the U.S. Army changed his life from growing up in poverty to become educated and a commission officer meant everything to him. He has been living with this nightmare for over 40+ years that is why he is asking the board to review his situation and change his status.

c. He was the only person that was charged with the crime and sentenced. At the time of his court hearing there was no evidence to prove that he committed the crime,

no witness was present, no rape kit or medical exam was presented. The only evidence that was used against him was an allegation from a person and a lie detector test that does not prove anything.

d. He and Ms. [REDACTED] were in a committed relationship. On that day she left her post and abandoned her duties so in order to protect herself she came up with this story. It was no way he could have done this to her because on that day Ms. [REDACTED] was in full military uniform which included a fully loaded weapon.

e. He is asking this board to reconsider his type of separation as well as change his character of service from under other than honorable conditions.

3. The applicant was commissioned as a Reserve Officer of the United States on 8 May 1983.

4. Orders A-06-006168, ordered him to active duty with temporary duty enroute to attend officer basic course with a report date of 1 July 1984, and a follow-on assignment to Germany with a report date of 5 November 1984.

5. On 13 September 1985, he received a letter of reprimand from his company commander for his lack of professionalism, dependability and good military decorum from 23 August to 25 August 1985. Specifically, as officer in charge of the C Company element of the 44th Signal Battalion post training exercise at Coleman Barracks, he violated Article 86 of the Uniform Code of Military Justice by leaving the site from about 1600, 23 August until the afternoon of 25 August without the permission of his commander. Furthermore, he did not leave precise instruction with the non-commissioned officer in charge. It was his commander's intent to file a copy of this correspondence in his unit file until he departs the unit.

6. On 4 November 1985, his commander recommended that he not be promoted to first lieutenant (1LT). His chain of command recommended the applicant be retained on active duty for 6 months in order that he may successfully demonstrate, by his performance, that he is qualified for promotion to 1LT. The applicant read and understood why he was not to be promoted on 1 January 1985 [sic].

7. On 11 December 1985, the recommendation that he is not promoted to 1LT was approved. In accordance with paragraph 3-5, AR 624-100 (Promotions of Officers on Active Duty), command directed that the applicant be retained on active duty for a period of 6 months beyond his promotion eligibility date so that his qualifications for promotion may be reevaluated.

8. On 23 January 1986, his commander did not recommend him for promotion stating the applicant had not performed up to his explicitly stated standards. In fact, his

performance has deteriorated. He had not demonstrated that he is qualified to be promoted to 1LT and should be denied promotion. The next higher commander recommended approval.

9. On 29 August 1986, before a general court-martial he was found guilty of conduct unbecoming an officer by committing sodomy with Private/E-1 [REDACTED] in the presence of 1LT [REDACTED] and by having intercourse with Private/E-1 K.S.S. in the presence of 1LT [REDACTED] on 4 April 1986. The court sentenced him to forfeiture of all pay and allowances, confinement for forty-five (45) days and a dismissal from the service.

10. On 30 September 1986, the convening authority approved the adjudged sentence and, except for the dismissal, will be executed.

11. On 3 October 1986, he was released from active duty pending completion of appellate review. His DD Form 214 shows he completed 2 years and 2 months of active service. It also shows in:

- Item 24 (Character of Service): Under Other Than Honorable Conditions
- Item 25 (Separation Authority): No regulatory authority
- Item 26 (Separation Code): PJD
- Item 27 (Reenlistment Code): NA
- Item 28 (Narrative Reason for Separation): Dismissal as a result of Court-Martial
- Item 29 (Date of Time Lost During this Period): 860925 - 861003

12. On 20 March 1987, his petition for grant of review of the decision of the U.S. Army Court of Military Review was denied.

13. On 7 May 1987, the Assistant Secretary of the Army (Manpower and Reserve Affairs) approved the sentence as affirmed by the U.S. Army Court of Military Review and ordered the dismissal to be executed.

14. General Court-Martial Order Number 33, Headquarters, Department of the Army, Washington, D.C. dated 6 July 1987, states the applicant ceases to be an officer of the United States Army at midnight, 6 July 1987.

15. He did not qualify to have his case considered by the Army Discharge Review Board because his conviction was by a general court-martial.

16. By regulation, AR 600-8-24 (Officer Transfers and Discharges) prescribes policies and procedures governing transfer and discharge of officer personnel. Paragraph 5-17 of this regulation states that an officer convicted and sentenced to a dismissal as a result of general court-martial proceedings will be processed pending appellate review of such proceedings.

17. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, United States Code, section 1552, the authority under which this Board acts, the Army Board for Correction of Military Records 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.

18. 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 serious misconduct. 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 dismissed under other than honorable conditions 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.

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.

3/25/2025

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 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) 600-8-24 (Officer Transfers and Discharges) prescribes policies and procedures governing transfer and discharge of officer personnel. Paragraph 5-17 of this regulation states that an officer convicted and sentenced to a dismissal as a result of general court-martial proceedings will be processed pending appellate review of such proceedings.

a. Paragraph 1-22a, provides that when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearance under DODD 5200.2-R and AR 380-67 for reasons that do not involve acts of misconduct, for an officer. When the separation is based solely on preservice activities, substandard performance of duty, or final revocation of a security clearance under DODD 5200.2-R and AR 380-67 for reasons that do not involve acts of misconduct, it will be Honorable.

b. Paragraph 1-22b, provides that a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to an officer whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

3. 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.

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/NRs) regarding equity, injustice, or clemency determinations.

a. 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.

b. 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. 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//