

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 January 2025

DOCKET NUMBER: AR20240005052

APPLICANT REQUESTS: reconsideration of his previous request for 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)
- Self-authored letter
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 AR20090018887 on 3 December 2009.

2. The applicant states he enlisted in the U.S. Army in 1987. It was a great experience. He as able to go places and see things he probably would have never seen. He would like to thank the U.S. Army for this experience. He made a mistake that he truly regrets. He truly enjoyed his time in the service and wishes he could have retired but he is the cause of that not happening. He served his country during wartime in the Gulf War. He would serve again if possible. There are not documents to submit on his behalf to show anything otherwise about the mistake that he made. He has been out of the service for over 30 years and not a day goes by that he has not regret the dumb mistake that he made. He does not know if there is anything that he can do to right this wrong that he did or not. If there is he is willing to do it.

3. The applicant enlisted in the Regular Army on 13 August 1987. He extended his initial enlistment three times on DA Form 1695 (Oath of Extension of Enlistment):

- 21 January 1988, for six months to complete an overseas tour with dependents
- 22 May 1990, for thirteen months to meet service remaining requirements (SRR)
- 30 April 1991, for five months SRR for permanent change of station to continental United States

4. He served in Southwest Asia from 16 December 1990 – 31 March 1991, in support of Desert Shield/Desert Storm.
5. On 22 October 1991, a Criminal Investigative Division Report of Investigation (Final) shows the date and time reported as 12 July 1991, 0900 hours:
  - a. Synopsis: Private First Class (PFC) D.A.M. reported that the applicant raped her on 17 September 1990. Investigation failed to reveal sufficient evidence to substantiate the offense occurred as alleged.
  - b. Basic for investigation: First Lieutenant J.S.R., reported during a unit investigation of an adultery offense by M\_\_\_, she alleged she was raped by the applicant in September 1990.
  - c. Staff Judge Advocate Coordination: Special Agent B\_\_\_ coordinated this investigation with Captain Mc\_\_\_, who opined there is insufficient evidence to believe the applicant committed the offense of Rape or Sodomy. Further, there is insufficient evidence to substantiate the offenses occurred as alleged.
6. DD Form 458 (Charge Sheet) shows on 3 January 1992, his command preferred court-martial charges against him for:
  - a. Failure to obey an order and its specification of on divers occasions from about 1 September 1990 to about 18 July 1991, violate a lawful General Regulation, to wit: paragraph 16a, USAREUR Regulation 600-1, dated 30 August 1990, by wrongfully selling rationed merchandise; paragraph 16b, USAREUR Regulation 600-1, dated 30 August 1990, by wrongfully purchasing goods from Sending State sales facilities to produce income; paragraph 16d, USAREUR Regulation 600-1, dated 30 August 1990, by wrongfully purchasing and possessing rationed goods from Sending State sales facilities over reasonable amounts for personal consumption or use; paragraph 16f, USAREUR Regulation, dated 30 August 1990, by wrongfully possessing more than one ration card made out in his name during a ration card period; paragraph 16j, USAREUR Regulation 600-1, dated 30 August 1990, by wrongfully altering or forging a ration card and possessing a ration card he knew was altered or forged; paragraph 16k, USAREUR Regulation, dated 30 August 1990, by wrongfully possessing and using a ration card made out in the name of another person; paragraph 16l, USAREUR Regulation 600-1, dated 30 August 1990, by wrongfully reporting that a ration card has been lost, stolen, or destroyed; paragraph 16m, USAREUR Regulation 600-1, dated 30 August 1990; by wrongfully transferring ration cards to another person; and paragraph 16o, USAREUR Regulation 600-1, dated 30 August 1990, by wrongfully assisting a person not authorized to purchase rationed merchandise to obtain rationed merchandise.

b. General article and its six specifications of:

(1) From on or about 1 July 1990 to about 30 September 1990, wrongfully communicate to Specialist (SPC) W.G.E. a threat to have her detailed for Charge of Quarters duty on weekends if she did not let the said SPC T. use her ration card.

(2) From about 1 September 1990 to about 31 December 1990, wrongfully possess 3 military identification cards, he, the said SPC A.L.T., then well knowing the same to be unauthorized.

(3) From on or about 1 September 1990 to 31 December 1990, wrongfully solicit SPC E.R.M. and PFC D.A.M. to disobey a general regulation, to wit: paragraph 16b, USAREUR Regulation 600-1, by asking them to purchase goods or services from Sending State sales facilities for resale or to produce income; paragraph 16d, USAREUR Regulation 600-1, by asking them to purchase and possess goods from Sending State sales facilities over reasonable amounts for personal consumption or use; paragraph 16f, USAREUR Regulation 600-1, by asking them to possess and use more than one ration card made out in their names during a ration card period; and paragraph 16j, USAREUR Regulation 600-1, by asking them to possess and use a ration card that they knew was forged.

(4) On or about 17 September 1990, wrongfully have sexual intercourse with PFC D.A.M., a married woman not his wife.

(5) On or about 27 August 1991, in a sworn statement (DA Form 2823), wrongfully and unlawfully make under lawful oath false statements in substance as follows: that he never asked SPC E. to buy cigarettes for him; that he didn't sell or give cigarettes to German Nationals not authorized U.S. Tax Free Goods at any time during his tour in Germany; that he had never been in possession of rations cards that were stolen; that he never asked SPC E.R.M. and PFC D.A.M. to buy cigarettes for him; and that he never asked to borrow PFC D.A.M.'s typewriter to type his name on ration cards, which statements he did not then believe to be true.

(6) From on or about 1 July 1990 to about 30 September 1990, wrongfully offer to SPC W.G.E., exemption from weekend Charge of Quarters duty, with intent to influence the action of the said SPC W.G.E. with respect to an official matter in which the United States was and is interested, to wit: the applicant using her ration card to obtain rationed merchandise.

7. On 20 December 1991, he was afforded the opportunity to consult with appointed counsel. He requested discharge for the good of the service. He voluntarily requested discharge under the provisions of AR 635-200 (Personnel Separations - Enlisted Personnel), chapter 10. He understood that he may request discharge for the good of

the service because of charges which have been preferred against him under the Uniform Code of Military Justice, at least one of which authorize the imposition of a bad-conduct or dishonorable discharge. He acknowledged that he understood the elements of the offenses charged and was guilty of at least one charge against him which authorizes the imposition of a bad-conduct or dishonorable discharge.

- He understood he may be discharged under conditions other than honorable (OTH) and furnished an Other Than Honorable Discharge Certificate
- He understood the possible effects of an OTH discharge and as a result he will be deprived of many or all Army benefits, that he may be ineligible for many or all benefits administered by the Veteran's Administration, and that he may be deprived of his rights and benefits as a veteran under both Federal and State law
- He also understood that he may expect to encounter substantial prejudice in civilian life because of an OTH discharge

8. His immediate commander recommended a trial by General Court-Martial. The remaining chain of command recommended trial by a Special Court-Martial empowered to adjudge a bad conduct discharge.

9. On 22 January 1992, the separation authority approved the applicant's request for discharge under the provisions of AR 635-200, chapter 10, and directed the issuance of an under other than honorable conditions discharge and reduction to the lowest enlisted grade.

10. Accordingly, on 29 January 1992, he was discharged under other than honorable conditions. His DD Form 214 shows he completed 4 years, 5 months, and 17 days net active service this period. He was awarded or authorized: Army Service Ribbon, National Defense Service Medal, Overseas Service Ribbon, Army Achievement Medal, Southwest Asia Service Medal with bronze service star, Expert Marksmanship Qualification Badge (Grenade). It also shows:

- Item 25: AR 635-200, chapter 10
- Item 26: KFS
- Item 27: 3
- Item 28: For the Good of the Service – In Lieu of Court-Martial

11. There is no indication he petitioned the Army Discharge Review Board for a review of his discharge within that board's 15-year statute of limitations.

12. On 3 December 2009, in ABCMR Docket Number AR20090018887, the Board considered his application but determined the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board

determined that the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned. The Board denied his request.

13. By regulation, (AR 635-200) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

14. In reaching its determination, the Board can consider the applicant's petition and her service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. One potential outcome discussed was to grant partial relief by awarding continuous honorable service for the honorable period of service completed prior to the misconduct leading to the applicant's separation. However, based upon the serious and criminal nature of the misconduct leading to the applicant's separation, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

//SIGNED//  
X

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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 (AR) 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

a. Paragraph 3-7a (1) states an honorable discharge is a separation with honor. 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b (1) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their

period of enlistment, military service obligation, or period for which called or ordered to active duty.

d. Paragraph 5-3 states, in pertinent part, that the separation of enlisted personnel is the prerogative of the Secretary of the Army and will be affected only by his authority. Except as delegated by these regulations or by special Department of the Army directives, the discharge or release of any enlisted member of the Army for the convenience of the Government will be at the Secretary's discretion and with the type of discharge as determined by him. Such authority may be given either in an individual case or by an order applicable to all cases specified in such orders.

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//