

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 October 2024

DOCKET NUMBER: AR20240005628

APPLICANT REQUESTS:

- upgrade his bad conduct discharge to honorable
- personal appearance before the Board via video or telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- Certificate of Ordination
- Letter of Support from [REDACTED]

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 requests his bad conduct discharge be upgraded to general under honorable conditions and a personal appearance before the Board via video or telephonically. The upgrade will assist him to financially be able to care for his family by being able to apply for jobs that are more substantial to better sustain his family. In 2003, he was a young Soldier who made a bad decision which ultimately costed him his career in the Army. He was a Government credit card holder and his supervisor at the time told him to buy things for him and to also purchase things for himself. The supervisor told him that he would approve the transactions. He believed what he was doing was okay because he was swayed by the influence of his supervisor and coupled by a level of immaturity at the time. Since his discharge, he has grown and matured

greatly and had time to reflect on his actions and the negative influence he allowed to have over his behavior. He has become an active part in his community and his church. He has learned the true meaning of dedication, responsibility and integrity. As a deacon, he is in charge of being the example to others in his church and he takes that role seriously.

3. A review of the applicant's service record shows:

- a. On 17 November 1998, the applicant enlisted in the Regular Army and had continuous service through reenlistments.
- b. On 14 November 2002, the applicant accepted non-judicial punishment for:
  - two specifications of failure to be at appointed place of duty
  - two specifications of failure to obey a lawful order
  - making a false statement to a commissioned officer

His punishment included:

- reduction to the grade of specialist/E4 suspended if not vacated before 15 May 2003
- 30-days extra duty
- Oral reprimand
- Oral admonishment

The applicant did not appeal the decision or the punishment.

c. The applicant's DA Form 2166-8 (Noncommissioned Officer (NCO) Evaluation Report) for the period of 1 April 2002 through 31 March 2003 shows the applicant was rated as an Administrative Sergeant. His rater commented his initiative, honesty and responsibility were unbecoming of an NCO, and he had trouble remaining mission oriented and needed to focus more on NCO values of Be, Know, Do. His overall potential for promotion was marginal because he did not always use sound judgement, placed his needs before those of the Army and did not always make the right decisions to accomplish the mission. His senior rater rated his overall performance as poor and overall potential for promotion as fair. He commented the applicant lacked discipline, integrity and fundamental ability to follow orders and not to recommend for promotion.

d. The applicant's DA Form 2166-8 for the period of 1 April 2003 through 31 December 2003 shows the applicant was rated as an Administrative Sergeant. He had the duties of IMPAC Credit Card Holder. His rater rated his overall potential for promotion as among the best. The rater commented he was accountable for his actions and demonstrated natural leadership ability. His senior rater rated his overall

performance as successful and his overall potential for promotion as superior. The senior rater commented the applicant had unlimited potential for positions of greater responsibility.

e. The applicant's DA Form 2166-8 for the period of 1 January 2004 through 31 October 2004 shows the applicant was rated as an Administrative Supervisor. He had the duties of IMPAC Credit Card Holder. His rater rated his overall potential for promotion as among the best. The rater commented he grasped the scope of responsibility and fully integrated himself into the office workflow. His senior rater rated his overall performance as successful and his overall potential for promotion as superior. The senior rater commented the applicant should be placed in positions of increased responsibility and challenge his leadership skills.

f. The applicant's DA Form 2166-8 for the period of 1 November 2004 through 31 May 2005 shows the applicant was rated as a Personnel Administrative Specialist. His rater rated his overall promotion potential as fully capable. The rater commented he demonstrated competency and professionalism in all administrative duties. His senior rater did not meet the minimum qualifications to rate the applicant.

g. The applicant's DA Form 2166-8 for the period of 1 June 2005 through 30 April 2006 shows the applicant was rated as a Personnel Administrative Specialist. His rater rated his overall promotion potential as fully capable. His senior rater rated his overall performance as successful and his overall potential as superior and he should be assigned to challenging positions.

h. On 22 June 2006, the applicant's duty status changed to confined by military authorities effective 12 June 2006 as a result of a court-martial.

i. On 23 August 2006, Special Court-Martial Orders Number 3, issued by Headquarters, U. S. Army Aviation Warfighting Center and Fort Rucker, show the applicant was arraigned and found guilty of the following offenses:

- One specification of theft of money in the value of \$4,900.87 which was the property of the U. S. Government by wrongful use of a government credit card
- One specification of theft of money in the value of \$5,106.42 which was the property of the U. S. Government by wrongful use of a government credit card
- One specification of theft on money in the value of \$458.89 which was the property of the U.S. Government by wrongful use of a government credit card
- One specification of theft on money in the value of \$5,860.00 which was the property of the U.S. Government by wrongful use of a government credit card
- One specification of theft on money in the value of \$603.70 which was the property of the U.S. Government by wrongful use of a government credit card

- One specification of theft on money in the value of \$307.59 which was the property of the U.S. Government by wrongful use of a government credit card
- One specification of theft on money in the value of \$486.53 which was the property of the U.S. Government by wrongful use of a government credit card
- One specification of theft on money in the value of \$611.83 which was the property of the U.S. Government by wrongful use of a government credit card
- One specification of theft on money in the value of \$2,090.45 which was the property of the U.S. Government by wrongful use of a government credit card

The applicant was sentenced to reduction in grade to private / E1, confinement for 8-months, forfeiture of \$1,200.00 per month for 8-months and to be discharged with a bad conduct discharge. The sentence was adjudged on 12 June 2006. The applicant was credited with 20-days of confinement against the sentence confinement. Only so much of the sentence as provides for reduction to the grade of Private/E1, confinement for 8-months, forfeiture of \$854 00 pay per month for 8-months, and to be discharged from the service with a bad conduct discharge is approved and, except the part of the sentence extending to a bad conduct discharge, will be executed. The accused will be credited with 20-days of confinement against the sentence to confinement.

j. On 29 November 2006, the applicant's duty status was changed to present for duty effective 3 December 2006 as he had completed his confinement at Fort Sill, OK.

k. On 23 January 2008, Special Court-Martial Orders Number 10, issued by U. S. Army Field Artillery Center and Fort Sill, show the applicant was sentenced to reduction in grade to private/E1, forfeiture of \$854.00 per month for 8-months and a bad conduct discharge which was adjudged on 12 June 2006 had been finally affirmed. The applicant was credited with 20-days confinement against his sentence of confinement. The portion of the sentence extending to confinement had been served and having been complied with the bad conduct discharge was executed.

l. On 27 March 2008, the applicant was discharged from active duty with a bad conduct discharge for a court-martial. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant completed 8-years, 10-months and 20-days of active service with lost time during the period of 12 June through 2 December 2006.

j. On 8 September 2010, the Army Discharge Review Board denied the applicant's request for the upgrade of character of service. The evidence of record indicates the applicant was adjudged guilty by a court-martial and the sentence was approved by the convening authority. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. Though the applicant had successfully transitioned into civilian life and had many accomplishments, they did not overcome the reason for his discharge and character of service.

## 4. The applicant provides:

- a. Certificate of Ordination shows the applicant was chosen as a Deacon at a Baptist Church.
- b. Letter of support from [REDACTED] who stated he worked with the applicant when he served at Fort Rucker, AL. He was an exceptional Soldier and NCO. He was never derelict in duty at anytime while at Fort Rucker. The applicant's benefits should be restored for his exemplary service to his country prior to his conviction and should be eligible for Veterans Administration benefits.
- c. Letter of support from [REDACTED] who stated she worked with the applicant when he served at Fort Rucker, AL. Though it was not his responsibility, he sponsored her upon her arrival at the installation. He was an outstanding NCO and he performed his duties to the utmost and was always there for Soldiers in need. He went above and beyond his duties to help others. He was one of the best NCOs she had the pleasure of serving with. Whatever the mistakes he made it does not reflect his character or duty as a NCO.
- d. Letter of support from [REDACTED] who stated he has known the applicant for years. They served together on the [REDACTED] since 2010. He as mentored the applicant and has known him to be organized, efficient, extremely competent and would be a tremendous asset to any organization.
- e. Letter of support from [REDACTED] who stated he has known the applicant for several years. He is the deacon at the church. The applicant is recommended for a position because he is dedicated, energetic, positive and conscientious in whatever he undertakes.
- f. Letter of support from [REDACTED] the applicant's spouse who stated she has known the applicant in a variety of capacities for many years. He is her husband, lifeline and support system as well as a business partner and the father of her four children. He is efficient, detail oriented and extremely competent and he often is successful in finishing tasks well before a deadline. He has great communication skills both oral and written. She recommends the applicant for any endeavor me may seek. He deserved a second chance to prove he can be a model representative of the U. S. Army.
- g. Letter of support from [REDACTED] who stated she had known the applicant for 5-years. He demonstrates immense creativity and dedication to any job that he does. He is not only committed in completing his duties but ensuring they are done in the most successful and efficient manner.

**BOARD DISCUSSION:**

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and found the evidence of post-service achievements and letters of support the applicant provided insufficient to support clemency considering the serious nature of the misconduct for which he was tried and convicted by court-martial. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust. The Board concurs with the correction described in the Administrative Note(s) below.

**BOARD VOTE:**

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
			DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Other than the correction addressed in Administrative Note(s) below, the Board determined 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 otherwise insufficient as a basis for correction of the records of the individual concerned.

4/2/2025

X [REDACTED]

CHAIRPERSON  
[REDACTED]

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.

ADMINISTRATIVE NOTE(S): The applicant's DD Form 214 is missing required administrative entries. Correct the DD Form 214 by adding the following to block 18 (Remarks): "Continuous honorable active service from 17 November 1998 to 29 September 2004."

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 (Active Duty Enlisted Administrative Separations), in effect at the time, sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.
  - a. Paragraph 3-7a (Honorable discharge), 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 (General discharge), 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.
- c. Paragraph 3-7c (Under other-than-honorable-conditions discharge), a discharge under other than honorable conditions 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: when the reason for separation is based upon a pattern of behavior that constitutes a significant departure from the conduct expected of Soldiers of the Army. 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.
- d. Paragraph 3-8 (Limitations on characterization), characterization will be determined solely by the Soldier's military record which includes the Soldier's behavior and performance of duty during the current enlistment or period of service to which the separation pertains, plus any extensions prescribed by law or regulation or effected with the consent of the Soldier. Exceptions are provided in this paragraph. In determining the character of service, the following will be used as guidelines: A Soldier is entitled to an honorable characterization of service if limited-use evidence is initially introduced by the Government in the discharge proceedings, and the discharge is based upon those proceedings. The separation authority will consult with the servicing Judge Advocate in cases involving limited use evidence. The following will not be considered in determining the characterization of service: Mental status evaluation or other similar medical evaluation given during the period of service that is being characterized. When the sole basis for separation is a serious offense that resulted in a conviction by a court-martial authorized to impose, but not imposing, a punitive discharge, the soldier's service may not be characterized as under other than honorable conditions unless such characterization is approved by HQDA.
- e. Paragraph 3-10 (Dishonorable discharge), 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.

f. Paragraph 3-11 (Bad conduct discharge), a Soldier 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. Questions concerning the finality of appellate review should be referred to the servicing staff judge advocate.

3. AR 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//