

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 February 2025

DOCKET NUMBER: AR20240006592

APPLICANT REQUESTS:

- upgrade of his Dishonorable Discharge (DD) to an Honorable Discharge
- his narrative reason for separation be amended to reflect "Secretarial Authority"

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Counsel Brief and five Exhibits (24 pages)

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. Through counsel, the applicant provides a brief and five Exhibits. Counsel states, in part, the applicants request is premised on clemency.

a. Counsel provides a list of the awards and decorations earned by the applicant.

b. Counsel provides a synopsis of the charges and specifications for which the applicant was arraigned before a court-martial.

c. Counsel argues that the Secretary of the Army may correct military records when it is "necessary to correct an error or remove an injustice." Army Regulation 15-185 (ABCMR) provides that for relief to be granted, an applicant must demonstrate the existence of an error or injustice that can be remedied effectively by correcting an applicant's military record.

d. Counsel further states, the applicant has worked hard since his discharge to become a valuable and contributing member of society. Additionally, he has the support of fellow Soldiers he served alongside.

e. Additionally, the applicant respectfully requests that this Honorable Board consider potentially exculpatory evidence. Following his discharge, the applicant's accuser made multiple attempts to contact the applicant despite his requests that she not. Additionally, in a message to the applicant, "N.M." admitted to lying to the military about the events that led to the applicant's incarceration and discharge. Id. She states, "Ok I lied ... Hopefully u'll [sic] find a way to forgive me one day."

f. And finally, the repercussions of the applicant's discharge are lifelong. Myriad courts have recognized that Veterans like the applicant are improperly stigmatized and harmed by similar discharges throughout their lives. "Since the vast majority of discharges from the armed forces are honorable, the issuance of any other type of discharge stigmatizes the ex-serviceman. It robs him of his good name. It injures his economic and social potential as a member of the general community."

g. Considering the clemency matters provided herein, the applicant respectfully requests that his discharge be upgraded to Honorable and that his narrative reason for separation be changed to Secretarial Authority. The applicant's accuser has admitted to fabricating the charges that led to his discharge. Surely the years spent incarcerated combined with the fact that he has been stripped of the honor of his outstanding service to his country is punishment enough; it would be manifestly unjust to additionally allow his DD to remain and to haunt and hinder him the rest of his life.

h. Counsel provides the following documents in support of the brief, most of which will be discussed further in this Record of Proceedings:

(1) Exhibit 1 - DD Form 214 (Certificate of Release or Discharge from Active Duty).

(2) Exhibit 2 - Court-Martial related documents.

(3) Exhibit 3 - Character reference from J.O. who states, in part, he served alongside the applicant in the U.S. Army from 2010 to 2012. In all his interactions with the applicant, he has found him to be an individual of unwavering professionalism, exceptional character, and an unshakable commitment to helping others. He possesses a heart of gold and is always ready to extend a helping hand, even if it means giving someone the shirt off his back. His dedication to his colleagues and the mission was unwavering during their time in the Army. One remarkable aspect of the applicant's character is his consistently positive and upbeat demeanor. He has never known the applicant to be in a bad mood or display negativity. His optimistic outlook on life is contagious and serves as a source of inspiration to those around him. While he does not condone any negative actions that the applicant may have been involved in, he

firmly believes that he deserves a chance at redemption. He highly recommends that the applicant's record be expunged, and he be given an opportunity to rebuild his life. He is confident that he will use this chance to demonstrate the same unwavering dedication, professionalism, and good-hearted nature that he has consistently shown throughout their association.

(4) Exhibit 4 - Character reference from C.V. who states, in part, he had the pleasure of serving as the first line supervisor to the applicant. The applicant has always impressed him with his ability to articulate difficult concepts, lead, motivate, and inspire. His character is a direct reflection of his hard work, dedication, and unmeasurable work ethic. He has proven to be a resilient Soldier that truly embodied the Army values. His leadership, intellect, and disciplined presence, sets himself apart both as a Soldier and as a human being. During his time with the applicant, he showed leadership potential out the gate. The applicant volunteered for every detail, lead from the front in regard to physical fitness, and paid attention in classroom settings. The applicant's intellect excelled beyond his Army profession; he tutored Soldiers in the barracks that struggled in college courses. He served as the strength manager and was basically a human calculator. He is certain that the applicant is going to continue to do great things in his future and is beyond deserving of this opportunity at a shot at redemption.

(5) Exhibit 5 - Text messages reportedly exchanged between the applicant and his accuser between on or about 2 July 2022 and 1 December 2022 wherein she admits to lying and expresses hope for the applicant's forgiveness one day.

3. On 19 October 2010, the applicant enlisted in the Regular Army in the rank/grade of private (PV2)/E-2 for a period of 4 years and 24 weeks. Upon completion of training, he was awarded Military Occupational Specialty 42A (Human Resources Specialist) and assigned to a unit in Germany. He was promoted to specialist (SPC)/E-4 on 1 June 2012, his highest rank held. He was reassigned to a unit at Fort Campbell, KY.

4. On 24 April 2014, the applicant reenlisted for a period of 2 years.

5. On 19 February 2015, the applicant reenlisted for a period of 3 years.

6. A DD Form 2707-1 (Department of Defense Result of Trial), dated 4 November 2015 and General Court-Martial Order (GCMO) Number 10, issued by Headquarters, Fort Campbell, Fort Campbell, KY on 20 May 2016 show the applicant was arraigned at Fort Campbell, KY at a General Court-Martial convened by Commander, Fort Campbell, Fort Campbell, KY.

a. He pled guilty and was found guilty of the following charges and specifications in violation of the Uniform Code of Military Justice (UCMJ).

(1) Charge I, Article 128, UCMJ:

Specification 2: Did, at or near Clarksville, TN, on divers occasions, between on or about 29 August 2014 and on or about 30 September 2014, commit an assault upon N.M. by strangling her around the neck with a force likely to produce death or grievous bodily harm, to wit: his hands and arms. Plea: Guilty. Finding: Guilty.

Specification 3: Did, at or near Oak Grove, KY, on divers occasions, between on or about 1 October 2014 and on or about 8 March 2015, commit an assault upon N.M. by strangling her around the neck with a force likely to produce death or grievous bodily harm, to wit: his hands and arms. Plea: Guilty. Finding: Guilty.

Specification 4: Did, at or near Clarksville, TM, on or about 29 August 2014, unlawfully strike N.M. in the face with his hand. Plea: Guilty. Finding: Guilty.

Specification 5: Did, at or near Clarksville, TN, on or about 30 August 2014, unlawfully grab N.M. on the arm with his hand. Plea: Guilty. Finding: Guilty.

Specification 6: Did, at or near Clarksville, TN, between on or about 8 August 2014 and on or about 15 September 2014, unlawfully drag NM by the hair with his hand and unlawfully strike N.M. in the face with his hand. Plea: Guilty. Finding: Guilty.

Specification 9: Did, at or near Oak Grove, KY, on or about 20 February 2015, unlawfully strike N.M. in the face with his hand. Plea: Guilty. Finding: Guilty.

Specification 10: Did, at or near Oak Grove, KY, on divers occasions between on or about 24 February 2015 and on or about 5 March 2015, unlawfully strike N.M. in the head, face, arm, stomach, wrist, forearm and shoulder with his hand. Plea: Guilty. Finding: Guilty.

Specification 11: Did, at or near Columbus, GA, on or about 8 March 2015, unlawfully strike N.M. in the face with his hand. Plea: Guilty. Finding: Guilty.

(2) Charge II, Article 121, UCMJ:

Specification 1: Having received a lawful command from CPT K.J.B, his superior commissioned officer, then known by the accused to be his superior commissioned officer, to not have contact with NM, or words to that effect, did, at or near Fort Campbell, KY on divers occasions between on or about 11 March 2015 and on or about 22 April 2015, willfully disobey the same. Plea: Guilty. Finding: Guilty.

Specification 2: Having received a lawful command from CPT K.J.B, his superior commissioned officer, then known by the accused to be his superior commissioned officer, to not leave the limits of Fort Campbell, KY, or words to that effect, did, at or near Oak Grove, KY, on or about 31 March 2015, willfully disobey the same. Plea: Guilty. Finding: Guilty.

(3) Charge III, Article 134, UCMJ:

Specification 1: Did, at or near Fort Campbell, KY, on or about 30 March 2015, wrongfully communicate to N.M. a threat to kill her by shooting her with a gun, such conduct being of a nature to bring discredit upon the armed forces. Plea: Guilty. Finding: Guilty.

(4) Charge IV, Article 121, UCMJ:

The Specification: Did, at or near Oak Grove, KY, on or about 31 March 2015, steal a suitcase, a passport, clothing, and jewelry, of a value of about \$500.00 or less, the property of N.M. Plea: Guilty. Finding: Guilty.

b. The applicant's sentence consisted of forfeiture of reduction from SPC/E-4 to private (PV1)/E-1; to be confined for 5 years; and to be Dishonorably Discharged from the service. The sentence was adjudged on 4 November 2015.

c. Only so much of the sentence as provided for reduction to PV1/E-1; confinement for 15 months; and a DD was approved and, except for that part of the sentence extending to the DD was ordered to be executed. The applicant was credited with 210 days of confinement against the sentence to confinement.

7. The applicant's duty status was changed from Present for Duty (PDY) to Confined by Military Authorities (CMA) effective 4 November 2015.

8. On 2 February 2016, the applicant rendered a written statement wherein he declined the opportunity to undergo a separation medical examination.

9. The applicant's duty status was changed from CMA to PDY effective 1 May 2016 upon his release from confinement.

10. GCMO Number 58, issued by Headquarters, U.S. Army Fires Center of Excellence and Fort Sill, Fort Sill, OK on 1 May 2017 shows the applicant's sentence adjudged on 4 November 2015 had been finally affirmed. That portion of the sentence extending to confinement had been served and the DD was ordered to be duly executed.

11. Orders and his DD Form 214 show the applicant was discharged in the rank/pay grade of PV1/E-1 on 17 May 2017 under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 3, as a result of "Court-Martial (Other)." He was assigned separation code "JJD" and reentry code "4." His service was characterized as "Dishonorable." He was credited with completion of 5 years, 6 months, and 25 days of net active service. He had lost time due to confinement from 27 April 2015 until 30 April 2016. He had continuous honorable active service from 19 October 2010 until 18 February 2015.

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. Army Regulation 635-200 provides that a Soldier would be given a DD pursuant only to an approved sentence of a general court-martial and that the appellate review must be completed, and the affirmed sentence ordered duly executed.

14. On 9 August 2024, in response to a written request, a member of the Army Criminal Investigation Division (CID), informed an agency staff member that a search of the Army criminal file indexes revealed Military Police Reports pertaining to the applicant.

a. On 19 August 2024, the applicant was provided a copy of the CID response and afforded a 15-day period during which he could provide a response. These documents are available in their entirety for the Board's consideration. In part, they show the applicant was investigated for committing the following offenses which were determined to be founded:

- Failure to operate a motor vehicle in a careful manner on post
- Traffic accident with damage to government property on post
- Violation of Military Protective Order (2 incidents)
- Domestic assault off post (2 incidents)
- Spouse abuse

b. The applicant provided a response, wherein he provided a brief explanation for each of the offenses from his point of view.

15. 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 that relief was not warranted.

2. The Board carefully considered the applicant's contentions, his record of service record, the charges preferred against him, the outcome of the court-martial proceedings, the sentence he received and the character of service he was issued upon discharge. The Board considered his statement regarding his accuser, the letters of reference he provided, the text message, the Military Police Reports pertaining to the applicant and his responses to the CID report. The Board found insufficient evidence of mitigating factors for the misconduct and found the reference letters and his explanation of the ROI offenses insufficient to overcome the serious nature of the multiple offenses for which he was found guilty and insufficient to warrant a clemency determination. Based on a preponderance of evidence, the Board determined that the applicant's separation and character of service were not in error or unjust.

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(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. Title 10, U.S. Code, Section 1552(b), provides, with respect to courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of the Secretary's Department may extend only to actions taken by reviewing authorities under the UCMJ or action on the

sentence of a court-martial for purposes of clemency. The Secretary of the Army shall make such corrections by acting through boards of civilians within the executive part of the Army.

3. 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.

4. 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.

5. 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.

f. Chapter 5, paragraph 5-3 states separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums.

6. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) implements the specific authorities and reasons for separating Soldiers from active duty. It also prescribes when to enter SPD codes on the DD Form 214.

a. Paragraph 2-1 provides that SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of Department of Defense and the Military Services to assist in the collection and analysis of separation data. This analysis may, in turn, influence changes in separation policy. SPD codes are not intended to stigmatize an individual in any manner.

b. Table 2-3 provides the SPDs and narrative reasons for separation that are applicable to enlisted personnel. It shows, in part, SPD JJD is the appropriate code to assign to an enlisted Soldier who is involuntarily separated under the provisions of Army Regulation 635-200, Chapter 3, as a result of trial by court-martial. Additionally, the SPD/Reentry Eligibility (RE) Code Cross Reference Table established RE code "4" as the proper reentry code to assign to Soldiers separated under this authority and for this reason. JFF is the appropriate SPD to assign to enlisted Soldiers who are voluntarily discharged under Secretarial authority.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Service 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//