

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 February 2025

DOCKET NUMBER: AR20240007846

APPLICANT REQUESTS: in effect an upgrade of his dishonorable discharge to general.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- DA Form 1119-1 (United States Army Safety Award)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Criminal Records Check
- Three Character Letters

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 that it was a great honor serving in the United States Army for nearly three years. He has always believed that the United States is the greatest country in the world and would still protect it with his life today.

a. He expresses sincere remorse and apologizes for his past actions. He acknowledges that taking four boxes of dishes from the storage shed was wrong and offers no excuses for his behavior. He is deeply sorry to the United States Army, his company, and his family.

b. For over 35 years, he has lived with a Dishonorable Discharge for this incident. He recognizes that the United States Army deserved better from him and hopes the Board will consider upgrading his discharge. He notes that he was discharged two months before reaching his three-year mark. At the time, he held the rank of Corporal (E-4) and was performing the duties of an E-8 in a Radio Repair Shop. Despite his

circumstances, he remained committed to his supervisory role, successfully passed a brigade inspection with high marks, and received an award for his driving performance.

c. In closing, he reflects on his actions as those of a young man who made a poor decision by taking something that did not belong to him. He respectfully requests that the Board consider his sincere apology and his appeal for an upgraded discharge. He concludes by extending his blessings to the United States of America.

3. The applicant provides:

a. A DD Form 1119-1 dated 1 January 1989, show the applicant received the accident-free driving award.

b. A DD Form 214 dated 5 October 1990.

c. A Local Criminal Records Check dated 18 October 2023, shows the Miami County Sheriff's Office did a local criminal check on the applicant and found no recorded.

d. All three-character reference letters highlight the applicant's exceptional qualities, painting a picture of a friendly, helpful, and devoted individual. He is described as a caring and trustworthy neighbor who always looks out for others, a hardworking and reliable employee who is respected for his integrity and problem-solving skills, and a loyal family man who is deeply dedicated to his loved ones. His ability to connect with people, his strong work ethic, and his willingness to go the extra mile make him an invaluable asset in both his professional and personal life. Whether as a neighbor, colleague, or family member, the applicant consistently demonstrates respect, dependability, and a genuine commitment to those around him.

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

a. He enlisted in the Regular Army on 14 Aug 1986.

b. General Court-Martial Order (GCMO) Number 119, dated 11 September 1989, shows the applicant was found guilty of the following:

- Charge 1 – specification 1, attempt to steal property of Wedgewood Concessionaire of a value of \$17,000. Specification 2, attempt to unlawfully enter a building to commit larceny.
- Charge 2 – conspire with specialist (SPC) C.W.B. and private second class (PV2) D.M.F. to commit housebreaking and larceny.

- Charge 3 – specification 1, steal the property of Wedgewood Concessionaire of a value of \$3,258.00. Specification 2 – wrongfully appropriate government property, of a value of \$4,423.00.
- Charge 4 – unlawfully entered a building, to commit larceny.
- Sentence was adjudged on 22 June 1989. The applicant sentence with a dishonorable discharge, confinement for 45 months, forfeiture of all pay and allowances, and fined \$4,650.00 or further confined for a period of 15 months.

c. GCMO Number 31, dated 12 January 1990, shows the unexecuted portion of the approved sentence against the applicant was adjudged on 22 June 1989, a fine of \$4,650.00 was not paid by 10 December 1989, as promulgated in the GCMO Number 119. Was remitted on 11 September 1989. The Appellate was pending review.

d. GCMO Number 502, dated 24 August 1990, after Article 71(c) was complied with and the sentence was affirmed, ordered the dishonorable discharge executed.

e. Orders number 169-2, dated 18 September 1990, shows the applicant will be discharge on 5 September 1990.

f. On 5 October 1990, he was discharged from active duty with a dishonorable discharge characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 2 years, 10 months, and 2 days of active service with 456 days of lost time. He was assigned separation code JJD and the narrative reason for separation listed as “As a result of Court-Martial,” with reentry code 4. It also shows he was awarded or authorized:

- Army Service Ribbon
- Overseas Service Ribbon
- Expert Marksmanship Qualification Badge with Hand Grenade
- Expert Marksmanship Qualification Badge with Rifle M-16

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

6. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service.

8. 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:

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 discuss was to grant clemency by upgrade the applicant's characterization of service to General, Under Honorable Conditions based upon the demonstrated remorse and the demonstrated growth in the provided character statements. However, based upon the multiple incidents of criminal 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.

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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. 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 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable discharge) 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 the 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) 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 3-7c (Under Other Than Honorable Conditions) states 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, homosexuality, security reasons, or for the good of the service.

d. Paragraph 3-10 (Dishonorable Discharge) states 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.

3. Title 10, U.S. Code, section 1552, provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of 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 correction of a record to reflect actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

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. 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 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.

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//