

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 April 2025

DOCKET NUMBER: AR20240009266

APPLICANT REQUESTS:

- reconsideration of his previous request for upgrade of his bad conduct discharge (BCD)
- a video/telephonic appearance before the Board

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 149 (Application for Correction of Military Record)
- Personal statement (4 pages) addressed below
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- VA Form 21-4138 (Statement in Support of Claim) related to the 4-page statement above

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 AC88-06681 on 9 August 1989.

2. The applicant discusses in his 4-page personal statement which is available in supporting documents for the Board's review. Several topics were as follows:

- His initial training at Fort McClellan, AL resulting in his completion of Military Police training
- First duty station being in Germany and units he was assigned to
- Finding and securing a pistol belt found outside of the dining facility (held until after his 12-hour shift and securing it in his wall locker until after he slept)
- Received a General Court Martial for that incident for theft of a weapon
- Lie detector test that he completed and passed but was not allowed in the Court-Martial

- Post-service jobs he worked and regret he has lived with as a law abiding citizen for the past 38 plus years

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

a. He enlisted in the Regular Army on 11 January 1984.

b. He received non-judicial punishment (NJP) on 1 May 1984, for on or about 29 April 1984, disobeyed a lawful order.

c. He served in Germany from 25 May 1984 – 5 January 1986. While serving in Germany he received NJP on 24 December 1984, for on or about 18 December 1984, disobeyed a lawful order. He was reduced to private/E-2 (suspended 90 days).

d. On 6 January 1986, at Kaiserslautern, Germany, the applicant was found guilty by a general court-martial (GCM) of:

- Charge I (Larceny), and its specification of larceny of U.S. Government property of a value of over \$100.00 on 25 May 1985
- The court sentenced him a BCD, confinement for six months, forfeiture of \$500.00 pay per month for six months, and reduction to the lowest enlisted grade

e. On 24 February 1986, the convening authority approved the sentence and, except for the BCD, ordered the sentence executed.

f. On 18 August 1986, U.S. Army Court of Military Review, on consideration of the entire record, held the findings of guilty and sentence as approved by the convening authority correct in law and fact. Accordingly, those findings of guilty and the sentence were affirmed.

h. GCM Order Number 28, issued on 9 January 1987, shows the appellate review had been finally affirmed; Article 71(c) having been complied with; the BCD will be executed.

i. Accordingly, the applicant was discharged with a BCD on 4 February 1987. His DD Form 214 shows he was discharged in the rank/grade of private/E-1 as a result of court-martial in accordance with Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 3, section IV.

4. In his previous request (AC88-06681) on 9 August 1989, after reviewing the application and all supporting documents, the Board determined failed to submit

sufficient relevant evidence to demonstrate the existence of probable material error or injustice. The application submitted was denied by the ABCMR.

5. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. 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.

2. The ABCMR 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. The Board determined there was insufficient evidence of mitigating circumstances during the applicant's service that would warrant reconsideration of the misconduct resulting in the Bad Conduct Discharge (BCD). The nature of the offense—larceny—constitutes a serious breach of military conduct and discipline. The Board acknowledged the applicant's noteworthy post service accomplishments, serving as the Mayor of Keytesville, MO for 2 years. In addition, holding the role of acting Deputy Warden at Moberly Correctional Center during a four-year tenure with the Missouri Department of Corrections, becoming the third-highest ranking officer. The Board commends the applicant whereas he acted as Assistant Chaplain with the Southern Baptist Disaster Relief, providing humanitarian aid during natural disasters. These contributions reflect positively on the applicant's rehabilitation and community engagement.

3. Despite commendable post-service conduct, the Board concluded that these efforts do not sufficiently outweigh the seriousness of the in-service misconduct. The offense, which led to a court-martial conviction and BCD, undermined the standards expected of military personnel. Based on a preponderance of evidence, the Board finds the character of service at separation was neither in error nor unjust. Therefore, the request for upgrade of discharge and reversal of the prior Board decision is denied without merit.

4. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable

decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 to amend the decision of the ABCMR set forth in Docket Number AC88-06681 on 9 August 1989.


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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) 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

2. AR 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for separation of enlisted personnel.

a. Chapter 3 states a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or a special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

b. 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.

c. 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.

d. 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.

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. 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 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//