

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 April 2025

DOCKET NUMBER: AR20240009267

APPLICANT REQUESTS: an upgrade of his dishonorable discharge as a result of his Court-Martial.

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Self-authored statement, 17 March 2024
- Letters of Recommendation (five)

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 served honorably from 1979 until 1988. On his second enlistment and as a result of bad choices he made, he was court-martialed and was sentenced to 20 years in the U.S. Disciplinary Barracks, at Fort Leavenworth, KS federal prison. While there he received no bad marks and attended college courses and earned an associate's degree in business management. After the completion of his federal sentence, he was sentenced again in civilian court and has spent 16 years and will be released in October 2024. While in the civilian prison, he became a maintenance mechanic, completed anger management courses, parenting classes, and went through a sex offender treatment program. He wanted to ensure he would never commit the actions he did before once he was released.
3. He enlisted in the Regular Army on 20 June 1979. He executed an immediate reenlistment on 23 February 1983 for a period of six years in the rank/grade of specialist/E-4. He was promoted to sergeant/E-5 effective 1 May 1985.
4. General Court-Martial Order Number 66, issued by Headquarters, 1st Infantry Division (Mechanized) and Fort Riley, Fort Riley, KS on 30 November 1988 shows the

applicant, after pleading not guilty to all charges, was convicted of violating the following Articles of the Uniform Code of Military Justice (UCMJ):

a. Charge I: Article 120, specifically for on or about 7 November 1987, did rape R____ J. P____.

b. Charge III: Article 134, specifically for:

(1) Specification 4 (renumbered Specification 1): did on or about 28 May 1987 and 31 July 1987, commit indecent acts upon T____ L. S____ by removing her panties and placing his penis between her legs while rubbing his body and penis against her body.

(2) Specification 6 (renumbered Specification 4): between on or about 28 May 1987 and 31 July 1987 while in the presence of T____ S____, Sa____ S____, and Sh____ S____, wrongfully and willfully expose, in an indecent manner to public view, his penis and buttocks.

(3) Specification 7 (renumbered Specification 5): on or about 1 August 1987 commit indecent acts upon A____ L. S____ by rubbing his penis against her buttocks and between her legs by her vaginal area.

c. His sentenced was adjudged on 16 July 1988 and included reduction to private/E-1, confinement for 25 years, forfeiture of all pay and allowances, and a dishonorable discharge.

d. His sentence was approved and, except for the part of the sentence extending to a dishonorable discharge.

5. His case was twice reviewed by the U.S. Army Court of Military Review, on 30 March 1990 and again on remand on 24 May 1991 that affirmed the findings of guilty and the sentence.

6. U.S. Court of Criminal Appeals affirmed the findings and sentence in the applicant's case on 7 December 1992.

7. General Court-Martial Order Number 190, issued by U.S. Disciplinary Barracks, Fort Leavenworth, KS on 24 March 1993, noted that his sentence had been affirmed and ordered the dishonorable discharge be duly executed.

8. The applicant was discharged on 30 April 1993, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 3-11, as a result of court-martial in the rank/grade of private/E-1. His DD Form 214 shows:

- he completed 9 years and 26 days of net active service
- his character of service as "Dishonorable"
- his separation code as "JJD"

9. He provides five letters of recommendation in applying for jobs which all attest to his excellent ability to work, his cooperation with supervisors, and ability to help others.

10. The Board should consider the applicant's statement 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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for conviction by court-martial for rape and multiple specification of committing indecent acts. The Board found no error or injustice in the separation proceedings. Based on a preponderance of the evidence, the Board concluded that due to the applicant's egregious conduct, the characterization of service the applicant received upon separation was appropriate.

2. The applicant was given a dishonorable discharge pursuant to an approved sentence of a court-martial. The appellate review was completed, and the affirmed sentence was ordered duly executed. All requirements of law and regulation were met with respect to the conduct of the court-martial and the appellate review process, and the rights of the applicant were fully protected.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XX	XX	XX	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. 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.
3. Title 10, U.S. Code, Section 866: Article 66 (Review by Court of Criminal Appeals), directs each Judge Advocate General to establish a Court of Criminal Appeals for the purpose of reviewing court-martial cases.
4. Article 71(c) of the UCMJ stipulates that if a sentence extends to death, dismissal, or dishonorable or bad-conduct discharge and if the right of the accused to appellate review is not waived and an appeal is not withdrawn, that part of the sentence extending to death, dismissal, or a dishonorable or bad-conduct discharge may not be executed until there is final judgment as to the legality of the proceedings. A judgement as to legality of the proceedings is final in such cases when review is completed by a Court of Military Review.
5. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel:
 - a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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.
 - b. 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.
 - c. Chapter 3 provided that an enlisted person would be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial,

after completion of appellate review, and after such affirmed sentence has been ordered duly executed.

6. 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), on 25 July 2018, 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.

//NOTHING FOLLOWS//