

IN THE CASE OF: ██████████

BOARD DATE: 7 August 2025

DOCKET NUMBER: AR20240010670

APPLICANT REQUESTS:

- an upgrade of his characterization of service from bad conduct to honorable
- a personal appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's Legal Brief (7 pages)
- Exhibit 1: DD Form 214 (Certificate of Release or Discharge from Active Duty), for the periods ending on 5 September 1980 and 21 November 1990
- Exhibit 2: Applicant Personal Statement
- Exhibit 3: Letter of Support, ██████████ (Available for the Board to review in the supporting document)
- Exhibit 4: Letter of Support, ██████████ and ██████████ (Available for the Board to review in the supporting document)
- Exhibit 5: Letter of Support, ██████████ (Available for the Board to review in the supporting document)
- Exhibit 6: Letter of Support, ██████████ (Available for the Board to review in the supporting document)
- Exhibit 7: Letter of Support, ██████████ (Available for the Board to review in the supporting document)
- Exhibit 8: Letter of Support, ██████████ (Available for the Board to review in the supporting document)
- Exhibit 9: Letter of Support, ██████████ (Available for the Board to review in the supporting document)
- Exhibit 10: Court-Martial Records, which contains the U.S. Army Criminal Investigation Division's (CID) Report of Investigation and court-martial charges
- Exhibit 11: Applicant's Official Military Personnel File
- Exhibit 12: Service Treatment Records (86 pages) (Available for the Board to review in the supporting documents)

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 in the Army for over a decade and spent more than six years on active duty. He requests that his November 1990 discharge be upgraded to "Honorable" status. He explains in his 3-page statement, which is available for the Board's review in the supporting documents:

- A life of service and fellowship
- Facing consequences head-on and taking accountability
- Making amends and healing with loved ones
- A call for clemency

3. The applicant's counsel states in his 7-page legal brief:

a. The applicant served honorably for 11 years on active and reserve duty prior to the conduct resulting in his discharge by court-martial. He cooperated with CID during the investigation of his conduct, pled guilty to all charges, and engaged in genuine efforts of atonement and rehabilitation. He was a model inmate during his incarceration at Fort Riley and has lived an exemplary post-service life as a very active and respected member of his community. He requests that the Board consider the circumstances of his discharge and grant an upgrade on the basis of clemency so he and his family may continue to heal and move forward.

b. Counsel argues that the applicant's discharge should be upgraded based on clemency, in light of his admission of guilt, acceptance of responsibility, genuine efforts of atonement and rehabilitation, and his post-service dedication to his family and his community. In determining whether to grant relief on the basis of clemency, the Board shall consider that it is consistent with military custom to honor sacrifices and achievements, to punish only to the extent necessary, to rehabilitate to the greatest extent possible, and to favor second chances in situations in which individuals have paid for their misdeeds. Moreover, the Board's relief should weigh character and rehabilitation more heavily than achievement alone. Evidence of clemency can come from outside of the veteran's service record. Additionally, the BCMR should consider evidence including:

- applicant's candor
- post-conviction conduct
- length of time since misconduct

- acceptance of responsibility
- character and reputation of the applicant
- meritorious service in government or other endeavors
- evidence of rehabilitation
- character references
- letters of recommendation

c. Counsel concludes that the applicant committed terrible crimes and has paid dearly for them. Still, he used his own misdeeds as an opportunity to grow as a person. He has been rehabilitated, reconciling with his family and serving the community through his ministry. The Board should look upon the applicant's honorable service, acceptance of responsibility for his actions, and his post service atonement and devotion to service in his community as sufficient grounds for clemency and upgrade his discharge to Honorable.

d. Counsel's complete brief and supporting documents are available for the Board to review.

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

a. He enlisted in the Regular Army on 6 September 1977.

b. He received nonjudicial punishment under Article 15, Uniform Code of Military Justice (UCMJ) on 4 January 1979 for failing to obey a lawful order during the period 7 November 1978 to 16 November 1978, by photographing inside the Tango Communications Facility without authorization from the Commanding Officer. He was reduced to private/E-1.

c. On 5 September 1980, he was honorably released from active duty by reason of completion of required service and transferred to the U.S. Army Reserve (USAR) Control Group (Reinforcement).

d. On 1 October 1980, he was voluntarily relieved from the USAR Control Group (Reinforcement) and assigned to the USAR Ready. On 9 February 1983, he was discharged from the USAR Ready due to his immediate reenlistment.

e. On 9 February 1983, he reenlisted in the USAR in the rank of specialist/E-4. He was honorably discharged on 20 May 1987.

f. He enlisted in the Regular Army on 20 May 1987, for a period of 4 years.

g. On 31 January 1990, at Presidio of San Francisco, CA, the applicant was found guilty by a general court-martial of:

- Charge I, one specification of committing the offense of carnal knowledge with ██████████ a female under the age of 16, who was not his wife, between 15 June 1989 and 3 September 1989
- Charge II, specification 2 of committing indecent acts upon the body of ██████████ a female under the age of 16, not his wife, by fondling and placing his hands on her private parts, with intent to arouse his sexual desires

h. The court sentenced him to a bad conduct discharge, confinement for 13 months, forfeiture of \$400.00 pay per month for 13 months, and reduction to private/E-1. Only so much of the sentence as provided for a bad conduct discharge, confinement for 13 months, and reduction to private/E-1 was approved, and except for the part of the sentence extending to the bad conduct discharge, would be executed.

i. The sentence was approved, and the record of trial was forwarded to the Judge Advocate General of the Army for appellate review.

j. General Court-Martial Order Number 449, issued on 1 August 1990 shows the sentence had been affirmed. The provisions of Article 71(c) had been complied with and the bad conduct discharge would be duly executed.

k. Accordingly, the applicant was discharged on 21 November 1990. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 3, section IV, as a result of court-martial, in the rank/grade of private/E-1, and his service was characterized as bad conduct. This form also shows in:

- Item 12c (Net Active Service This Period): 2 years, 8 months, and 8 days
- Item 12d (Total Prior Active Service): 3 years
- Item 12e (Total Prior Inactive Service): 3 years
- Item 13 (Decorations, Medals, Badges, Citation and Campaign Ribbons Awarded or Authorized): Army Service Ribbon, Expert Marksmanship Qualification Badge (hand grenade), and the Marksman Marksmanship Qualification Badge (M-16)

5. In reaching its determination, the Board can consider the applicants 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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant’s statement, post-service post, letters of recommendation, accepting the responsibility of his acts, his meritorious service while in government, 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 two charges of committing the offense of carnal knowledge with a female under the age of 16, who was not his wife and committing indecent acts with a female under the age of 16. The Board found no error or injustice in the separation proceedings. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. The applicant was given a bad conduct 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.

3. 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:

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.

8/13/2025

X

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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the 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 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.

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.

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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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.

5. 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. 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.

//NOTHING FOLLOWS//