

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 April 2025

DOCKET NUMBER: AR20240010698

APPLICANT REQUESTS:

- An upgrade of his bad conduct discharge (BCD) to honorable
- A personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Counsel Statement
- Support Letters (8):
 - "As an NCO and Soldier, he was among the very best I have ever served with in my career" and "he was a model NCO who always took care of Soldiers and put the mission first"
 - As a leader with combat experience tactical and technical knowledge, and a 'go to war' mentality Soldiers respected him and sought to model his positive traits"
 - One of his strongest attributes was loyalty - he was loyal to his Troops the chain of command, the Army, and its mission. Even today, I would not hesitate to serve with him again. I would follow him anywhere"
 - "He was an outstanding leader and Soldier and one of the very best I ever served with"
- Support, Court and Civilian Employment 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 how his parents instilled in him the values of hard work, integrity and patriotism because of this he enlisted in the Army in 1982. At his first duty

assignment began to master his skills as a Soldier and Scout. During his career he was promoted to the rank of Staff Sergeant, served as a gunner on a M3 Bradley Fighting Vehicle, deployed and served in Operation Desert Shield and Operation Desert Storm. He discusses the relationship with the assistant S4 and other members of his unit he considered mentors; these relationships were an attempt to foster professional development and growth but led to his involvement in the wrongful collection of temporary duty (TDY) payments. He states this relationship included the events that led up to his general court-martial (GCM); at the GCM he was found guilty and sentenced to a BCD and reduced to private E-1 (PVT) on 5 September 1996. He accepted the outcome and regrets his involvement but now recognize that something about his sentence and discharge was not right. After his discharged from the Army, he has had a successful career working in the civilian employment sector. The applicant and his counsel have made available supporting documents from his service record for the Board's review:

- DA Form 2-1 (Personnel Qualification Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- DA Forms 1059 (Service School Academic Evaluation Report)
- Award and Course Completion Certificates
- Promotion Orders
- Noncommissioned Officer (NCO) Reports
- Court and Civilian Employment Documents

3. Counsel states in a 13-page brief in support of the application which is available for the Board's review in supporting documents:

a. The applicant was a well-respected, model Soldier and NCO who led troops in combat. In 1996, a GCM convicted him for his minor role in a TDY fraud scheme, which scheme was planned and executed by a commissioned officer and two other senior NCOs. These schemers defrauded the United States out of thousands of dollars over a span of several years and they used the applicant as a pawn in their scheme.

b. Counsel argues when taking into account his excellent military record his minor role in the offense, and the life-long collateral consequences resulting from this BCD (i.e. losing his military career, pension and other benefits, and the stigma of this punitive di charge), this BCD was excessive and unfairly harsh. Also, his conduct during service was otherwise exemplary and merits an upgrade to an honorable discharge. Counsel elaborates the following areas:

- The applicant has expressed remorse for his one-time involvement in the TDY scheme

- His post-military life objectively demonstrates his atonement and is entirely consistent with the honorable service that he rendered to our country over the course of a thirteen year military career
- His post discharge life and achievements since leaving the military demonstrate he is worthy of a second chance
- Against the backdrop of a stellar military service record, strong letters in support of his upgrade from people who know him well, and evidence of his character, job history, and rehabilitation, they respectfully request the Board to grant the applicant an upgrade to Honorable

c. Counsel concludes stating for all the reasons set forth, the applicant respectfully requests this Board upgrade his discharge to Honorable. They also request a personal appearance for the Board.

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

a. He enlisted in the Regular Army on 22 February 1983 and continuously served through reenlistments and extensions.

b. He was deployed to Southwest Asia/Saudi Arabia from 1 October 1990 to 18 March 1991.

c. On 5 September 1996, at Fort Bliss, Texas, the applicant was tried by a GCM of:

- Charge I (Article 81) and its specification of conspiracy to commit larceny of approximately \$3,472.00 of U.S. currency, military property
- Charge II (Article 121) and its specification of stealing \$3,472.00 of U.S. currency, military property
- Charge III (Article 132) and its specification of, for the purpose of obtaining a claim against the U.S. in the amount of \$3,472.00, used a false official document, to wit: a DD Form 1610
- The court sentenced him to reduction to grade of E-1 and to be discharged from the service with a BCD

d. On 30 October 1996, the convening authority approved and, except for the part of the sentence extending to a bad conduct discharge, will be executed.

e. GCM Order Number 36, issued on 23 May 2002, shows the appellate review had been finally affirmed; Article 71(c) having been complied with; the BCD will be executed.

f. The applicant was discharged with a BCD on 8 July 2002. His DD Form 214 shows he was discharged in the rank/grade of private/E-1 as a result of court-martial

conviction in accordance with Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 3 section IV.

i. It also shows he completed 19 years, 4 months, and 17 days of active service; His DD Form 214 also shows:

- Item 26 (Separation Code): JJD
- Item 27 (Reentry Code): 4
- Item 29 (Dates of Time Lost During this Period): he was on excess leave from 9 January 1997 to 8 July 2002

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 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 general court-martial for conspiracy to commit larceny of military property, stealing military property and obtaining a claim from the U.S. Government by using a false document. 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.

5/5/2025

X [REDACTED]

CHAIRPERSON

[REDACTED]

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 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. 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.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) 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.

4. 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.

5. 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//