

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 June 2025

DOCKET NUMBER: AR20240011626

APPLICANT REQUESTS: through Counsel:

- upgrade of his dishonorable discharge
- correction of his Narrative Reason for Separation to Secretarial Authority in lieu of As a Result of Court-Martial

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's brief
- Power of Attorney
- applicant's self-authored statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty) covering the period ending 28 February 1991
- birth certificates of 6 of his children, 1994 - 2020
- two certificates of training, 8 March 2016 and June 2016
- Under Secretary of Defense memorandum, 25 July 2018
- marriage certificate, 1 September 2018
- partial prior Army Board for Correction of Military Records (ABCMR) Record of Proceedings for a different applicant, 2019
- Judicial Review Order, 24 October 2022
- prior Navy Board for Correction of Naval Records for a different applicant, 14 February 2024
- partially legible Athens College Transcript
- partially legible resume
- wife's statement
- mother's statement
- former mother-in-law's statement
- former wife's statement

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. Counsel states, in pertinent part:

a. The applicant is requesting an upgrade of his dishonorable discharge to honorable or general under honorable conditions and amendment of his Narrative Reason for Separation to Secretarial Authority in lieu of As a Result of Court-Martial.

b. Unfortunately, he was discharged with a dishonorable characterization of service following a conviction by court-martial. These events occurred over 33 years ago and since then, the applicant has raised 8 children and maintained steady employment. His wife is a private first class (PFC) in the Army and as such, her duties may require her to transfer to different parts of the country, which would make finding employment for the applicant an arduous task every time his wife makes a permanent change of station move.

c. Based on his post-service conduct, the applicant should receive clemency from the Board. The applicant's dishonorable discharge has served its intended purpose and currently only serves to punish him indefinitely. The applicant was a young man when he was stationed in Germany, only 19 years old, and attributes much of his misconduct to his youth and ignorance. Since his discharge 33 years ago, he has shown he has learned his lesson. He accepts responsibility for his actions and has lived with the stigma of a dishonorable discharge all of his adult life. While the applicant has been able to find employment after difficulty doing so, his potential is limited due to his discharge status.

d. The applicant was inspired by his family heritage to enlist in the Army. He grew up poor and at the time of his enlistment was barely living off the salary of a PFC/E-3. To afford the items he normally could not afford, the applicant wrote fraudulent checks and was placed on restriction. While on restriction, he was invited to a woman's home and 1 week later he was charged with attempted rape, fraudulent checks, and being absent without leave (AWOL) from his restriction. At the court-martial, the applicant was barely over 20 years old. He was sentenced to 36 months of confinement and discharged with a dishonorable characterization of service.

e. After his discharge and initial difficulty finding employment, the applicant has been able to become self-sufficient and raised 8 children. He attended 3 semesters at Athens Technical College and earned a grade point average of 2.42. He regrets the

decisions he made when he was young, accepts full responsibility, atones for his mistakes, and has only tried to live an honorable life by caring for his family the best he can. He has provided multiple letters of support attesting to his honorable character.

f. The applicant should receive clemency from the Board based on Under Secretary Defense Wilke's memorandum. His discharge does not honor his sacrifices and achievements and does not offer him a second chance. The Board should honor the applicant's commitment to service. He voluntarily joined the Army knowing he could be deployed to a hostile environment at any time. Additionally, he paid for his misdeeds and suffered harsh collateral consequences.

g. The applicant's character and perseverance to rehabilitate himself should weigh heavily on the Board. He has shown he is rehabilitated, demonstrating his misconduct was an aberration and not his true character by raising his children as an active father and maintaining steady employment. The Board should consider the character references he submitted, all of which show him to be a man of good moral character. Additionally, he has accepted responsibility for his misconduct that occurred decades ago.

h. In similar cases the ABCMR and the Board for Correction of Naval Records previously granted relief to similar applicants and there is no reason for this Board to deviate from previous precedent. In ABCMR Docket Number AR20190003394, the applicant was granted an honorable discharge after receiving nonjudicial punishment (NJP) for adultery and sharing nude photos of a woman with whom he was having an affair, despite providing no evidence of post-service achievements or letters of recommendation. In the Board For Correction of Naval Records Docket Number 10847-23, the applicant was granted clemency in the form of a general discharge upgrade after having received an under other than honorable conditions discharge for three NJPs and a conviction of marijuana possession.

i. The applicant has worked very hard to rehabilitate himself and restore his dignity. His characterization of service is an injustice which continues to affect his ability to care for his family and live a life free from the stigma that has haunted him for all these years.

3. The applicant states:

a. He served in the Army as a Food Service Specialist and humbly requests a discharge upgrade. He regrets the actions that led to his discharge. Not only did they bring discredit to the Army, but they also brought disgrace upon himself and his family.

b. He initially enlisted in the U.S. Army Reserve (USAR) in January 1986 and served with a USAR unit in Georgia until he went active in 1988. He was then stationed in Furth, Germany. While there, his girlfriend got pregnant with his first daughter.

Unfortunately, he made some choices he should not have made which got him into trouble. As a result, he was court-martialed in 1989 and sentenced to 36 months in the disciplinary barracks with a dishonorable discharge.

c. After his discharge from the Army, he was briefly homeless and was forced to live with his sister in Georgia for 2 months. He tried applying for Government jobs and received one rejection letter after another. It was difficult for him to obtain employment, but eventually he found employment at a poultry factory where he worked his way up to supervisor.

d. In 1995, he married his first wife and they have three adult children together. They separated in 2011, and amicably divorced in 2017, remaining friends. In 2018, he married his second wife who is now a PFC in the Army stationed at Fort Drum, NY. Together they raise their children. He has always supported and maintained a steady relationship with his children.

e. He is now a packer at Kraft/Heinz, where he has worked for the past year. He maintains a good working relationship with all of his work colleagues. For the past 35 years, he has lived a good life; however, he is always haunted by his past. He truly regrets his choices. He was young and if he could go back in time and make a different decision, he would. He is not the same immature young man he was in 1989, and his only focus is to be a good husband, father, employee, and citizen.

f. He hopes the Board considers his statement and grants him a discharge upgrade. Doing so will free him of this stigma that has haunted him for the past 35 years.

4. After 1 year, 7 months, and 2 days of prior inactive service, the applicant enlisted in the Regular Army on 29 March 1988, at the age of 20.

5. A DA Form 4126-R (Bar to Reenlistment Certificate), 30 January 1989, shows:

a. The applicant's record of NJP shows he received a summarized Article 15 on 29 December 1988.

b. His record of non-payment of just debts shows:

- 17 November 1988, loan indebtedness of an amount of \$3,367.00 and dishonorable checks totaling \$1,133.75
- 18 December 1988, indebtedness with AAFES and Pinder Club

c. Other factual and relevant indicators of unattainability or unsuitability shows:

- 15 October 1988, counseled for failure to be at appointed place of duty

- 16 October 1988, counseled for failure to be at appointed place of duty
- 22 October 1988, counseled for failure to follow instructions
- 25 October 1988, counseled for failure to report in for an alert call
- 30 October 1988, counseled for failure to report for duty

6. A DA Form 4187 (Personnel Action) shows the applicant was reduced in rank and grade from PFC/E-3 to private (PV1)/E-1 effective 10 March 1989.

7. Two additional DA Forms 4787 show the following duty status changes for the applicant:

- from present for duty (PDY) to AWOL effective 16 April 1989
- from AWOL to PDY effective 18 April 1989

8. A DA Form 4430-R (Report of Result of Trial) shows:

a. The applicant was arraigned and tried by general court-martial on 20 July 1989, where he was charged with and found guilty of:

- three specifications of writing bad checks
- AWOL
- attempted rape
- breaking restriction

b. On 20 July 1989, he was sentenced to dishonorable discharge, total forfeitures, confinement for 3 years, and to be fined \$2,029.00.

9. A DA Form 4187 shows the applicant's duty status changed from PDY to confined by military authority effective 19 June 1989.

10. On 12 October 1989, the applicant's sentence to dishonorable discharge, confinement for 3 years, forfeiture of all pay and allowances, and a fine to the United States in the amount of \$2,029.00 was approved and except the dishonorable discharge would be executed.

11. A second DA Form 4430-R shows the applicant was arraigned and tried by summary court-martial on 3 November 1989, where he was charged with and found guilty of multiple specifications of assault and sentenced to 20 days confinement.

12. A U.S. Army Court of Military Review Decision, 5 July 1990, shows the U.S. Army court of Military Review held the findings of guilty and the sentence as approved by the convening authority correct in law and fact and accordingly, those findings of guilty and the sentence were affirmed.

13. U.S. Army Correctional Brigade General Court-Martial Order Number 701, 6 November 1990 shows the applicant's sentence to a dishonorable discharge, confinement for 3 years, forfeiture of all pay and allowances, and payment to the United States a fine of \$2,029.00, adjudged on 20 July 1989, as promulgated in General Court-Martial Order Number 131, Headquarters, 1st Armored Division, dated 10 October 1989, has been finally affirmed and the dishonorable discharge would be executed.

14. A DA Form 3822-R (Report of Mental Status Evaluation) shows the applicant underwent a mental status evaluation on 16 January 1991, where he was found to have the mental capacity to understand and participate in the proceedings and was mentally responsible.

15. A Standard Form 88 (Report of Medical Examination) shows the applicant underwent medical examination on 16 January 1991, where he was found qualified for separation.

16. The applicant's DD Form 214 shows he was given a dishonorable discharge on 25 February 1991, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 3, as a result of court-martial, with corresponding Separation Code. He was credited with 1 year, 2 months, and 19 days of net active service this period, with lost time from 16 April 1989 through 17 April 1989 and from 29 June 1989 through 24 February 1991.

17. The applicant provided a partially legible Athens College Transcript, which reflects his completion of courses at that institution.

18. The applicant provided a Judicial Review Order, 24 October 2022, which shows the applicant was granted temporary custody of his son S____. The applicant has also provided the birth certificates of 6 of his 8 children for the Board's review.

19. The applicant provided letters of support from his wife, his mother, his former mother-in-law, and his former wife, all of which have been provided in full to the Board for review, and in pertinent part show the applicant's remorse for his prior poor decisions, his honorable character as a husband and a father, and his worthiness for consideration by the Board.

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. Based upon the serious, criminal and violent nature of the 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:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

//SIGNED//
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. 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 Uniform Code of Military Justice, 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 Uniform Code of Military Justice 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.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets 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 provides that an enlisted person would be given a bad conduct or dishonorable discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review is required to be completed and the affirmed sentence ordered duly executed.

d. Chapter 15 (Secretarial Plenary Authority), currently in effect, states separation under this chapter is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and used when no other provision of this regulation applies. Separation under this chapter is limited to cases where the early separation of a Soldier is clearly in the best interest of the Army.

e. The service of Soldiers separated under Secretarial plenary authority will be characterized as honorable or under honorable conditions as warranted by their military records unless an entry-level status separation (uncharacterized is warranted).

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 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.

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//