

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 August 2025

DOCKET NUMBER: AR20240011732

APPLICANT REQUESTS: upgrade of his bad conduct discharge to general, under honorable conditions.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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:

a. He is requesting a change to his records to reflect a general discharge under honorable conditions in lieu of a bad conduct discharge. He was already discharged at the time with a general discharge; therefore, he was a civilian the second time he was court-martialed.

b. Also, his age at the time should be considered along with initially being misguided by a senior noncommissioned officer (NCO), Staff Sergeant (SSG) R____, who "got his money out of accrual" and advised him to leave in order to avoid worse trouble.

c. There is no way he could have gotten his money out of the Inspector General's office without the help of SSG R____, which corroborates his story. This was the worst advice he could have ever received at that age. It ruined his career in the Army as well as his future life.

d. He was already given a general discharge and should have never been court-martialed a second time. At that age, the chain of events set his life on a road of

disappointment, shame, fear, and failure. Please consider his request and help him to turn things around, setting his future on a path toward success.

3. The applicant enlisted in the Regular Army on 2 May 1989, at the age of 17.

4. A DA Form 3822-R (Report of Mental Status Evaluation) shows he applicant underwent a mental status evaluation on 11 September 1989. The remarks show he did not have any psychiatric diagnosis, and he was cleared for any administrative action deemed appropriate by his command.

5. A DA Form 2173 (Statement of Medical Examination and Duty Status) shows:

a. The applicant was admitted to William Beaumont Army Medical Center (WBAMC) on 2 September 1989, after attempting suicide by taking unknown amounts of Actifed, Tylenol, and Aspirin.

b. The details of the accident show on 1 September 1989, at approximately 2330 hours, the Battery Charge of Quarters was informed by a Soldier that the applicant and Private (PVT) R____ had attempted suicide. Upon arriving at the barracks, they were both discovered in a semi-conscious state with a large quantity of various prescription and over the counter medications on the floor nearby. Both Soldiers were admitted to the WBAMC Psychiatric Ward for observation, were released and returned to duty.

c. The events which led to their hospitalization were clearly acts of misconduct and not in the line of duty (LOD). On 22 September 1989, the applicant's commander signed the form indicating a formal LOD investigation was required, and the injury was not considered to have been incurred in the LOD.

6. An undated DA Form 2823 (Sworn Statement) shows the applicant indicated his relationship with PVT R____ was nothing more than friendship. He wanted to end his life because he was very depressed and felt hopeless. He discussed his problems with PVT R____ and told him he wanted to commit suicide to go someplace better (heaven) and he believed PVT R____ wanted the same thing. He came up with the idea to take some pills. After the suicide attempt was unsuccessful, PVT R____ talked him into telling the doctor they were gay to get out the Army that way. He later realized they were wrong to deal with their problems by running away from them.

7. A DD Form 261 (Report of Investigation – LOD and Misconduct Status), 13 October 1989, shows the applicant's attempted suicide on the night of 1 September 1989 was not incurred in the LOD and was due to his own misconduct.

8. On 8 June 1990, the applicant received a letter of reprimand for misconduct involving being apprehended by El Paso police for drunk driving on 12 May 1990. The applicant acknowledged the Letter of Reprimand and did not make a statement in his own behalf. The reprimand was subsequently filed in Official Military Personnel File (OMPF).

9. Multiple DA Forms 4187 (Personnel Action) show the applicant's following duty status changes:

- from present for duty (PDY) to absent without leave (AWOL) on 9 July 1990
- from AWOL to PDY on 4 August 1990, when he surrendered to Military Police (MP)
- from PDY to AWOL on 2 October 1990
- from AWOL to dropped from the rolls (DFR) on 2 November 1990

10. An initial DD Form 458 (Charge Sheet) shows on 13 November 1990, the applicant was charged with being AWOL from his unit 2 October 1990, and remaining AWOL through an unknown date.

11. A DA Form 4187 shows the applicant's duty status was changed from DFR to returned to military control (RMC) on 19 November 1990, when he surrendered to military authorities.

12. A second DD Form 458 shows on 10 December 1990, the applicant was charged with being AWOL from his unit from his unit from 2 October 1990 until 19 November 1990.

13. Multiple additional DA Forms 4187 show the applicant's following additional duty status changes:

- from PDY to AWOL on 12 December 1990
- from AWOL to DFR on 11 January 1991

14. A DD Form 553 (Deserter/Absentee Wanted by the Armed Forces), 14 January 1991, shows the applicant as considered a deserter wanted by the Armed Forces, who had been absent since 12 December 1990, and had an administrative date of desertion effective 11 January 1991.

15. A third DD Form 458 shows on 15 January 1991, the applicant was charged with being AWOL from the Personnel Control Facility, Fort Ord, CA, from 12 December 1990, and remained AWOL through an unknown date.

16. An additional DA Form 4187 shows the applicant's duty status was changed from DFR to confinement by civilian authorities (CCA) on 9 March 1991.

17. A DD Form 616 (Return of Absentee) shows the applicant was apprehended by civilian authorities on 4 March 1991, for failure to appear, receiving stolen property, and confined in the Los Angeles County Jail. Apprehension efforts were to be terminated.

18. A final DA Form 4187 shows the applicant's duty status changed from CCA to RMC on 24 May 1991.

19. A final DD Form 458 shows on 26 June 1991, the applicant was charged with being AWOL from the Personnel Control Facility, Fort Ord, CA, from 12 December 1990 through 24 May 1991.

20. On 1 July 1991, court-martial charges were transmitted in the applicant's case, with his immediate commander, battalion commander, and brigade commander all recommending his trial by special court-martial.

21. Headquarters, 7th Infantry Divisio (Light) and Fort Ord Special Court-Martial Order Number 47, 9 October 1991, shows:

a. The applicant was arraigned at tried by a Special Court-Martial that convened on 31 July 1991, at Fort Ord, CA, where the applicant was charged with and found guilty of:

(1) being AWOL from his unit from 2 October 1990 through 19 November 1990

(2) being AWOL from his unit from 12 December 1990 through 24 May 1991.

b. On 31 July 1991, he was sentenced to a bad conduct discharge, confinement for 4 months, and forfeiture of \$502.00 pay per month for 4 months.

c. Only so much of the sentence as provided for a bad conduct discharge, confinement for 3 months, and forfeiture of \$502.00 pay per month for 3 months was approved and, except for that portion of the sentenced extending to a bad conduct discharge, would be executed.

22. Headquarters, 7th Infantry Divisio (Light) and Fort Ord Special Court-Martial Order Number 60, 18 November 1991, shows:

a. The applicant was arraigned and tried by a Special Court-Martial that convened on 31 July 1991, at Fort Ord, CA, where the applicant was charged with and found guilty of:

(1) being AWOL from his unit from 2 October 1990 through 19 November 1990

(2) being AWOL from his unit from 12 December 1990 through 24 May 1991.

b. On 31 July 1991, he was sentenced to a bad conduct discharge, confinement for 4 months, and forfeiture of two thirds pay per month for 4 months.

c. Only so much of the sentence as provided for a bad conduct discharge, confinement for 3 months, and forfeiture of \$502.00 pay per month for 3 months was approved and, except for that portion of the sentence extending to a bad conduct discharge, would be executed. The applicant was credited with 6 days confinement against his sentence to confinement.

23. A DD Form 261, 25 November 1991, shows the applicant fractured his right index finger while assigned to the Fort Ord Peronel Control Facility and was involved in an altercation with another inmate. The injury was considered to be due to misconduct and not in the LOD.

24. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was given a bad conduct discharge on 9 December 1991, as a result of court-martial. He was credited with 1 year, 9 months, and 20 days of net active service, with lost time from 2 October 1990 through 19 November 1990; 12 December 1990 through 24 May 1991; and 31 July 1991 through 25 October 1991. He was credited with 45 days of excess leave from 25 October 1991 through 9 December 1991.

25. Headquarters, 7th Infantry Division (Light) and Fort Ord Special Court-Martial Order Number 7, 21 January 1993, shows in the Special Court-Martial case of the applicant, only so much of the sentence was affirmed as provided for a bad conduct discharge and confinement for 3 months, as modified, adjudged on 31 July 1991 and only so much of the findings of guilty to eh specification of the additional charge was affirmed as provided he was AWOL from 12 December 1990 through 3 March 1991. The remaining findings of guilty were affirmed and the bad conduct discharge would be executed. That portion of the sentence extending to confinement had been served.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was/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. Upon review of the applicant's petition and available military records, the Board found no error or injustice in the separation proceedings. The applicant was separated for conviction by court-martial for being AWOL for two periods of time. 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.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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. 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 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 grounds. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs 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.
3. 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.
4. 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 will be given a bad conduct 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.

//NOTHING FOLLOWS//