

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 August 2025

DOCKET NUMBER: AR20240013713

APPLICANT REQUESTS:

- reconsideration of his prior requests for an upgrade his under other than honorable conditions discharge to honorable
- as a new request, award of the Army Good Conduct Medal

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter, 23 August 2024
- Agency Letter to Applicant, 23 January 2025
- Guilty Plea, 22 March 1994

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers AR20120011132 on 8 January 2013 and AR20230013216 on 25 June 2024.

2. The applicant is requesting reconsideration of his request to have his discharge upgraded to honorable, and award of the Army Good Conduct Medal from 6 September 1990 to 5 September 1993. The Board previously considered erroneous information regarding attempted sexual assault and burglary. He was only charged and convicted of kidnapping.

3. The applicant provides the plea document issued by the State of Hawaii that shows he pled no contest to the charge of kidnapping. The State agreed to reduce the charge to felony kidnapping, maximum incarceration of 9 months with credit for time served, probation, with supervision transferred to Fort Worth, Texas, upon discharge from the Army.

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

- a. He enlisted in the in the Regular Army on 6 September 1990.
- b. He was promoted to specialist/E-4 on 1 May 1992 and reenlisted on 30 October 1992 for a period of 2 years. On 18 February 1993, he extended his reenlistment.
- c. The applicant's DA Form 2-1 (Personnel Qualification Record) shows:
 - he served in Saudi Arabia from 26 January 1991 through 25 July 1991
 - he was confined from 14 September 1993 through 14 June 1994 (304 days)
- d. On 20 September 1994, the applicant's company commander notified the applicant he was recommending him for separation under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), chapter 14-5 for conviction by a civil court on 16 May 1994.
- e. On 30 September 1994, after consultation with legal counsel, he acknowledged the rights available to him and the effect of waiving said rights. The applicant waived consideration of his case by a board of officers contingent upon receiving nothing less than an under honorable conditions (general) discharge. He further indicated that if the separation authority refused to accept his conditional waiver, he requested consideration of his case before an administrative separation board, personal appearance before the board, and representation by counsel.
- f. On 8 November 1994, the separation authority disapproved the applicant's request for conditional waiver and referred his case to an administrative separation board.
- g. On 6 December 1994, the applicant was notified that a board of officers had been appointed to determine if he should be discharged. He was advised of his rights, including his right to representation by counsel.
- h. On 29 December 1994, a board of officers convened to determine if the applicant should be discharged due to misconduct based on conviction by civil court.
 - (1) The Summarized Record of Proceedings shows the applicant was represented by counsel and that he testified in his own behalf. Two noncommissioned officers and two enlisted Soldiers from his unit also testified before the Board.
 - (2) The board of officers found by a preponderance of the evidence that the applicant did commit misconduct based on a civil conviction for kidnapping by the First Circuit Court of the State of Hawaii. The board recommended the applicant be discharged with an under other than honorable conditions discharge.

(3) The applicant's chain of command concurred with the board's findings and recommended approval with an under other than honorable conditions discharge.

i. On 30 January 1995, the separation authority approved the board's recommendation and directed the applicant be discharged under the provisions of Army Regulation 635-200, paragraph 14-5a (Conviction of a Civil Court) with an under other than honorable conditions discharge. He would be reduced to the lowest enlisted grade.

j. On 24 February 1995, he was discharged with an under other than honorable conditions discharge in the grade of E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 4 years, 5 months, and 19 days of active service. He was assigned separation code JKB and the narrative reason for separation as "Misconduct." It also shows he was awarded or authorized:

- Overseas Service Bars
- National Defense Service Medal,
- Southwest Asia Service Medal with 2 Bronze Service Star (BSS)
- Army Service Ribbon
- Kuwait Liberation Medal
- Marksman Marksmanship Qualification Badge with Rifle Bar

5. On 8 January 2013, the ABCMR rendered a decision in Docket Number AR20120011132. The Board noted the evidence of record shows the applicant was convicted by a civil court of kidnapping. His record of service did not meet the standards of acceptable conduct and performance of duty and was not entitled to an honorable discharge. The Board did grant partial relief through the administrative notes by adding, "CONTINUOUS HONORABLE ACTIVE SERVICE FROM 19900906 UNTIL 19921029."

6. On 25 June 2024, the ABCMR rendered a decision in Docket Number AR20230013216. The Board found no error or injustice in the applicant's separation processing and further noted, the separation authority could direct immediate reduction to the lowest enlisted grade. The Board determined the character of service received was not in error or unjust and his request was denied.

7. There is no right or entitlement to the Army Good Conduct medal until the immediate commander has approved the award and the award has been announced in permanent orders.

8. 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 applicant's contentions, the military record, and regulatory guidance were carefully considered. 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 misconduct conviction by a civil court. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant provided no documentation to support his request, including post-service achievements or letters of reference to support clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. The Army Good Conduct Medal. Deny. There is no right or entitlement to the medal, the Board found 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.

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 amendment of the ABCMR decision rendered in Dockets Number AR20120011132 and AR20230013216, on 8 January 2013 and 25 June 2024, respectively.


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. Army Regulation 635-5 (Separation Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.
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. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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. Paragraph 3-7b (General Discharge) states a general discharge is a

separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

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 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.

5. Army Regulation 600-8-22 (Military Awards), currently in effect, prescribes Department of the Army policy, criteria, and administrative instructions concerning individual and unit military awards. The Army Good Conduct Medal is awarded to on a selective basis to each Soldier who distinguishes himself or herself from among his or her fellow Soldiers by exemplary conduct, efficiency, and fidelity throughout a specified period of continuous enlisted active Federal military service. There is no right or entitlement to the medal until the immediate commander has approved the award and the award has been announced in permanent orders.

a. The periods of service of qualifying service are: (1) each 3 years completed on or after 27 August 1940; (2) for the first award only, 1 year served entirely during the period 7 December 1941 to 2 March 1946; (3) for the first award only, upon termination

of service on or after 27 June 1950 of less than 3 years but more than 1 year; (4) for the first award only, upon termination of service on or after 27 June 1950 of less than 1 year when final separation was by reason of physical disability incurred in line of duty; or (5) for the first award only, for those individuals who died before completing 1 year of active Federal military service or if the death occurred in the line of duty.

b. Throughout a qualifying period of service, the enlisted Soldier's character must have been above reproach and must meet all of the following criteria for award of the Army Good Conduct Medal as indicated in the Soldier's record: willingly complied with the demands of the military environment, been loyal and obedient to his or her superiors, faithfully supported the goals of his or her organization and the Army, and conducted himself or herself in an exemplary manner as to distinguish him or her from fellow Soldiers.

//NOTHING FOLLOWS//