

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 February 2024

DOCKET NUMBER: AR20230005203

APPLICANT REQUESTS: to restore his rank/grade of specialist (SPC)/E-4.

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

- DD Forms 149 (Application for Correction of Military Record)
- Two pages of Army Board for Correction of Military Records (ABCMR) docket number AR20190006482 board date 1 December 2020

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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, in effect:

a. He is praying that the Board can please restore his highest rank achieved which was SPC/E-4. He would greatly appreciate that, and it would allow his family to see that he did achieve that rank before being discharged. Also, the Board did upgrade his discharge from other than honorable to honorable in which he is greatly appreciated at the same time. He was an E-4 and prays the board grants him relief in that manner.

b. He served his country proudly. The Board granted him an honorable discharge in which the Board changed his narrative reason for separation to minor misconduct on his DD Form 214 (Certificate of Release or Discharge from Active Duty). He truly believes that with this being a minor infraction the Board should please consider having his DD Form 214 and honorable discharge certificate show SPC/E-4. He is hopeful that he will be given this promotion to SPC, and his military record will be corrected. At the moment it shows private (PVT)/E-1. This would be something he can be proud to show he did serve in the military, and he also has a son serving in Hawaii and is very proud he is keeping the family tradition going. Hopefully, his other children and grandchildren can do the same and will always push for it.

c. He had applied for the Board to consider for an upgrade from Under Other Than Honorable Conditions (UOTHC) to Honorable. The Board did approve the upgrade. At the time he did not realize that he also needed to apply to have his rank restored to the rank of SPC.

3. A review of the applicant's military records show the following:

a. On 2 June 1997, the applicant enlisted into the Regular Army for 3 years; he was 20 years old. He completed initial entry training and was awarded his military occupational specialty. The applicant's chain of command promoted him to the rank/grade of SPC/E-4, effective 1 September 1999.

b. On 24 January 2000, the applicant's Fort Benning unit reported him as Absent Without Leave (AWOL) and dropped him from the Army rolls, effective 3 February 2000.

c. On 18 July 2000, he was arrested by civilian authorities and returned to military control; orders reassigned the applicant to the U.S. Army Personnel Control Facility (PCF) at Fort Sill, effective 18 July 2000.

d. On 26 July 2000, the applicant's PCF commander preferred court-martial charges against the applicant for being AWOL from 24 January until 18 July 2000 (176 days).

e. On 28 July 2000, after consulting with counsel, the applicant voluntarily requested to be discharge in-lieu of trial by court-martial under the provisions of chapter 10 (Discharge in Lieu of Trial by Court-Martial), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel).

(1) He understood that he may request discharge in lieu of trial by court-martial because of the following charges which had been preferred against him under the Uniform Code of Military Justice (UCMJ), each of which authorized the imposition of a bad conduct or dishonorable discharge; Article 86, UCMJ: AWOL 24 January to 18 July 2000.

(2) In his request, he acknowledged no one subjected him to coercion and counsel had advised him of the implications of his request; he further acknowledged he was guilty of the charges. He elected not to submit a statement in his own behalf.

(3) He also acknowledged that he had been advised by counsel of the maximum permissible punishment authorized under the UCMJ; of the possible effects of an Under Other Than Honorable Discharge if the request was approved; and of the procedures and rights available to him.

(4) The legal office reviewed the applicant's request for discharge in lieu of trial by courts-martial and had no legal objections.

f. On 18 January 2001, the separation authority approved the applicant's request and directed his UOTHC discharge; the separation authority further ordered the applicant's reduction in rank to private/E-1.

g. On 14 February 2001, the applicant was discharged accordingly; DD Form 214 shows he completed 3 years, 2 months, and 16 days of his 3-year enlistment contract, with 201 days of excess leave and lost time from 24 January to 18 July 2000. He was awarded or authorized the Army Service Ribbon and two marksmanship qualification badges. Item 12h (Effective Date of Pay Grade) shows 18 January 2001.

h. On 10 December 2003, the Army Discharge Review Board (ADRB) conducted a records review and denied the applicant's request, stating the applicant's service record did not support the applicant's contentions; the ADRB concluded the applicant's contentions were not sufficiently mitigating to warrant a discharge upgrade.

i. On 16 April 2009, the applicant requested the ABCMR to change his reentry code and upgrade his character of service to general under honorable conditions. The applicant acknowledged he had made a mistake when he went AWOL, but, as with his ADRB application, he attributed his actions to being young and fears that his wife might leave him. The Board denied the applicant's requests because he had failed to submit sufficient evidence to show his record contained an error or injustice.

j. On 1 December 2020, ABCMR docket number AR20190006482 shows, after reviewing the application and all supporting documents, to include the Department of Defense guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was warranted. Based upon the length of active service completed prior to the misconduct leading to the applicant's separation, as well as the mitigation for that misconduct found by the medical advisor, the Board concluded there was sufficient evidence to upgrade the applicant's characterization of service to Honorable, change the separation authority to AR 635-200, paragraph 14-12a, change the separation code to JKN, and change the narrative reason for separation to minor misconduct.

k. The ABCMR did not recommend changing the applicant's rank from PVT/E-1 to SPC/E-4.

l. On 23 February 2023, the applicant was reissued a DD Form 214 showing in:

- Item 4a (Grade, Rate or Rank) and 4b (Pay Grade) PVT/E-1
- Item 12h (Effective Date of Pay Grade) 18 January 2001

- item 24 (Character of Service) – Honorable
- item 25 (Separation Authority) – AR 635-200, 14-12A
- item 26 (Separation Code) – JKN (Misconduct, Minor Infractions)
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – "Misconduct (Minor Infractions)"

4. In support of his case, the applicant provided two pages ABCMR docket number AR20190006482, which state in pertinent part, his chain of command promoted him to SPC, effective 1 September 1999. There was evidence in his records that he had a condition or experience that excused or mitigated his discharge. The evidence supports he likely suffered from a trauma-related disorder while on active duty and the Behavioral Health Advisor recommended the applicant's discharge be upgraded to Honorable with a narrative reason of JKN (misconduct - minor infractions).

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. In pertinent part, it states 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 character."

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows the applicant was promoted to SPC/E-4 on 1 September 1999. He went AWOL from 24 January 2000 to 18 July 2000 (176 days). After court-martial charges were preferred, he requested discharge in lieu of court-martial. Such discharge takes an under other than honorable conditions discharge and automatic reduction to private/E-1. Although his AWOL was terminated by an arrest, a previous Board agreed that the applicant had suffered from a mitigating behavioral health condition, that mitigated his misconduct. The previous Board determined based upon the length of active service completed prior to the misconduct leading to the applicant's separation, as well as the mitigation for that misconduct found by the medical advisor, the Board

concluded there was sufficient evidence to upgrade the applicant's characterization of service to honorable, change the separation authority to AR 635-200, change the separation code to JKN, and change the narrative reason for separation to minor misconduct. Since the only reason he was reduced was his receipt of an under other than honorable conditions discharge, and since that discharge had been upgraded to honorable and the reason changed to minor misconduct, the Board determined restoration of his grade of SPC/E-4 is also appropriate 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 Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending his re-issued DD Form 214 to show in:

- Item 4a (Grade, Rate or Rank) and 4b (Pay Grade) SPC/E-4
- Item 12h (Effective Date of Pay Grade) 1 September 1999



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, USC, 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 31, USC, section 3702, also known as the Barring Act, prohibits the payment of a claim against the Government unless the claim has been received by the Comptroller General within 6 years after the claim accrues. Among the important public policy considerations behind statutes of limitations, including the 6-year limitation for filing claims contained in this section of Title 31, U. S. Code, is relieving the government of the need to retain, access, and review old records for the purpose of settling stale claims, which are often difficult to prove or disprove.
3. AR 600-8-19 (Enlisted Promotions and Reductions), in effect at the time, prescribed policies and procedures for enlisted promotions and reductions. It stated Soldiers approved for an under other than honorable conditions discharge was required to be reduced to the lowest enlisted grade.
4. AR 635-200 (Active Duty Enlisted Administrative Separations) prescribes policies and standards to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. It prescribes the policies, procedures, and authority for separation of Soldiers. Chapter 14 (Separation for Misconduct) establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave.
  - a. Paragraph 14-4 (Authority for discharge or retention) provides that, upon determination that a Soldier is to be separated with a discharge under other than honorable conditions, the separation authority will direct reduction to the lowest enlisted grade by the reduction authority (see AR 600-8-19).
  - b. Paragraph 14-12 (Conditions that subject Soldiers to discharge) provides that, Soldiers are subject to discharge for minor disciplinary infractions.
5. AR 635-8 (Separation Processing and Documents) prescribes the transition processing function of the military personnel system. It provides principles of support, standards of service, policies, tasks, rules, and steps governing required actions in the field to support processing personnel for separation and preparation of separation documents. Paragraph 5-6 (Rules for completing the DD Form 214) provides detailed

instructions for data required in each block of the DD Form 214. The instructions for Block 4 (Grade, Rate, or Rank) states to verify that active duty grade or rank and pay grade are accurate at time of separation.

6. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

7. On 25 August 2017 the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury (TBI); sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

8. 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 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//