

IN THE CASE OF: ██████████

BOARD DATE: 6 March 2024

DOCKET NUMBER: AR20230005498

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under honorable conditions (general) characterization of service and a personal appearance before the Board.

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

- Online Application with self-authored statement
- Army Review Board Agency (ARBA), Medical Advisory Opinion, Docket Number AR20160016528, dated 24 August 2018
- letter, ARBA, Case Management Division (CMD), dated 27 August 2018
- email, Note of Appreciation, dated 11 February 2022
- two letters of recommendation, dated 4 April 2023 and 11 April 2023
- two-character statements, dated 13 April 2023 and 2 May 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous considerations of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers AR2001057577 on 21 June 2001 and AR20160016528 on 8 May 2019.

2. As a new argument, the applicant states, in effect:

a. He is fully confident that his military records are not in error or unjust. However, after 30 years of serving his country, it is time to review and correct any inaccuracies that may have been recorded. He has continuously demonstrated his trustworthiness and leadership qualities, earning the respect and admiration of his peers and superiors. As a civil servant, he has maintained a spotless record and obtained a top-secret clearance. Potential inaccuracies in his record could hinder his ability to continue serving. He is committed to upholding the values and principles of the military. He has earned the right to have his records accurately reflect his commitment and dedication to service.

b. He recognizes the gravity of his mistakes. He has taken active steps to address these mistakes and has since demonstrated his commitment in upholding ethical and legal standards. He asks that the Board consider his full body of service.

3. The applicant enlisted in the Regular Army on 6 June 1989 for a 4-year period. Upon completion of initial entry training, he was awarded military occupational specialty 11M (Fighting Vehicle Infantryman). The highest rank he attained was specialist/E-4.

4. The applicant served in Southwest Asia from 12 October 1990 to 9 June 1991 and was awarded the Combat Infantryman Badge on 6 April 1991.

5. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on two occasions:

a. On 25 March 1992, for conspiring with Specialist [REDACTED], to alter an official document issued to another Soldier, by typing [the applicant's] name in place of the other Soldier's. His punishment consisted of reduction to private first class and forfeiture of \$256.00 pay.

b. On 4 May 1992, for being absent from his unit without leave (AWOL), on or about 13 April 1992 until on or about 14 April 1992. His punishment consisted of reduction to private/E-2, forfeiture of \$205.00 pay, 14 days of extra duty, and 14 days of restriction. His appeal of his punishment was denied on 8 May 1992.

6. Two DA Forms 4187 (Personnel Action) show the following changes in the applicant's duty status:

- Present for Duty (PDY) to AWOL on 1 June 1992
- AWOL to PDY on 8 June 1992

7. The applicant's immediate commander notified the applicant on 22 June 1992 of his intent to initiate separation actions against him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, paragraph 14-12b, for patterns of misconduct. His commander noted the applicant's two instances of nonjudicial punishment, as well as his two periods of AWOL, as reasons for the proposed separation action. The applicant acknowledged receipt on the same date.

8. The applicant consulted with legal counsel on 25 June 1992 and acknowledged he had been advised of the basis for the contemplated separation action. Following his consultation, he voluntarily waived consideration of his case by an administrative separation board, contingent upon receiving a characterization of service no less favorable than under honorable conditions (general). He requested representation by counsel and a personal appearance before an administrative separation board if the

separation authority refused to accept his conditional waiver. He acknowledged he understood that he may be ineligible for many or all benefits as a Veteran under Federal and State laws, and he could expect to encounter substantial prejudice in civilian life as a result of the issuance of a general discharge. He declined to submit a statement in his own behalf.

9. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 26 June 1992, for being AWOL, on or about 1 June 1992 until on or about 8 June 1992. His punishment consisted of reduction to private/E-1, forfeiture of \$392.00 pay per month for two months, 45 days of extra duty, and 45 days of restriction.

10. On 26 June 1992, the applicant's immediate commander formally recommended his separation from service under the provisions of Army Regulation 635-200, paragraph 14-12b, by reason of patterns of misconduct, with the issuance of an under honorable conditions (general) characterization of service. Both intermediate commanders concurred with the recommendation.

11. The applicant was discharged on 10 July 1992, under the provisions of Army Regulation 635-200, paragraph 14-12b, by reason of misconduct – pattern of misconduct. His DD Form 214 (Certificate of Release or Discharge from Active Duty), reissued on 19 December 2011, and two corresponding DD Forms 215 (Correction to DD Form 214), confirm his service is characterized as under honorable conditions (general), with separation code JKM and reentry code RE-3. He was credited with 3 years, 1 month, and 5 days of net active service, with lost time from 1 June 1992 to 7 June 1992. He was awarded or authorized the:

- Army Commendation Medal (2nd award)
- Army Achievement Medal
- National Defense Service Medal
- Army Service Ribbon
- Southwest Asia Service Medal with three bronze service stars
- Kuwait Liberation Medal (KU)
- Kuwait Liberation Medal (SA)
- Driver and Mechanics Badge with Driver-T Bar
- Marksman Marksmanship Qualification Badge with Rifle Bar
- Expert Marksmanship Qualification Badge with Grenade Bar
- Combat Infantryman Badge

12. The Army Discharge Review Board (ADRB) reviewed his request for a discharge upgrade on 18 May 2001. After careful consideration, the Board determined his discharge was proper and equitable. The Board denied his request for relief.

13. The ABCMR reviewed the applicant's request for an upgrade of his under honorable conditions (general) characterization of service on 21 June 2001. After careful consideration, the Board determined the applicant failed to submit sufficient relevant evidence to demonstrate the existence of probable error or injustice. His request for relief was denied.

14. The ABCMR reconsidered the applicant's request for an upgrade of his characterization of service on 8 May 2019. An accompanying medical advisory opinion, dated 24 August 2018, determined the applicant was awarded a 70 percent disability rating from the Department of Veterans Affairs for post-traumatic stress disorder (PTSD) related to combat, which mitigated some of his misconduct. There was a nexus between the diagnosis of PTSD and his two occasions of AWOL. However, PTSD did not mitigate the offense of altering an official document. After considering the basis for the misconduct and the findings and recommendations of the medical advisor, the Board concluded the characterization of service received at the time of discharge was appropriate. The Board denied the applicant's request for relief.

15. The applicant provides the following:

a. A copy of the ARBA, Medical Advisory Opinion, Docket Number AR20160016528, dated 24 August 2018, and the accompanying cover letter from ARBA, CMD, is summarized in paragraph 13 above.

b. A note of appreciation dated 11 February 2022, from the Chief Information Officer, Headquarters, Department of the Army, recognizes the applicant for his extraordinary efforts in ensuring the successful implementation of Army 365 at his command.

c. Two letters of recommendation, from U.S. Army Futures Command, Future Vertical Lift, Cross Functional Command leadership, dated 4 April 2023 and 11 April 2023, show the applicant has maintained a top-secret security clearance in his role as a U.S. Army civilian employee. He is considered "the best" information technology professional Lieutenant Colonel (LTC) [REDACTED], and Major General [REDACTED] have worked with throughout the course of their careers. He is a dedicated employee with sterling character, who lives by the Army Values and serves with the utmost professional conduct.

d. Two-character statements, from U.S. Army Futures Command, Future Vertical Lift, Cross Functional Command leadership, LTC [REDACTED] and LTC [REDACTED], dated 13 April 2023 and 2 May 2023, show the applicant is considered an individual of utmost character who has clearly demonstrated dedication to duty and family. He is a consummate professional who embodies the Army values. He is a dedicated family man and role model for young men today, a true testament to his personal values.

16. Regulatory guidance provides when an individual is discharged under the provisions of Army Regulation 635-200, Chapter 14, by reason of misconduct, an under other than honorable conditions characterization of service is normally appropriate.

17. The Board should consider the applicant's overall 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 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 noted the applicant's post service achievements and his compelling character letter of support attesting to the applicant's character, and his demonstrated dedication to duty and family. The Board noted, the previous opine finding a nexus between the applicant's diagnosis of PTSD and his offense of being AWOL twice. However, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of falsifying documents and forgery.

2. The Board determined the applicant was discharged for misconduct and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. The Board determined reversal of the previous Board decision is without merit and denied relief.

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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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 to amend the decision of the ABCMR set forth in Docket Number AR2001057577 on 21 June 2001 and AR20160016528 on 8 May 2019.

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 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. 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. Paragraph 2-11 states applicants do not have the right to a hearing before the ABCMR. The Director of the ABCMR may grant a formal hearing whenever justice requires.
2. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of

misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

b. Paragraph 3-7a provides that 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.

c. Paragraph 3-7b states 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.

3. 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/NR) 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, Boards 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//