

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 March 2024

DOCKET NUMBER: AR20230005779

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge to honorable
- a video teleconference before the Board

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Augusta Fire/EMA Department photo identification
- Basic Life Support (BLS) certification
- South Carolina EMT certification
- [REDACTED] EMT license issued [REDACTED] Department of Public Health

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 AR20090009736 on 19 November 2009, AR20190002149 on 7 October 2019, and AR20210016976 on 17 May 2022.
2. The applicant states the incident in which he was considered as defrauding the federal government was over 20 years ago and he believes that he has served his time for the incident. He assumes full responsibility for his actions and has become an up-standing person of service in his community, as a demonstration of his character. He has attempted to have his records corrected several times in the past 20 years and was told not to submit again on one request. He spoke with a lawyer in 2019, who advised him of his rights to request a discharge upgrade and he has pursued this effort ever since. He is currently a Sergeant in a municipal fire department, where he is a certified emergency medical technician for [REDACTED] and holds a cardiopulmonary resuscitation certification as well.
3. The applicant provides various certifications that he has earned in the health care field (attached for review).

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

a. He enlisted in the Regular Army (RA) on 15 December 1987 and reenlisted on 14 October 1988, 14 December 1993, and 5 December 1996.

b. On 1 April 1994, he was promoted to SSG.

c. He received an Article 15 on 12 September 1990, for making a false statement for which he received 14 days extra duty and 14 days restriction.

d. On 3 May 1996, the applicant petitioned the Department of the Army Suitability Evaluation Board (DASEB) to transfer the records of nonjudicial punishment from the performance to the restricted fiche of his Official Military Personal File (OMPF).

e. On 23 July 1996, the applicant's request was denied by the DASEB.

f. On 9 July 2001, a Criminal Investigation Report (CID) shows an investigation established probable cause to believe the applicant committed the offenses of false official statement, fraud, and larceny of government funds when he submitted a fraudulent travel voucher and received \$3,011.49 for allegedly moving family members to California.

f. DD Form 458 (Charge Sheet), dated 27 August 2001, shows he was charged for the following:

- On 7 February 2001, make a false official statement to a Special Agent - he went [REDACTED] with his two children, [REDACTED] and that he also took another child, [REDACTED] to [REDACTED] or about September 2000, in order to move them
- On 1 and 30 September 2000, steal \$100.00 which was property of the United States Government
- On 1 May and 1 July 2001, steal \$100.00 which was property of the United States Government
- On 8 September 2000, submitting a false claim for \$3,011.49 to a finance officer for advance relocation and travel of family members
- On 31 May 2001, submitting a false claim for \$6,437.10 to a claims officer for loss of personal property

g. On 5 September 2001, the applicant's brigade commander appointed an Article 32, Uniform Code of Military Justice (UCMJ), Investigating Officer, to investigate the charges against the applicant. The investigator was instructed to contact the office of the staff judge advocate for consultation as to procedure and applicable law, advise the

applicant of his right to counsel, and conduct the hearings withing 10 days of receipt of the appointment.

h. On 10 September 2001, the applicant's defense counsel requested a delay for the investigation because of the travel he needed to do, time to prepare for the case and other cases he was working on as well as the applicant needing to submit paperwork, which could result in an alternate disposition of the applicant's case. The request for delay was approved until 10 October 2001.

i. On 17 September 2001, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), chapter 10. He consulted with legal counsel and was advised of the basis for the trial by court martial, his available rights and basis for voluntarily requesting discharge under the provision of AR 635-200, chapter 10. He signed a request for discharge for the good of the service and indicated he would submit a statement on behalf of himself. The applicant stated in part, he had served his country honorably with pride for 17 years. He had taken great pride in his work, with only three years to retirement. He had no words that could explain, excuse, or justify his actions. It was extremely difficult for him to make his request. He had lost so much of what was important to him, i.e., his job, pride, and his ability to securely provide for his family. Enclosed was a cashier's check for \$5,428.17 to repay the Army. He further states, he had no right to ask anything further of the Army; however, he humbly asked that he be able to begin life again without a federal conviction.

j. On 24 September 2001, the applicant's chain of command recommended approval of his request and the appropriate separation authority approved the applicant's request on 4 September 2001 and directed he be furnished an UOTHC certificate.

k. On 27 September 2001, he was discharged accordingly, and his DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged, under the provisions of AR 635-200, Chapter 10, with a characterization of Under Other than Honorable Conditions and reduction to the lowest enlisted grade. He completed 16 years, 8 months, and 25 days of net service this period with no lost time. He was awarded or authorized:

- Army Commendation Medal (2nd Award)
- Army Achievement medal (4th Award)
- Army Good Conduct Medal (5th Award)
- National Defense Service Medal
- Drill Sergeant Badge
- Army Service Ribbon

- Overseas Service Ribbon (2nd Award)
- Noncommissioned Officer Professional Development Ribbon (Numeral 2)
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- Silver German Army Marksmanship Badge

6. A letter dated 6 September 2022 shows the Army Board for Correction of Military Records (ABCMR) determined after careful review of his application, the Board granted partial relief of his request. The Board recommended that all Department of the Army records of the individual concerned be corrected by reissuing him a DD Form 214 for the period ending 27 September 2001 showing his character of service as Under Honorable Conditions, General.

8. In regard to the applicant's request for an appearance before the Board, AR 15-185 (Army Board for Correction of Military Records (ABCMR)) states ABCMR members will review all applications that are properly before them to determine the existence of an error. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

9. AR 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court martial. In a case in which an UOTHC is authorized by regulation, a member may be awarded an honorable or general discharge, if during the current enlistment period of obligated service, he has been awarded a personal decoration or if warranted by the particular circumstances of a specific case.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found the evidence in the records and the evidence provided by the applicant insufficient to support an additional upgrade of his character of service from under honorable conditions (general) to fully honorable. Based on a preponderance of the evidence, the Board determined the character of service the applicant received as a result of the Board's prior decision was

not in error or unjust. The Board concurs with the corrections described in the Administrative Note(s) below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Other than the corrections addressed in Administrative Note(s) below, the Board determined the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20210016976 on 17 May 2022.

7/24/2024

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.

ADMINISTRATIVE NOTE(S): When the Board upgraded the applicant's character of service to under honorable conditions (general), an additional correction became necessary. Because the only basis for his reduction to the lowest enlisted grade was his original character of service, he is now authorized to have his DD Form 214 corrected to show in:

- Item 4a – SSG
- Item 4b – E06
- Item 12i – 1994 04 01

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 635-200 (Personnel Separations - Enlisted Personnel), as in effect at the time, set forth the basic authority for the separation of enlisted personnel, it states:

a. A Chapter 10 (Discharge in Lieu of Trial by Court Martial) is applicable to members who had committed an offense or offenses for which the authorized punishment included a bad conduct or dishonorable discharge could submit a request for discharge for the good of the service. The request could be submitted at any time after the charges had been preferred. Although an honorable or general discharge was authorized, an under other than honorable conditions discharge was normally considered appropriate.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service has generally met standards of acceptable conduct and performance of duty for Army personnel.

c. 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 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 PTSD criteria, detailed medical considerations, and mitigating factors, when taking action on applications from former

service members administratively discharged under other than honorable conditions, 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.

4. 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, sexual assault, or sexual harassment. 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.

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.

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//