

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 April 2024

DOCKET NUMBER: AR20230006455

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) discharge to an honorable discharge.

APPLICANT'S SUPPORTING DOCUMENT CONSIDERED BY THE BOARD:

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 (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 he is in the process of buying a house and does not want any negative issues to occur. His first 3 years were honorable, and he reenlisted for 3 more years prior to being discharged UOTHC.
3. The applicant enlisted into the Regular Army on 18 February 1986 for a period of 3 years. Upon completion of initial entry training, he was assigned to a unit located in Germany. He was advanced to the rank/pay grade of specialist four (SP4)/E-4 on 1 April 1988.
4. On 20 July 1988, he reenlisted for a period of 4 years. He was subsequently reassigned to a unit located at Fort Stewart, GA.
5. A DA Form 4126 (Bar to Reenlistment Certificate) shows:
 - a. The applicant accepted nonjudicial punishment on 6 December 1990 for violating Article 111 of the Uniform Code of Military Justice by operating a vehicle while drunk. His punishment included reduction from SP4 to private (PV2)/E-2; forfeiture of \$405.00 pay per month for 2 months; extra duty for 45 days; and restriction for 30 days.

b. A bar to reenlistment was initiated against the applicant on 19 December 1990 and approved on 12 January 1991.

6. Portions of the applicant's military service record, including documentation showing the facts and circumstances regarding his administrative separation, are not available for review.

7. On 5 April 1991, an administrative flag was imposed to prevent him from receiving any favorable personnel actions due to pending administrative separation.

8. On 17 July 1991, the applicant's military identification card was confiscated by the military police due to it bearing the wrong rank/grade at the time.

9. On 2 August 1991, the applicant received a General Officer Memorandum of Reprimand (GOMOR) for his second incident of operating a motor vehicle while under the influence of alcohol. He elected not to submit a statement in his own behalf. His entire chain of command recommended filing the GOMOR in his Official Military Personnel File (OMPF). The imposing General Officer ultimately directed the GOMOR be filed in his OMPF.

10. The applicant's duty status was changed as follows on the dates shown.

- 6 September 1991 – from Present for Duty (PDY) to Confinement of Military Authority (CMA)
- 17 September 1991 – from CMA to PDY
- 28 October 1991 – from PDY to Confinement of Civil Authorities (CCA)
- 30 October 1991 – from CCA to PDY
- 27 December 1991 – from PDY to Absent Without Leave (AWOL)
- 31 December 1991 – from AWOL to PDY
- 10 January 1992 – PDY to CCA

11. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty), as amended by a DD Form 215 (Correction to DD Form 214), show he was discharged on 17 January 1992, in the grade E-1, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Paragraph 14-12b, due to Misconduct. He was assigned Separation Program Designator Code "JKM" and Reentry Code "3." His service was characterized as UOTHC. He was credited with completion of 5 years, 9 months, and 25 days of net active service. He had two periods of lost time. His awards and decorations include the Army Achievement Medal with two oak leaf clusters and the Southwest Asia Service Medal with one bronze service star.

12. Block 18 (Remarks) of his DD Form 214 is void of entries pertaining to his immediate reenlistment or his period of honorable service from 18 February 1986 until 19 July 1988 (see Administrative Notes).

13. In reaching its determination, the Board can consider the applicant’s petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

BOARD DISCUSSION:

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, his bar to reenlistment, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust. The Board concurs with the corrections described in the Administrative Note(s) below.

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:

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 the overall merits of this case are otherwise insufficient as a basis for correction of the records of the individual concerned.

8/18/2024

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 NOTES:

A review of the applicant's record shows his DD Form 214, for the period ending 17 January 1992, is missing an important entry that may affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding in item 18 (Remarks):

- IMMEDIATE REENLISTMENT THIS PERIOD – 19860218-19880719, 19880720-19920117
- CONTINUOUS HONORABLE ACTIVE SERVICE 19860218-19880719
- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE

REFERENCES:

1. Title 10, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a

member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. 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. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. 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.

4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. 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.

b. 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.

c. 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.

5. Army Regulation 635-5 (Personnel Separations – Separation Documents), in effect at the time, prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It establishes the standardized policy for preparing and distributing the DD Form 214. It states the DD Form 214 provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge.

a. Paragraph 1-4b(5) of the regulation in effect at the time stated that a DD Form 214 would not be prepared for enlisted Soldiers discharged for immediate reenlistment in the Regular Army.

b. Paragraph 2-4h(18) of the regulation currently in effect states that item 18 documents the remarks that are pertinent to the proper accounting of the separating Soldier's period of service. Subparagraph (c) states that for enlisted Soldiers with more than one enlistment period during the time covered by the DD Form 214, enter "IMMEDIATE REENLISTMENTS THIS PERIOD" and specify the appropriate dates. For Soldiers who have previously reenlisted without being issued a DD Form 214 and who are later separated with any characterization of service except "honorable," enter "CONTINUOUS HONORABLE ACTIVE SERVICE FROM" (first day of service which DD Form 214 was not issued) UNTIL (date before commencement of current enlistment)." Then, enter the specific periods of reenlistments as prescribed above.

6. 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//