

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 January 2024

DOCKET NUMBER: AR20230007233

APPLICANT REQUESTS: upgrade of his under honorable conditions (general) discharge from the Army National Guard (ARNG).

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

- DD Form 149 (Application for Correction of Military Record)
- NGB Form 22 (Report of Separation and Record of Service), 23 July 1990
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 17 March 1991
- U.S. Army Reserve Discharge Order, 2 June 1992
- General Discharge Certificate, 23 July 1990
- Text and/or Email Exchange with an official of the National Guard Bureau

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 previously applied to this Board for an upgrade of his general discharge, but he was told to first appeal to the State Army National Guard and/or the National Guard Bureau (NGB). As seen by the text and/or email exchange with an NGB official, not much was done regarding his case. He needs the upgrade for health benefits and home loan.

a. He has attached emails and faxes that shows that he has done what he was directed and was still denied the upgraded NGB Form 22. He has provided all documents related to this, to include the original NGB Form 22. The question arose as to why he was unavailable to sign, and it was because he had lost his mother to cancer at that time and was preparing her burial. He never missed any weekend duties, nor did he receive any write ups during his service. He was unjustly assigned a reason of Unsatisfactory Participant upon his separation because he was unavailable to appear in

person to sign the NGB Form 22 upon his initial separation from the ARNG due to his mother's funeral.

b. Shortly after his ARNG separation in 1990, he was called to active duty in January 1991 to serve in Desert Storm and was then honorably discharged on 2 June 1992. He is requesting that this Board correct the unjust and incorrect discharged listed as General under Other than Honorable [sic; under honorable conditions] on the NGB Form 22 and justly grant me a corrected NGB Form 22.

3. The applicant's service records are not available for review. An exhaustive search was conducted to locate his records which are necessary in the processing of his case, but they could not be found. The applicant provides sufficient documents for the Board to conduct a fair and impartial review of his case.

4. The authority granted by Title 10, USC, Section 1552 (Correction of Military or Naval Records) is not unlimited. The ABCMR has the authority to correct only Army records. The Board has no authority to correct records created by the Department of Defense, other branches of the Services, Department of Veterans Affairs, or any other governmental agency. ARNG discharges, as documented on NGB Form 22, are functions of the State under the legal authority of Title 32 and are not Federal actions. As such, they are primarily under the control of the State Adjutant General. The ABCMR may only recommend possible actions.

5. Review of the applicant's available records shows:

a. His NGB Form 22 shows he enlisted in the Army National Guard (ARNG) on 8 January 1976. It also shows he entered active duty for training from 4 July to 23 October 1976 and that he was trained in and held military occupational specialty 16S, MANPAD Crewmember.

b. He was discharged from the Virginia ARNG on 23 July 1990 with a general, under honorable conditions characterization of service. His NGB Form 22 shows the authority for discharge as paragraph 8-27(g) (Unsatisfactory Participation) of National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management). It also shows he completed 14 years, 6 months, and 6 days of ARNG service (Reentry Code 3).

c. Upon his discharge from the ARNG, the applicant was transferred to the U.S. Army Reserve Control Group (Annual Training) to complete his service remaining obligations.

d. He was ordered to active duty in support of Operation Desert Storm on 31 January 1991. He was honorably released from active duty on 17 March 1991. His DD Form 214 shows completion of 1 month and 17 days of active duty.

e. Upon his release from active duty, the applicant was again transferred to the U.S. Army Reserve Control Group (Reinforcement).

f. On 2 June 1992, the U.S. Army Reserve Personnel Center published Orders honorably discharging the applicant from the U.S. Army Reserve effective 2 June 1992.

5. By regulation (NGR 600-200), paragraph 8-27g (State ARNG Discharge – Unsatisfactory Participation), ARNG commanders could separate Soldiers the commander had determined were unsatisfactory participants.

6. 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 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 her characterization of service. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence of in-service mitigating factors that warrant an upgrade of the applicant's under honorable conditions (general) discharge from the Army National Guard (ARNG). The Board noted, the record is absent the facts and circumstances surrounding the applicant's discharge and the characterization of service received from the Army National Guard.

2. This board is not an investigative body. The Board determined despite the absence of the applicant's service records, they agreed the burden of proof rest on the applicant, however, he did not provide any supporting documentation and his service record has insufficient evidence to show the facts and circumstances surrounding the applicant's characterization of discharge. Therefore, relief was denied.

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 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.

2/18/2024

X [REDACTED]

CHAIRPERSON
[REDACTED]

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. National Guard Regulation 600-200 (Enlisted Personnel Management), in effect at the time, stated:

a. Paragraph 8-7a (Honorable Discharge). An honorable discharge was issued to ARNG Soldiers who had been discharged with honor.

b. Paragraph 8-27g (State ARNG Discharge – Unsatisfactory Participation). ARNG Soldiers who failed to meet participation requirements, outlined in AR 135-91 (Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Procedures) could be separated as unsatisfactory participants.

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. It states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR is not an investigative body and decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application.

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. 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. 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//