

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 February 2024

DOCKET NUMBER: AR20230008247

APPLICANT REQUESTS: and upgrade on his under other than honorable conditions discharge. He also requests an appearance before the Board via video/telephone

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record), 27 February 2023
- Two character reference letters

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 is requesting an upgrade to his discharge. He provides two character reference letters:

a. American Legion Veteran Service Office Letter, which states:

(1) She has known the applicant since childhood. He was separated due to an altercation in the barracks at the time of his separation. He was at the barracks and saw two of his Soldiers in his unit starting to fight. He tried to break it up, but then one of the Soldiers who was in the fight told the applicant that the other man was sleeping with his wife, which resulted in the applicant and the other person in a physical altercation. At the time of the applicant's separation, he was unaware of the gravity of the situation and his character of service. Since his discharge, he has been an active volunteer with the Special Olympics, worked as an emergency medical technician, was on the search and rescue recovery department in Colorado, and has been a volunteer in the fire department. He received a college degree and has not been in any other altercations or any legal actions since his one event in the military.

(2) Character reference email, which states, "...she has known the [applicant] for 20 years now...he has proven to be a man with the qualities and values that most of us strive to achieve in a lifetime. He is not only one of the most patriotic people I've ever met that is the most dependable, honest, and hard-working individual anyone could ask for in a friend or coworker or even just an acquaintance".

3. The applicant's record is incomplete. Review of the available service records shows:

a. The applicant's DD Form 4 (Enlistment/Reenlistment Document) shows he enlisted in the Regular Army on 4 August 1987 and reenlisted for a period of two years on 8 August 1991.

b. He held military occupations specialty 63B, Light Wheel Vehicle Mechanic. He served in Germany from March 1989 to around April 1992, and in Southwest Asia from 12 December 1990 to 1 May 1991.

c. His service record contains two DA Forms 268 (Report to Suspend Favorable Personnel Actions (FLAG)): on 30 November 1991 for adverse action and 7 December 1991 for adverse action

d. On 6 January 1992, the applicant's commander initiated a Bar to Reenlistment Certificate against the applicant. The certificate two indicators of un-trainability or suitability"

- 30 November 1991, driving while intoxicated (DWI), pending MP Blotter Report/Pending UCMJ action
- 7 December 1991, aggravated assault, pending MP Blotter Report

The applicant did not desire to submit a statement in his own behalf, and his bar was approved on 9 January 1992. He did not appeal.

e. The applicant's DA Form 2-1 (Personnel Qualification Record) shows he was advanced through the ranks to specialist/E-4 on 1 October 1989. It also shows in: item 27 (Remarks): RE 3 Not Eligible to Reenlist and item 35 (Record of Assignments): Under Other Than Honorable Conditions, dated 9 April 1992

f. The applicant's separation packet is not available for review. However, his DD Form 214 (Certificate of Discharge or Release from Active Duty) shows he was discharged on 9 April 1992, under the provisions of Army Regulation 635-200 (Personnel Separation), Chapter 10, For the Good of the Service-in Lieu of Court Martial, with an under other than honorable conditions characterization of service. He completed 4 years, 8 months, and 6 days of net active service this period. He was assigned Separation Code KFS and Reentry Code 3

(1) He was awarded or authorized: Army Service Ribbon, National Defense Service Medal, Army Achievement Medal, Good Conduct Medal, Southwest Asia Service Medal with 3 bronze service stars, Kuwait Liberation Medal, Expert Marksmanship Badge with Grenade Bar, Driver and Mechanic Badge, overseas service bar, and Marksman Marksmanship Qualification Badge with Grenade Bar

(2) The Remarks block listed his immediate reenlistment but did not mention his continuous honorable service.

4. There is no indication the applicant petitioned the Army Discharge Review Board for review of his discharge processing within that board's 15-year statute of limitations.

5. 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. The Board determined 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.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation.

a. The applicant's separation packet is not available. However, the applicant's DD Form 214 reveals the applicant was charged with commission of an offense punishable under the UCMJ with a punitive discharge. After being charged, he presumably consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in the character service.

b. The Board noted the applicant provides two character reference letters one of which states since his discharge, the applicant has been an active volunteer with the Special Olympics, worked as an emergency medical technician, was on the search and rescue recovery department in Colorado, and has been a volunteer in the fire department. He received a college degree and has not been in any other altercations or any legal actions since his one event in the military. The Board determined the applicant's service clearly did not rise to the level required for an honorable discharge (given his extensive AWOL); however, a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board further unanimously determined no change to the reason for separation and/or associated Separation/RE codes is warranted as the underlying reason for separation remains the same.

c. The Board also noted that the applicant’s service from first date of enlistment to the date before his last reenlistment was honorable. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, in addition to listing immediate reenlistment(s), an entry is required for continuous honorable service from first day of service for which DD Form 214 was not issued until date before commencement of current enlistment.

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 reissuing the applicant a DD Form 214 for the period ending 9 April 1992 showing:

- Character of Service: General, Under Honorable Conditions
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change
- Remarks: Add “Continuous Honorable Active Service from 19870804 to 19910807” and “Soldier has completed first full term of service.”

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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, United States 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 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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.

3. Army Regulation AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

Chapter 3-7a provides an honorable discharge is a separation with honor. 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

Chapter 3-7b provides a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

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 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. 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//