

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 March 2024

DOCKET NUMBER: AR20230008754

APPLICANT REQUESTS:

- Upgrade of his under other than honorable conditions discharge to general under honorable conditions
- Permission to appear personally before the Board, via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Two letters of support

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, due to humiliating circumstances in his marriage, coupled with his own immature decision-making, he packed up his three children and ran away from a situation that kept recurring, regardless of where he went.

a. Right after graduating from high school, and as a newly married teenaged father, the applicant enlisted in the Regular Army and went off to "boot camp" (basic combat training) and AIT (advanced individual training), with a stop along the way at "jump school" (airborne training).

(1) Following AIT graduation, his first assignment was a 1-year tour in Korea, and this is when his relationship issues started. While on leave from Korea, he discovered his wife with a guy from high school; his wife promised it was all a mistake.

(2) Getting past his wife's infidelity and being someone who had grown up without a father, the applicant wanted nothing more than to make his marriage work, so he and his wife stayed together.

b. The applicant completed his tour in Korea and received new orders for Fort Bragg, NC (now renamed Fort Liberty). He and his wife were excited to be together again and for the chance to start a new home. However, within a year of their arrival, the applicant deployed in support of Operations Desert Shield/Desert Storm; he left behind a toddler and a wife who was 8-months' pregnant. About 11 months later, and after being home only a month, he and his wife learned she was pregnant with their third child.

c. After the birth of their third child, things became very stressful and very busy. To make ends meet, the applicant started working a few nights a week delivering pizzas. Many times, his wife would be "up to her ears with kids" and, with his absences because of the part-time job, the applicant's marriage was being negatively affected. His wife made a friend with a neighbor lady, and they would go out in the evenings to get a break while the applicant stayed at home with the kids. Unfortunately, it went from one night a week to a few nights a week to his wife sneaking out at night with their only car and not returning until dawn. His wife's behavior often required him to call in to work and say he was unable to come in.

d. Furious with what his wife was doing, the applicant soon found out his wife had met a man in town and was having a "fling." The applicant was coming up for reenlistment, and they told him that, by changing his military occupational specialty (MOS) from 67Y (Attack Helicopter Repairer) to 67N (UH-1 Helicopter Repairer), he could quickly be reassigned from Fort Bragg. He elected to change his MOS and soon left for MOS training at Fort Rucker, AL (now renamed Fort Novosel), with a subsequent reassignment to Fort Polk, LA (renamed Fort Johnson).

e. The applicant's new unit promoted him to sergeant (SGT)/E-5 and made him a "VIP Crew Chief." He was able to go home each night, and he tried his best to make a new life with his wife and family, but his wife's promiscuity reemerged and, when it did, the applicant "lost it." In an effort to hide his embarrassing life, he stupidly left his Army job with the hope of finding a life as far away from his wife as possible. He filed for divorce and ultimately won full custody of their three children; in addition, he was able to find employment within the aviation industry, and he started his life all over again but not without many regrets about the way he had ended his Army career.

3. The applicant provides his DD Form 214 and two letters of support.

a. Mr. D\_\_ J. K\_\_, former chief executive of a turbine engine repair company, states he met the applicant when the applicant joined Mr. K\_\_'s company.

(1) As chief executive, he had the opportunity to observe and contribute to the applicant's development. The applicant made rapid progress, rising from technician to supervisor through his diligence and willingness to assume additional responsibility, and he did so without neglecting the care of his family.

(2) Following an ownership change, the applicant accepted employment with another business (a metalizing company; metalizing is the process of applying a thin coat of metal to an object's surface), and Mr. K\_\_ became an independent consultant. After several years as a consultant, the company that had hired the applicant engaged Mr. K\_\_ as a technical consultant, and Mr. K\_\_ had the chance to once again work with the applicant; he observed that the applicant was diligently supporting the company and had taken on a leadership role. "This continued striving for professional and personal betterment has become a hallmark of [applicant's] career."

b. Mr. J\_\_ P. S\_\_, retired president of a metalizing company, states the applicant came to work for his company in 2007, and he witnessed the applicant grow into an exemplary employee. Not only did the applicant display outstanding work ethic and dedication, he also maintained a family life while caring for his two daughters as a single dad. The applicant had been raised by his grandparents, who were "long time service people and knew the importance of love for this country." The applicant learned from his grandparents and dedicated his life to service; only the need to care for his family caused his time in the military to be cut short..."but this should not in any way be held against him as he served honorably while enlisted."

4. The National Personnel Records Center (NPRC) reports the applicant's service records are unavailable; they have been checked out as part of the NPRC's efforts to scan all service records. However, the applicant's provides a copy of his DD Form 214, and this document is sufficient to address his request.

5. The DD Form 214 shows that, on 10 May 1988, the applicant enlisted into the Regular Army; on 4 January 1994, the Army discharged the applicant under other than honorable conditions, per Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10 (Discharge for the Good of the Service). He completed 5 years, 6 months, and 20 days of net creditable active duty service, with lost time from 19930818 through 19930922 (36 days), and excess leave, from 19930927 to 19940104. The report additionally reflects the following:

- Item 4a (Grade, Rate, or Rank) and 4b (Pay Grade) – Private (PV1)/E-1
- Item 12f (Foreign Service) – "00/00/00"
- Item 12h (Effective Date of Pay Grade) – 19901130
- Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – Army Commendation Medal, Parachutist Badge, National Defense Service Medal, and Army Service Ribbon

- Item 18 (Remarks) – No entries for either an immediate reenlistment or deployed service in Southwest Asia
- Item 26 (Separation Code (SPD)) – "KFS"
- Item 27 (Reentry (RE) Code) – "RE-3"
- Item 28 (Narrative Reason for Separation) – "In Lieu of Trial by Court-Martial"

6. The Gulf War/Operations Desert Shield/Desert Storm Database Roster shows the applicant deployed to Southwest Asia from 19901001 to 19910403 (6 months and 3 days).

#### BOARD DISCUSSION:

1. The applicant's contentions, submissions, the military record, Statutory and regulatory guidance, and the various Department of Defense guidance regarding discharge upgrade requests based on liberal consideration or clemency were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted.
2. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant 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.
3. The applicant did not provide the Board with a sufficient basis for the application of liberal consideration or clemency.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board concurs with the corrections noted in "Administrative Notes," but otherwise 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 insufficient as a basis for correction of the records of the individual concerned.

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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.

ADMINISTRATIVE NOTE(S): make the following administrative corrections to the applicant's DD Form 214, ending 4 January 1994:

- a. block 12f (Foreign Service) – delete current entry and replace with "00/06/03"
- b. block 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized)– add the following awards:
  - Southwest Asia Service Medal with two bronze service stars
  - Kuwait Liberation Medal – Saudi Arabia
  - Kuwait Liberation Medal – Government of Kuwait
- c. Item 18 (Remarks) – add the following comment: "SERVICE IN SOUTHWEST ASIA FROM 19901001 TO 19910403."

REFERENCES:

1. Title 10, USC, 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. AR 635-200, in effect at the time, prescribed policies and procedures for the administrative separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) stated an honorable discharge was separation with honor.

(1) Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate.

(2) Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when the Soldier's subsequent honest and faithful service over a greater period outweighed the disqualifying entries found in his/her record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 3-7b (General Discharge). A general discharge was a separation under honorable conditions and applied to those Soldiers whose military record was satisfactory, but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 applied to Soldiers who had committed an offense or offenses for which the punishment under the UCMJ included a punitive (i.e. bad conduct or dishonorable) discharge.

(1) Soldiers could voluntarily request discharge once charges had been preferred; commanders were responsible for ensuring such requests were personal decisions, made without coercion, and following being granted access to counsel. The Soldier was to be given a reasonable amount of time to consult with counsel prior to making his/her decision.

(2) The Soldier was required to make his/her request in writing, which certified he/she had been counseled, understood his/her rights, could receive an under other

than honorable conditions character of service, and recognized the adverse nature of such a character of service.

3. The Manual for Courts-Martial in effect at the time showed violations of Article 86 (AWOL for more than 30 days) included punitive discharges among its maximum punishments.

4. AR 600-8-19 (Enlisted Promotions and Reductions), in effect at the time, stated when a separation authority determined a Soldier was to be discharged from the Service under other than honorable conditions, the regulation required the separation authority to reduce that Soldier to the lowest enlisted grade. Board action was not required for this reduction.

5. AR 601-210 (Regular Army and Army Reserve Enlistment Program), in effect at the time, covered eligibility criteria, policies, and procedures for the Active Army and RC enlistment program. Table 3-6 (Armed Forces RE Codes) included a list of the RE codes:

- RE-1 applied to Soldiers completing their term of active service who were considered qualified to reenter the U.S. Army; they were qualified for enlistment if all other criteria are met
- RE-3 applied to Soldiers who were not considered fully qualified for reentry or continuous service at time of separation, but disqualification was waivable; they were ineligible unless a waiver is granted

6. AR 635-5-1 (SPD), in effect at the time, stated Soldiers separated under chapter 10, AR 635-200 received an SPD of "KFS."

7. The SPD/RE Code Cross Reference Table, in effect at the time, provided instructions for determining the RE code for Active Army Soldiers. This cross reference table showed the SPD code and a corresponding RE code. The SPD code of "KFS" had a corresponding RE code of "3."

8. AR 635-5 (Separation Documents), in effect at the time, stated the DD Form 214 was to list all authorized awards and decorations; additionally, the revision, issued on 15 September 2000, added the requirement to show a Soldier's deployment location and dates in item 18 (Remarks).

9. AR 600-8-22, currently in effect, states:

a. The Southwest Asia Service Medal is awarded to members of the Armed Forces of the United States serving in Southwest Asia and contiguous waters or airspace there over, on or after 2 August 1990 to 30 November 1995. A bronze service star is

authorized for wear with this medal for participation in each credited campaign. Approved designated campaigns include the following:

- Defense of Saudi Arabia (2 August 1990 to 16 January 1991)
- Liberation and Defense of Kuwait (17 January 1991 to 11 April 1991)

b. The Kuwait Liberation Medal – Saudi Arabia is awarded to members of the Armed Forces of the United States who participated in the Persian Gulf War between 17 January 1991 and 28 February 1991.

c. The Kuwait Liberation Medal – Government of Kuwait is awarded to members of the Armed Forces of the United States who participated in the Persian Gulf War between 2 August 1990 and 31 August 1993.

10. AR 15-185 (ABCMR), currently in effect, states:

a. The ABCMR decides cases on the evidence of record; it is not an investigative body. Additionally, the ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary). The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

b. An applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

11. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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//