

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 March 2024

DOCKET NUMBER: AR20230008877

APPLICANT REQUESTS:

- An upgrade of his characterization of service from under other than honorable (general) to honorable
- Correct his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show in:
 - item 14 (Military Education) – Primary Leadership Course
 - item 15 (member contributed to post-Vietnam era veterans' educational assistance program) “yes” vice “no”
 - service in Desert Shield and Desert Storm
- A personal appearance before the Board and or via video or telephone

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

- DD Form 149 (Application for Correction of Military Record), 26 April 2023
- Self-authored letter, 16 January 2023
- DD Form 214
- Two Character 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:

a. He was told his discharge would be upgraded to honorable after six months, and this never happened. He went to Primary Leadership Development Course (PLDC) at Fort Dix, N.J. and he held the rank of specialist. He also contributed to the Army College Fund and is not able to use it. He is a Desert Shield Desert and Storm era Veteran; but

has no proof or identification. His DD Form 214 is incorrect and states he did not contribute to the Army College Fund; he contributed \$100.00 to the fund, during his first year of enlistment but is unable to go to school.

b. After his discharge he has not been issued any driving while intoxicated (DUI) or failed drug test. After review of his discharge, he was informed that his military service did not entitle him to Veterans Affairs benefits. However, he may be eligible for treatment at a Veterans Affairs hospital for conditions determined to be caused or aggravated by his military service.

c. While stationed at West Point, N.Y., he was in a car accident, hospitalized for a week, but does not have a copy of the medical records. The accident is the cause of his back pain, and suffering. Driving trucks and snow removal equipment aggravated his injury. Due to youthful ignorance, he did not seek further medical care. He has hearing loss from firing the cannon without hearing protection, and foot pain due to the wearing of the Army boots.

d. Also, while stationed at West Point, N.Y., he received a DUI. His behavior led to problems and caused his general discharge. However, he did not have a problem with drinking until he joined the military, and believes the military promoted drinking and glamorized it. He drank too much, and he is paying for it. He was young and childish when he enlisted and did things without thinking. He needs glasses, dental work and medication. He is applying in hopes of receiving medical care at the Veteran's Affairs medical center.

3. On 30 January 1990, the applicant enlisted in the Regular Army. He completed training and was awarded the military occupational specialty 62J (General Construction Equipment).

4. His DA Form 3286-60/6 (Statement for Enlistment U.S. Army Enlistment Options) shows in part, in option 9-28 U.S. Army College Fund. The applicant initials that he read and understood –

a. He must remain enrolled in the GI Bill which requires a deduction from his pay. He also acknowledged that the contribution was non-refundable.

b. He will forfeit his entitlement to this option if: Any of the following apply:

(1) He failed to complete his initial term of enlistment, unless separation or discharge was connected with disability, hardship or convenience of the Government.

(2) If found to be unqualified for retention or service under any option for any reason because of personal conduct or with withholding derogatory information which is within his knowledge and which precludes or results in loss of his access to special intelligence information, he will be advised that he is not eligible for his option and his enlistment option will be voided.

5. His DA Form 2-1 (Personnel Qualification Record) shows in part:

a. Item 5 (Oversea Service) – no entries.

b. Item 17 (Civilian Education and Military Schools) – no entries for PLDC.

c. Item 18 (Appointments and Reductions) – he was promoted to specialist effective 1 February 1992, and demoted to private first class effective 25 November 1992.

6. The specific facts surrounding his case is not available. On 15 January 1993, the applicant was discharged. His DD Form 214 shows he was discharged in accordance with chapter 14-12b of AR 635-200 for Misconduct-Pattern of Misconduct with a Under other than Honorable Conditions (General) discharge. His DD Form 214 shows:

a. He was awarded or authorized the National Defense Service Medal, Army Service Ribbon, Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16), and Sharpshooter Marksmanship Qualification Badge with grenade bar.

b. He completed 2 years, 11 months, and 16 days of net active service this period.

c. He was issued the separation code “JKM” and the reentry code “3”.

d. Item 14 (Military Education) – General Construction Equipment Operator Course, 9 weeks, May 1990.

e. Item 15a (member contributed to post-Vietnam era veterans’ educational assistance program) - “no”.

f. Item 18 (Remarks) – no deployments.

7. The applicant provides two-character letters which show, he suffers from a service-related condition that causes him to be absent from work, but he still strives in performing his postal duties. He is a dependable and honest, family man that is involved with his church, family and community.

8. The applicant’s name is not listed on the Gulf-War roster.

9. By regulation (AR 635-200), chapter 14 states action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. 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), commission of a serious offense, and convictions by civil authorities. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

10. 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 not 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. The applicant's DD Form 214 shows he was discharged in accordance with chapter 14-12b of AR for Misconduct-Pattern of Misconduct with a general, under honorable conditions characterization of service. He completed 2 years, 11 months, and 16 days of active service. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of the available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. Block 14: The applicant's service records do not contain evidence, and the applicant do not provide any that shows he completed the Primary Leadership Development Course. In the absence of such evidence (DA Form 1059, Service School Academic Evaluation Report), the Board found relief is not warranted.

c. Block 15: The entry in Block 15 of the applicant's DD Form 214 pertains to Post Vietnam Veterans' Educational Assistance Program (VEAP). If a soldier contributed to

VEAP and did not get money back, the regulation states to mark "Yes." For those who enlisted before 1984, contributed to VEAP, and received their money back, mark "No." For any soldier who enlisted after 1985, mark No." The applicant enlisted after 1985 and therefore the entry is correct as shown.

d. Block 18: Remarks. The applicant's service records do not contain evidence, and the applicant do not provide any that shows he served in Southwest Asia in support of Operations Desert Storm/Shield. In the absence of evidence (such as a manifest, deployment order, an award certificate reflecting his deployment, Leave and Earnings Statement reflecting receipt of hostile fire pay), the Board found relief is not warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

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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, 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) sets forth the basic authority for the separation of enlisted personnel. 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), commission of a serious offense, and convictions by civil authorities. 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.

a. 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. 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 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.

4. Army Regulation 635-5 (Separation Documents), in effect at the time provides for the preparation and distribution of the DD Form 214. It states for:

a. Item 14 – list all formal in-service training courses successfully completed during the period of service covered by the DD form 214 of at least 1 week or 40 hours duration.

b. Item 15 – Indicate “yes” or “no” by marking with an “X” in the appropriate box.

c. Item 18 – (Remarks) - for active-duty Soldiers deployed with their unit during their continuous period of active service, enter the statement SERVICE IN (NAME OF COUNTRY DEPLOYED) FROM (inclusive dates).”

5. Army Regulation 15-185 (Army Board for Correction of Military Records), paragraph 2-11, shows applicant’s do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//