

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 April 2024

DOCKET NUMBER: AR20230009232

APPLICANT REQUESTS:

- Reconsideration to upgrade his under other than honorable conditions discharge (UOTHC)
- Personal Appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Email from Applicant
- Resume
- Self-Authored Letter to Hiring Manager
- University of Phoenix Unofficial Transcript
- Nomination for the National Society of Leadership and Success

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20220004034 on 30 January 2023.

2. The applicant states in his application and self-authored email:

a. He is applying for an upgrade of his current discharge. He has been a productive member of society and has acknowledged his wrongdoing.

b. He is asking the Board to take into consideration the documentation that he has submitted from past schooling as well as his performance reviews (contained in AR20220004034 and available for the Board's review) that he has received since being discharged from the Army.

c. He is not looking for any monetary gain. He is only asking to have his veteran benefits restored.

d. The applicant cannot say his records nor his discharge are unjust. He is asking the Board to consider the length of time that has passed since his time in the service and to consider reinstating his veteran benefits.

e. It has been close to 26 years since he was discharged from the Army. In that time period, he has learned to better himself and mentor others. He has kept himself busy and relevant by continuing to attend schools and staying gainfully employed.

f. He admits he made a terrible mistake back then, and he has been paying for it ever since. He submitted several documents proving he has been a stellar individual in the civilian world, and he is asking for the Board's mercy and understanding. He truly apologizes for his behavior and the embarrassment he caused his fellow service members and staff.

g. The applicant responded to the ABCMR in regards to a request of the original documents he stated were attached to his application. The applicant responded stating he made the mistake of mailing the original documents the first time he filed. He attached some additional documents that show he is currently enrolled in school and a copy of an email showing he was recently nominated for the National Society of Leadership and Success. He is currently completing the tasks required for induction.

h. He would like the Board to know that he understands that he made a huge mistake, and his actions were made in very poor judgement. He is not looking for any form of monetary gain from his request.

i. He is asking the Board to consider the positive changes he has made, since his discharge and to find it in their hearts to grant him an upgrade of his discharge. He would like to be able to use his veteran benefits at the Department of Veterans Affairs and to be able to be buried at the Veterans Cemetery.

j. There is no excuse for the applicant's actions, but he has made changes in his life and he has taken the lessons that he learned to attempt to help others avoid making the same mistakes.

3. The applicant provides the following documents:

a. The applicant's resume, which is available for the Board's review.

b. A self-authored letter to the Hiring Manager, where in the applicant describes his experience and credentials. The entire letter is available for the Board's review.

c. An unofficial University of Phoenix transcript, printed on 21 March 2024 is available for the Board's review.

d. An email, dated 15 March 2024, informing the applicant he was nominated for membership in The National Society of Leadership and Success. The entire email is available for the Board's consideration.

4. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows the applicant enlisted in the Regular Army on 5 August 1993 and entered active duty on 5 November 1993.

b. DA Form 4980-18 (The Army Achievement Medal Certificate) shows the applicant was awarded the Army Achievement Medal on 12 July 1995 for meritorious service from 1 June 1994 through 15 September 1995.

c. Permanent Orders 000275-19, published by Bravo Detachment, 18th Personnel Service Battalion, dated 1 October 1996 awarded the applicant the Army Good Conduct Medal for exemplary behavior, efficiency, and fidelity from 3 November 1993 to 2 November 1996.

d. Civilian Police Records show the applicant was investigated for conspiracy to commit murder, first degree burglary, and shooting into an occupied property. The entire investigation is available for the Board's consideration. However, this document does show the following information:

(1) On 7 July 1998, a Judgment/Order or Other Disposition shows the offense as discharge of a weapon in an occupied property. Prayer for judgment is continued from day-to-day and session-to-session. For good cause, the cost is remitted.

(2) Transcript of plea shows the applicant plead guilty. The state agreed to recommend a prayer for judgement to be continued. The applicant was gainfully employed and enrolled in a secondary school and had no prior record. The state would not pray judgement unless the applicant violated a criminal law.

(3) A Dismissals Pursuant to Plea Arrangements shows the offenses of conspiracy to commit murder and first degree burglary were dismissed.

e. SF Form 88 (Report of Medical Examination), dated 7 October 1997 and SF Form 92 (Report of Medical History) show the applicant was receiving the medical examination for separation from the military. They do not reveal any medical or mental health issues and the applicant was qualified for separation.

f. Memorandum subject Recommendation for Separation under Army Regulation (AR) 635-200 ((Personnel Separations – Enlisted Personnel), Chapter 14, Paragraph 14-12c, Commission of a Serious Offense, dated 8 October 1997, shows the applicant's commander was initiating separation of the applicant for being charged by civilian law enforcement with conspiracy to commit murder, first degree burglary, and shooting into an occupied property. The commander was recommending the applicant receive an UOTHC discharge. The intermediate commanders and separation authority were not bound by the commander's recommendation. On 8 October 1997, the applicant acknowledged receipt of the initiation of separation.

g. On 24 October 1997, the applicant was advised by his consulting counsel of the basis for the action to separate the applicant for commission of a serious offense, the rights available to him and the effect of waiving his rights. The applicant stated he requested consideration of his case by an administrative separation board, personal appearance before an administrative separation board, and statements on his own behalf would not be submitted. He requested counsel for representation.

h. On 4 November 1997, the applicant 's separation was referred to an administrative separation board and on 24 November 1997, the applicant was notified he would appear before an administrative separation board.

i. On 25 November 1997, the applicant was advised by his consulting counsel of the basis for the action to separate the applicant for commission of a serious offense, the rights available to him and the effect of waiving his rights. The applicant waived his right for consideration of his case by an administrative separation board, waived personal appearance before an administrative separation board, and statements on his own behalf would not be submitted. He waived counsel for representation.

j. The applicant's chain of command recommended approval of the initiation of separation with an UOTHC discharge. On 3 December 1997, the appropriate approval authority approved the applicant's separation and waiver of his rights to an administrative separation board. He ordered the applicant's separation from the Army with the issuance of an UOTHC discharge and ordered the applicant be reduced to the rank of private/E-1.

k. On 31 December 1997, the applicant was discharged accordingly. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he had completed 3 years, 10 months, and 10 days of active-duty service. He was discharged for misconduct and received an UOTHC discharge with a separation code of JKQ and a reentry code of RE 3. He had lost time from 16 September 1997 through 30 December 1997. He was awarded or authorized the:

- Army Achievement Medal

- Army Good Conduct Medal
- National Defense Service Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Marksman Marksmanship Badge with Rifle Bar

5. On 2 March 2022, the applicant applied to the Board requesting an upgrade of his UOTHC discharge and restoration to the rank of specialist/E-4. On 20 January 2023, in AR20220004034, the Board stated after reviewing the application and all supporting documents and the evidence found within the military record, the Board determined relief was not warranted. 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. Based on the patterns of misconduct, the Board determined the character of service the applicant received upon separation was not in error or unjust. The Board denied the applicant's application.

6. In a prior ABCMR Docket Number AR202220004034, dated 30 January 2023, the Board determined the evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of his case are insufficient as a basis for correction of the records of the individual concerned.

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 his 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 to overcome the egregious misconduct of attempted murder. The applicant accepts responsibility for his actions and was remorseful with his application, demonstrating he understands his actions were not that of all Soldiers.

2. The Board noted the applicant's post service achievements and character references attesting to his character over the past 26 years. However, the Board found the applicant's post service accomplishments and prior period of honorable service were insufficient to mitigate the applicant's misconduct. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust. The Board agreed the evidence does not support amending the previous Board's decision to deny an upgrade.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20220004034 on 30 January 2023.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [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. 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 ABCMR may, in its discretion, hold a hearing or request additional evidence or

opinions. Additionally, it states in paragraph 2-11 that 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.

2. AR 635-200, in effect at the time sets policies, standards, and procedures to insure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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.

c. A discharge under other than honorable conditions is an administrative separation from the Service under conditions other than honorable. It may be issued in lieu of trial by court martial.

d. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or absence without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Army policy states that an under other than honorable conditions discharge is normally considered appropriate for a Soldier discharged for misconduct.

3. AR 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), prescribes the specific authorities, reasons for separating Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows code JKQ is used for discharge for misconduct.

4. AR 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waivable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaivable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

6. On 25 August 2017 the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury (TBI); sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

7. 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.

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//