ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 11 December 2024

DOCKET NUMBER: AR20230009615

APPLICANT REQUESTS:

- Upgrade his general discharge under honorable conditions to an honorable character of service
- Permission to appear personally before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service)
- Louisiana Army National Guard (LAARNG) memorandum

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 his leadership failed to refer him for alcohol abuse treatment, as was required by Army Regulation (AR) 600-85 (Alcohol and Drug Abuse Prevention and Control Program). He argues that his misconduct was the direct result of his alcoholism; even the Army recognized that alcohol abuse was a preventable and treatable progressive disease. He declares that he has now been sober for more than eleven years; apart from misconduct caused his disease, his service in the LAARNG was honorable.

3. A review of the applicant's service record shows the following:

a. On 23 February 1978, the applicant enlisted into the LAARNG for 6 years; on 7 December 1978, upon completion of his initial active duty for training, the Army awarded him military occupational specialty 63B (Power Generation and Light Wheeled Vehicle Mechanic). In November 1979, civilian authority arrested the applicant and

charged him with drinking in public and destroying city property. Effective 1 November 1980, the applicant's leadership promoted him to specialist four (SP4)/E-4.

b. On 16 October, and then on 24 October 1982, the applicant's LAARNG unit successively reduced him from SP4 to private (PV2)/E-2; the second demotion was due to unsatisfactory participation. On 3 December 1983, the applicant extended his enlistment by 6 years. Effective 4 March 1984, the LAARNG designated the applicant as a military technician. On 3 December 1984, the applicant's leadership promoted him to specialist five (SP5)/E-5 and, effective 1 October 1985, the unit laterally appointed him as a sergeant (SGT).

c. On 22 February 1988, and consistent with the applicant's plea, a civilian court found the applicant guilty of his third driving while intoxicated (DWI) offense; the court sentenced the applicant to pay a fine and court costs, as well as one year in the parish prison, with work release.

d. On 2 March 1988, the applicant's LAARNG unit learned the applicant had been imprisoned with work release; the unit arranged with the prison to pick up the applicant for drills and, on completion of the drill, return him to the prison. On 4 March 1988, the unit discovered that, because the third DWI was considered a felony offense under State law, the applicant could no longer handle a weapon.

e. On 4 March 1988, the unit submitted a request to its higher headquarters to discharge the applicant, under the provisions of National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), paragraph 8-26p (Conviction by Civil Court). On 25 March 1988, the office of The Adjutant General (TAG), LAARNG, returned the separation request without action, stating the unit needed to comply with the notification process outlined in Army Regulation (AR) 135-178 (ARNG and Army Reserve – Separation of Enlisted Personnel).

f. On 4 April 1988, the applicant's company commander advised him, via memorandum, that he was initiating separation action against the applicant for misconduct, under the provisions of AR 135-178; the stated reason was the applicant's conviction by a civil court. Paragraph 6 of the memorandum stated, "Acknowledgement of this letter is required within (30) calendar days of receipt. Failure to respond to this letter and request for consideration by an administrative separation board will be considered a waiver of that right."

g. On 7 April 1988, a unit representative hand-carried the notification to the applicant at the parish prison; the applicant refused to sign the acknowledgement without first consulting counsel. Also, on 7 April 1988, the unit sent the notification of separation action to the applicant's last known address, using certified mail with return receipt requested.

h. On or about 15 April 1988, the unit resubmitted its separation request to higher headquarters; the unit noted the applicant had refused to acknowledge the notification letter, and there was no indication the applicant had formally requested counsel. On 18 April 1988, LAARNG TAG returned the resubmission, pointing out that paragraph 6 of the separation notification had allowed the applicant 30 days to respond; 4 May 1988 was the earlier date the unit could resubmit.

i. On 28 April 1988, the applicant signed a memorandum in which he acknowledged receipt of the commander's separation notification. In his response, the applicant did not use the format provided in AR 135-178 but stated the following; he elected:

- "To consult with counsel"
- "To appear before an administrative board and present my case for retention"
- "To be represented at the board by military counsel"
- "I do not desire to submit statements at this time but will submit statements and evidence at the administrative board hearing"

j. At some point between 4 and 6 May 1988, the unit resubmitted its separation packet pertaining to the applicant. On 6 May 1988, LAARNG TAG issued orders separating the applicant with a general discharge under honorable condition. The applicant's NGB Form 22 shows he completed 10 years, 2 months, and 13 days of LAARNG service. The form additionally reflected the following:

- Item 15 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) – Army Service Ribbon
- Item 23 (Authority and Reason) – NGR 600-200, paragraph 8-26p
- Item 26 (Reenlistment (RE) Eligibility) – RE-3 (disqualification requiring a waiver)

k. On 16 May 1988, the unit found out that, on 9 April 1988, the notification of separation action (sent via certified mail) had been received and signed for by a Ms. K__ W__; (based on notification letter, the applicant was to be given 30 days to respond from date of receipt (i.e., response required by 8 May 1988)). On 3 May 1988, the applicant's 28 April 1988 elections were received by an element of the LAARNG but, because the address was wrong and, due to being in the wrong format, there was confusion about what he was electing, the applicant's unit did not acknowledge receipt of his response until 23 May 1988.

l. On 26 May 1988, after evaluating the late receipt of the applicant's elections, an LAARNG official directed that the applicant's discharge not be revoked; instead, the LAARNG should reenlist him for 1 year for the purpose of conducting an administrative separation board. On 1 June 1988, the LAARNG appointed five officers to serve on an administrative separation board for the applicant.

m. On 10 June 1988, the applicant and his retention noncommissioned officer completed a DD Form 1966 (Record of Military Processing – Armed Forces of the United States). In item 35 (Law Violations) and the remarks section (item 39), the applicant listed all of his civilian offenses, from 1978 to the application date; included was the applicant's third DWI conviction. On 10 June 1988, the applicant reenlisted into the LAARNG for 1 year. On 13 June 1988, the LAARNG TAG signed a memorandum granting the applicant a reenlistment waiver.

n. On 23 June 1988, the LAARNG issued orders dropping the applicant from the rolls of the Army, effective 23 June 1988. The orders cited NGR 600-200, paragraph 8-5b (Dropped from the Rolls (DFR) of the Army – Finalized Sentence to Civil Confinement); additionally, the orders stated that characterization of the applicant's service was not authorized, and no discharge certificate would be issued. The applicant's available service record is void of any documentation showing an administrative separation board convened, and the applicant personally appeared with counsel to argue his case for retention.

4. There is no indication the applicant applied to the Army Discharge Review Board for an upgraded character of service within the 15-year statute of limitations.

5. A review of the applicant’s service record contains sufficient evidence to support administrative corrections that are not annotated on his NGB Form 22 for the period ending 6 May 1988. These omissions should be added to his NGB Form 224 as administrative corrections and will not be considered by the Board.

6. Army Regulation (AR) 15-185 (Army Board for Correction of Military Records (ABCMR), currently in effect, states applicants do not have a right to a hearing before the ABCMR; however, the Director or the ABCMR may grant a formal hearing.

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 request and available military records, the Board found insufficient evidence of in-service mitigating factors to overcome the misconduct for three driving under the influence charges. The Board noted, the applicant provided insufficient evidence of post-service achievements or character letters of support for the Board to weigh a clemency determination.

2. The Board noted, the applicant received order separating him with a general discharge under honorable condition. The applicant's NGB Form 22 shows he completed 10 years, 2 months, and 13 days of LAARNG service. The Board agreed that the applicant's separating characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Therefore, the Board denied relief.

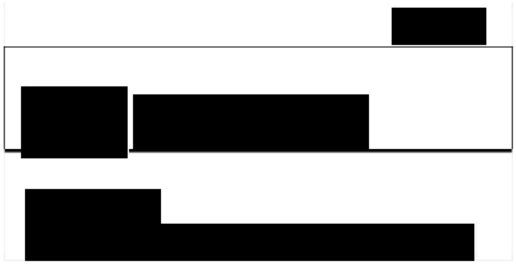
3. The applicant’s request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
[redacted]	[redacted]	[redacted]	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.



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 (NGR) 600-200 (Enlisted Personnel Management), in effect at the time, prescribed enlist enlisted personnel management policies and procedures for Army National Guard (ARNG) personnel.

a. Paragraph 8-5b (Dropped from the Rolls (DFR) of the Army). ARNG Soldiers could be DFR'd when sentenced to confinement (whether or not actually confined) in a Federal or State penitentiary or correctional institution after a civil court convicted the Soldier.

(1) The sentence had to have been made final.

(2) The Soldier's commander was to request the State ARNG publish orders dropping the Soldier from the rolls of the ARNG and a National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) was to be prepared.

(3) No characterization of service was authorized.

b. Paragraph 8-6 (Characterization of Service/Description of Service, Discharge Certificate, and Order – Characterization or Description). The Discharge of a Soldier from the ARNG was a function of State military authorities in accordance with State laws and regulations. However, due to the dual status of the Soldier as a Reserve of the Army, characterization of and limitations on service descriptions in chapter 1, Army Regulation (AR) 135-178 (ARNG and Army Reserve – Separation of Enlisted Personnel) was to be used in determining the type of discharge and character of service.

c. Paragraph 8-25 (Reenlistment Codes). Reenlistment Codes was determined at discharge. The codes provided information concerning the Soldier's service in the ARNG and was considered upon future reenlistment. Table 8-1 (Definition of the Reenlistment Code) showed the following:

- RE-1 – Soldier was eligible for reentry into the ARNG
- RE-3 – Soldier was not eligible for reentry, but the disqualification was waivable

d. Paragraph 8-26 (Discharge from the Reserve of the Army and/or State ARNG). This paragraph outlined the reasons, applicability codes, and board requirements for administrative discharges from the Reserve of the Army and/or State ARNG; it additionally cited the specific references that applied from AR 135-178.

(1) All Soldiers were to be notified of a commander's recommendation for their involuntary discharge; if the characterization was under honorable conditions, the commander was to advised the Soldier of the specific factors within his/her record that warranted that character of service.

(2) Subparagraph 8-26p (Conviction by Civil Court). For this provision, commanders were to refer to chapter 7 (Misconduct), AR 135-178; an administrative separation board was required unless waived by the Soldier, and the Soldier was to receive an RE-3 reenlistment code.

3. Army Regulation (AR) 135-178, in effect at the time, established policies and procedures for the administrative separation of enlisted ARNG and Army Reserve Soldiers.

a. Paragraph 1-18b (1) (Honorable). An honorable character of service was appropriate when the quality of the Soldier's service generally had met the standards of acceptable conduct and performance of duty for military personnel or is otherwise so meritorious that any other characterization was clearly inappropriate.

b. Paragraph 1-21 (Dropping from the Rolls of the Army). ARNG Soldiers convicted by civil court and sentenced to confinement in a Federal or State penitentiary or correctional facility, following a guilty finding, and whose sentence had become final, whether or not actually confined, could be dropped from the rolls of the Army. For the purposes of the regulation, a conviction was deemed final when the time for an appeal had expired or when final action on an appeal had been taken.

c. Paragraph 1-33 (Nonlocatee or In Hands of Civil Authorities). Discharge of an enlisted Soldier who had been convicted by civil authority was governed by Chapter 7. However, when discharge under the provisions of Chapter 7, Section III had been ordered by competent authority, and the Soldier was absent in the hands of civil authorities subsequent to the issuance of the discharge orders, the discharge could be executed regardless of absence.

d. Chapter 2 (Procedures for Separation). An enlisted Soldier was to be notified in writing by his/her immediate commander when separation action was contemplated.

(1) Section II (Notification Procedure). The Commander was to cite the exact allegations on which the proposed separation was based and include the specific provisions of the regulation authorizing separation. In addition, the commander was to inform the Soldier whether the separation would result in discharge, transfer to the Individual Ready Reserve, or with being dropped from the rolls, and state the least favorable character of service he or she could receive.

(a) The commander's memorandum additionally had to advise the Soldier of the following rights:

- Consult with counsel
- Submit statements in his/her own behalf
- Obtain copies of the documents that would be forwarded to the separation authority in support of the proposed separation
- Present his/her case before an administrative separation board (if the Soldier had 6 or more total years of active and reserve military service)
- Waive the foregoing rights

(b) The Soldier was to be provided a reasonable period of time to respond (not less than 20 calendar days). After receiving the advice of counsel, the Soldier was to state his/her elections and sign. The regulation provided a format for the Soldier's elections (Figure 2-2 (Separation under the Provisions of AR 135-178) and, after showing an acknowledgement of counsel's advice, the Soldier was to specifically reflect his/her decisions on the following:

- Whether he/she requested counsel
- If he/she wanted to have appear with or without counsel before a board of officers
- Whether any statements would be submitted in his/her own behalf
- If he/she waived the foregoing rights

(c) If notice by mail was authorized, and the Soldier failed to acknowledge receipt or provide a timely response, that fact constituted a waiver of rights.

(2) Section III (Administrative Board Procedures).

(a) When the reason for separation required an administrative separation board, the commander was to notify the Soldier in writing that he or she had been recommended for separation under this regulation; the requirements mirrored the notification process outlined in section II.

(b) Boards of officers were convened to determine whether a Soldier should be retained or separated. The board was to consist of at least three commissioned, warrant, or noncommissioned officers, with at lie one in the grade of major or higher. Enlisted Soldiers appointed to board had to hold the grade of E-7 or higher and be senior to the respondent.

(c) The rules for procedures and evidence were found in AR 15-6 (Procedure for Investigating Officers and Boards of Officers). After hearing testimony and reviewing documentary evidence, the board determined its findings and recommendations in a closed hearing.

(d) The board was determine whether each allegation was supported by a preponderance of evidence. If the board found the evidence warranted separation, the board could recommend separation due to misconduct or unsatisfactory performance; with the separation recommendation, the board also indicated a recommended character of service.

(3) When an administrative separation board recommended the Soldier's discharge, the separation authority could direct separation, either for misconduct or

unsatisfactory performance, or disapprove the board's recommendation and direct the Soldier's retention. The separation authority could not direct discharge when the board recommended retention and could not authorize a character of service less favorable than that recommended by the board.

e. Chapter 7 (Misconduct), section III (Conviction by Civil Court).

(1) Separation action. could be initiated against Soldiers under the following circumstances:

- When initially convicted by civil authorities, or action is taken that is tantamount to a finding of guilty
- A punitive discharge would be authorized for the same or a closely related offense under the Manual for Courts-Martial or the civil authority's sentence included confinement for 6 or more months
- The specific circumstances of the offense warranted separation

(2) A Soldier was considered convicted even though an appeal was pending; however, the discharge was not to be executed until either the Soldier indicated in writing he/she had no intention of filing an appeal or the time limit to file an appeal had expired or final action had been taken on the appeal.

5. AR 600-85 (Alcohol and Drug Abuse Prevention and Control Program (ADAPCP)), in effect at the time,

a. Paragraph 1-8 (Objectives). The objectives of the ADAPCP are the following:
- Prevent alcohol and other drug abuse
- Identify alcohol and other drug abusers as early as possible
- Restore both military and civilian employee alcohol and other drug abusers as early as possible
- Ensure effective alcohol and drug abuse prevention education is implemented

b. Paragraph 1-9 (General Policy). Alcohol and drug abuse were incompatible with military service. Soldiers identified as alcohol and drug abusers who, in the opinion of their commanders, warrant retention, were to be afforded the opportunity for rehabilitation. Those Soldiers identified as alcohol abusers who do not warrant retention were to be considered for separation. Commanders and supervisors had to confront suspected alcohol or other drug abusing individuals under their supervision with the specifics of their behavior, inadequate performance, or unacceptable conduct.

c. Paragraph 1-10 (Alcohol). The use of alcohol was legal and socially acceptable, but it-was not to become the purpose or focus of any military social activity. Abuse or excessive use of alcohol was not to be condoned or accepted as part of any military tradition, ceremony, or event. It was Army policy to encourage Soldiers and civilian employees to examine their personal use of alcohol; if necessary, they, were to seek assistance without fear of damage to their careers. Commanders were responsible for informing personnel of inappropriate performance or social conduct associated with problem drinking.

d. Paragraph 3-3 (Command Identification). Command identification occurred when the commander observed, suspected, or otherwise became aware of an individual whose job performance, social conduct, interpersonal relations, physical fitness, or health appeared to be adversely affected by the abuse of alcohol or other drugs (apparent or suspected). When abusers or suspected abusers were identified, they were to be interviewed by their unit commander or designated representative. If appropriate, they were to be referred to the ADAPCP for an initial screening interview.

e. Paragraph 3-6 (Investigation/Apprehension). A Soldier's alcohol or other drug abuse could be identified through military or civilian law enforcement investigation or apprehension. Upon notification of apprehension of a Soldier for apparent alcohol or other drug abuse, the commander was to refer the Soldier to the ADAPCP for an initial screening interview. Referral for screening or enrollment did not interfere with or preclude pending legal or administrative actions in any way.

f. In September 1987, the Army published an interim change to the regulation's chapter 9 (ARNG and Army Reserve).

(1) Paragraph 9-3 (Background). This chapter implemented the ADAPCP in the Reserve Component (RC) during periods of military duty in which other provisions of this regulation did not apply. The outcome for the RC under this chapter was expected to be the same as for the Active Component: providing Soldiers the opportunity to free themselves from the harmful effects of alcohol and other drug abuse.

(a) The ADAPCP was a comprehensive program designed to improve Army readiness through the prevention of alcohol and drug abuse and, as appropriate, facilitate the return to effective duty of rehabilitated Soldiers who had the potential for future service.

(b) The RC ADAPCP was to be operated with input from the National Guard Bureau (NGB), the Office of the Chief, Army Reserve (OCAR), and major command

(MACOM) headquarters as a command program. Commands were to have the widest possible latitude to use this program to improve and maintain unit readiness.

(c) This chapter addressed matters specific to the RC ADAPCP rather than reiterating the guidance elsewhere in this regulation. The intent was for the RC ADAPCP to parallel as closely as possible the Active Component (AC) ADAPCP while taking into consideration differences in mission, and in regulatory and operational requirements and capabilities, between the RC and AC.

(2) Paragraph 9-4 (Introduction). The provisions of chapter 1 applied to the RC under this chapter, except as specified below:

(a) Use was to be made of the AC ADAPCP through local coordination, as resources permitted.

(b) In addition to available AC ADAPCP resources, the RC was to refer Soldiers to community-based rehabilitative and counseling services at no cost to the Government. Although a Soldier could always self-refer to a drug or alcohol treatment center, the RC did not itself provide rehabilitation for alcohol or other drug abuse. AC ADAPCP, when available through local coordination, could be used. This did not relieve commanders of their responsibility to the Soldiers under their command in the areas of ADAPCP prevention, education, abuser identification, referral to community counseling and rehabilitation centers, and subsequent return to duty if warranted.

(3) Paragraph 9-6 (Identification, Referral, and Screening). The provisions of chapter 3 applied to the RC under this chapter, except as specified below:

- Community-based referral, counseling, and rehabilitation services (State certified) were to be used in lieu of ADAPCP screening in the RC unless AC resources were available
- Personnel separation procedures were contained in appropriate NG and U.S. Army Reserve (USAR) regulations

6. AR 15-185 (Army Board for Correction of Military Records (ABCMR), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(1) 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).

(2) 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.

c. Paragraph 2-11 (ABCMR Hearings). Applicants do not have a right to a hearing before the ABCMR; however, the Director or the ABCMR may grant a formal hearing.

7. 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//