

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 April 2024

DOCKET NUMBER: AR20230009797

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) characterization of service and a hearing before the board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Report of Separation from Active Duty)
- Orders # D-05-902386, 7 May 1984

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 became an Army Reservist after his honorable discharge from active duty. At that time, he was an active alcoholic, and his drinking was a detriment to his reserve duty. He was asked to leave the Reserve and did leave with a UOTHC discharge, which has haunted him his entire adult life. He is a different person now, with 40 years of continued sobriety in a 12-step recovery program. His discharge is a part of his past and is the last thing on his list he would like to clean up. He is not asking for benefits, just a chance to hold his head a little higher as he reflects on his past life. He apologizes for his past actions as a member of the Army Reserve. He thanks the board for considering his request and would be forever grateful if the board grants him relief. The applicant notes alcohol use disorder (AUD) as a condition related to his request.
3. The applicant enlisted in the U.S. Army Reserve (USAR) on 24 February 1978 and entered active duty for the purpose of completing his initial active duty for training. Upon completion of required training, he was awarded military occupational specialty 64C (Motor Transport Operator). He was honorably released from active duty on 24 May 1978, and returned to the control of the USAR.

4. A 6AA Form 122 (Unexcused Absence from Unit Training Assembly) and two 96th ARCOM Forms 100-R (Letter of Instruction-Unexcused Absence), show the applicant's commander notified him that he had accrued 16 unexcused absences from scheduled unit training assemblies (UTAs) from:

- 9 August 1980 thru 10 August 1980
- 7 February 1981 thru 8 February 1981
- 21 March 1981 thru 22 March 1981
- 11 April 1981 thru 12 April 1981

5. A 96th Army Reserve Command (ARCOM) Form 103-R (Notice of Unsatisfactory Participation from Unit Training Assemblies), shows the applicant's commander notified him that he was being declared an unsatisfactory participant from UTAs and recommended to have his case considered by a board of officers to determine if he should be separated from the USAR.

6. On 28 April 1981, the applicant's commander sent notification, dated 27 April 1981 via certified mail, restricted delivery, return receipt requested to the applicant that he was initiating actions to separate him from service under the provisions of Army Regulation 135-178 (Army National Guard and Army Reserve – Separation of Enlisted Personnel), Chapter 7, for misconduct. The specific reason cited was the applicant's failure to participate in UTAs and failure to correspond with the official correspondence sent to him by certified mail.

7. On 22 June 1981 and 25 June 1981, the applicant's chain of command recommended the applicant's separation from the service, under the provisions of Army Regulation 135-178, Chapter 7.

8. On 30 June 1981, the separation authority appointed the applicant a consulting counsel and sent the applicant a second notification that his command was initiating actions to separate him from service under the provisions of Army Regulation 135-178, Chapter 7, section VII (unsatisfactory participation of statutorily obligated members), for misconduct (unsatisfactory participation). He directed the applicant to acknowledge receipt of the notification, to consult with his appointed counsel regarding the reason for his command's action to separate him and the right available to him.

9. The applicant's notification of separation acknowledgement, consultation with counsel and election of rights forms were returned to the command blank.

10. On an undisclosed date, the separation authority approved the recommended separation action and directed the applicant's transfer to the IRR (individual ready reserve) Control Group (Annual Training) with a UOTHC characterization of service and reduction in grade in accordance with applicable regulations.

11. Oder 100-20, issued by Headquarters, 96th U.S. Army Reserve Command, Fort Douglass, UT on 21 September 1981, shows the applicant was reduced in grade from E-3 to E-2, effective 21 September 1981.

12. Orders D-04-011647, issued by U.S. Army Reserve Personnel Center, St Louis, MO, shows the applicant was reduced in grade from E-2 to E-1 effective 12 April 1984.

13. Orders # D-05-902386, discharged the applicant from the USAR on 7 May 1984, under the provisions of Army Regulation 135-178, with a UOTHC characterization of service in the grade of E-1.

14. Regulatory guidance in effect at the time provided an UOTHC discharge was normally considered appropriate for Soldier's discharged under the provisions of Army Regulation 135-178, for misconduct (unsatisfactory participation).

15. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

16. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting a discharge upgrade for his involuntary separation from the USAR.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. A DD 214 shows the former USAR Soldier entered the regular Army for advanced individual training on 24 February 1978 and was honorably discharged on 24 May 1978 under the provisions provided in paragraph 5-15 of AR 635-200, Personnel Management – Enlisted Personnel (1 March 1978): Reserve Component personnel ordered to IADT (initial active-duty training) under Reserve Enlistment Program (RE P63).

d. Orders published on 7 May 1984 show the applicant was discharged from the USAR effective 7 May 1986 under other than honorable conditions. AR 135-178,

Separation of Enlisted Personnel is the authority noted on the orders but neither a chapter nor paragraph was cited.

e. On 30 June 1981, the applicant was informed his unit had initiated action to separate him for unsatisfactory performance under provisions in section VII, chapter 7, or AR 135-178 (15 August 1980), Misconduct. There is no evidence he responded to his unit.

f. The applicant's involuntary separation was approved by the Commanding General of the 96<sup>th</sup> U.S. Army Reserve Command with the directives his service be characterized as under other than honorable conditions and he "be reduced in grade in accordance with applicable regulations."

g. No medical documentation was submitted with the application. Because of the period of service under consideration, there are no encounters in AHLTA. JLV shows he has not registered with the Veterans Hospital Administration.

h. There is no evidence the applicant had a mental health or other medical condition which would have then contributed to or would now mitigate his UCMJ violations; or that would have failed the medical retention standards of chapter 3, AR 40-501, Standards of Medical Fitness, and been a cause for referral to the DES prior to his discharge.

i. It is the opinion of the ARBA medical advisor that a discharge upgrade is not warranted.

#### 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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows during the applicant's service with a troop program unit, his chain of command identified him as an unsatisfactory participant and initiated separation action against him after having received 16 unexcused absences and was not attending battle assembly. The separation authority ordered the applicant separated with a characterization of service of UOTHC and reduced to private/E-1. The Board found no error or injustice in her separation processing. The Board reviewed and agreed with the medical official's finding no evidence the applicant had a medical condition which would have then contributed to or would now mitigate his violations; or that would have failed

the medical retention standards of chapter 3, AR 40-501, Standards of Medical Fitness, and been a cause for referral to the DES prior to his discharge. 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 evidence, the Board determined that the character of service and rank/grade the applicant received upon separation was not in error or unjust.

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 15-185 (ABCMR) states 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 135-91 (Army National Guard and Army Reserve – Service Obligations, Methods of Fulfillment, Participation Requirements and Enforcement Procedures) provides guidance governing absences from Ready Reserve training for enlisted personnel.

a. A Soldier becomes an unsatisfactory participant when he has accrued nine or more unexcused absences from scheduled drills during a 1-year period.

b. After accruing four unexcused absences in a 1-year period or after each succeeding unexcused absence up to and including the ninth absence in a 1-year period, the unit commander is required to notify the Soldier via a prescribed letter of instructions – unexcused absence. The delivery of this notice will be either in person or by certified mail, restricted delivery, return receipt requested. After each additional unexcused absence in a one-year period, the Soldier will receive a similar letter of instructions. Each of these notices will be filed in the Soldier's military personnel records.

c. As soon as possible after the actions in a above result in a determination that the member is an unsatisfactory participant, the unit commander may transfer the member to the IRR.

4. Army Regulation 135-178 sets forth the basic authority for the separation of enlisted Reserve Component personnel. The regulation then in effect, provided:

a. Paragraph 1-18b (1) provides that an honorable characterization of service 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. Paragraph 1-18b (2) provides that a general (under honorable conditions) characterization of service is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.

c. Paragraph 1-18b (3) provides that a UOTHC may be issued when the reason for separation is based upon a pattern of behavior that constitutes a significant departure

from acceptable military conduct or is based on one or more acts or omissions that are not acceptable military conduct.

d. Paragraph 1-24c provides that a member transferred to the IRR for unsatisfactory participation (prior to December 1982) with a tentative characterization of service of less than honorable normally will be discharged at the expiration of his or her statutory service obligation (ETS) with that characterization. However, he or she may earn a higher characterization at ETS by:

(1) Rejoining the same or another Army National Guard or USAR unit and participating satisfactorily for remainder of his or her statutory service obligation, but not less than 12 months; or

(2) Volunteering for and serving satisfactorily on a tour of at least 45 days of active duty for training.

e. Chapter 7 of this regulation establishes policy and prescribes procedures for separating enlisted members of the USAR for misconduct. Specific categories include fraudulent entry, conviction by civil court, other disqualifying patterns or acts of conduct and unsatisfactory participation of statutorily obligated members. A discharge UOTHC was normally considered appropriate. However, if warranted by the circumstances of the case, a characterization of service of honorable or under honorable conditions (general) may be furnished.

5. 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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; traumatic brain injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences.

6. 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 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//