

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 14 May 2024

DOCKET NUMBER: AR20230011069

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to under honorable conditions (general).

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

- DD Form 149 (Application for Correction of Military Record), 25 June 2023
- self-authored statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 22 October 1992
- Dean's list letter, 30 March 2011
- National Technical Honor Society letter, 20 May 2011
- Department of Veterans Affairs (VA) benefits letter, 8 February 2017
- 13 Certificates, from 9 November to 18 November 2018
- employment verification letter, 21 June 2023
- character reference, from Reverend T.M.III., 10 July 2023

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, in effect, he feels as though his 13 years of serving his country never happened. He went into the Army the exact same way he came out, but worse.

a. When he was serving overseas during the Gulf War, his spouse at the time was cheating with another servicemember, his platoon sergeant, which resulted in her having a baby and immediately remarrying after their divorce. He was under extreme pressure due to this incident, and he made a very bad decision.

b. During his service he did not have any other disciplinary actions, he was an outstanding Soldier, and his service records reflect this. During his discharge, he was told from a Judge Advocate General Officer that the Army was done with him, and he

was not eligible for any benefits. Which is untrue as he was eligible for benefits through the VA.

c. He knows he made a bad decision when during extreme times in his young life. His life since the Army, he worked for warehouse jobs and went back to school. After many years of rebuilding his life, he is a Facility Management Supervisor for one of the largest hospitals. He has been happily married for 21 years.

d. He is requesting a discharge upgrade due to health issues that are service connected. He received a small VA compensation for one service-connected injury; however, without a discharge upgrade he is unable to get the illnesses and injuries cared for. He is apologetic and has regretted his decision for over 30 years.

3. On his DD Form 149, the applicant notes other mental health is related to his request.

4. The applicant enlisted in the Regular Army on 30 June 1979, for a period of 3 years. He subsequently reenlisted four additional times on 30 July 1981, 1 May 1985, 18 April 1989, and 19 June 1990.

5. His DA Form 2-1 (Personnel Qualification Record) shows he was awarded the military occupational specialty of 68J (Aircraft Armament/Missile Systems Repairer) and the highest rank he attained was staff sergeant/E-6.

6. A DA Form 5180-R (Urinalysis Custody and Report Record) shows the applicant received a positive urinalysis result for cocaine.

7. On 20 May 1992, the applicant accepted nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice, for wrongfully using cocaine on or about 16 April 1992. His punishment imposed was reduction to the grade of E-5, forfeiture of \$741.00 pay per month for two months, restriction and extra duty for 45 days.

8. On 23 July 1992, the applicant's immediate commander notified the applicant of the intent to recommend the applicant's separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12c, Commission of a Serious Offense. The commander noted the specific reason as the applicant's positive drug test for cocaine and recommended the applicant receive a UOTHC discharge.

9. The applicant consulted with counsel on 23 July 1992, and was advised of the basis for the contemplated action to separate him and of the rights available to him. He requested consideration of his case by an administrative separation board, appearance

before a board, and representation by counsel. He elected not to submit a statement on his own behalf. Additionally, he understood he may encounter prejudice in civilian life if an under other than honorable conditions discharge was issued to him.

10. On the same date, the applicant's immediate commander formally recommended him for separation under the provisions of AR 635-200, Chapter 14, Section III (Acts or Patterns of Misconduct) 12c- commission of a serious offense. Further recommending a discharge characterization of under honorable conditions (general) discharge.

11. On 23 July 1992, the applicant's intermediate commander's recommended approval of separation under AR 635-200, paragraph 14-12c, for misconduct with a characterization of service as UOTHC.

12. On 30 September 1992, the separation authority approved the recommended separation under the provisions of AR 635-200, paragraph 14-12c, and further directed he receive a UOTHC characterization of service and reduction to the lowest enlisted grade.

13. He was discharged on 22 October 1992, under the provisions of AR 635-200, paragraph 14-12c, by reason of pattern of misconduct – abuse of illegal drugs, in the grade of E-1. His service was characterized as UOTHC. He received separation code JKK and reentry code of RE-3. He completed 13 years, 8 months, and 23 days of net active service with 4 years, 7 months and 2 days of foreign service.

a. The Remarks block listed his immediate reenlistments but did not list his continuous honorable service.

b. He was awarded or authorized the following decorations, medals, badges, citations and campaign ribbons:

- Army Service Ribbon
- Army Lapel Button
- Southwest Asia Service Ribbon with 3 Bronze Service Stars
- Army Good Conduct Medal (5th award)
- Kuwait Liberation Medal
- Expert Badge (Rifle)
- Overseas Service Ribbon (2)
- Aircraft Crewman Badge
- Air Assault Badge
- Noncommissioned Officers Professional Development Ribbon (2)
- Army Commendation Medal
- Army Achievement Medal (4th oak leaf cluster)
- Driver and Mechanic Badge

14. He additionally provides:

a. Certificates dated from 4 November 2002 through 18 November 2019 awarding him various medical course certificates, appreciation certificates, and various training certificates.

b. Two letters of congratulations, for making the dean's list and being inducted to the National Technical Honor Society.

c. A letter from the VA showing he received 10% compensation for a service-connected disability.

d. An employment verification letter showing the applicant started his position on 22 February 2010.

e. A character reference statement from Reverend T.M.III., summarizing the applicant as honorable, respectful, compassionate, caring, dutiful and committed not only to his spouse but his family, church, and community. The Reverend has watched the applicant grow into the man who he is today and is aware of his UOTHC discharge. Specifically stating, the applicant is not the same he was in 1992.

15. There is no indication the applicant applied to the Army Discharge Review Board for request of discharge upgrade within that Board's 15-year Statute of Limitations.

16. Regulatory guidance states when an individual is discharged under the provisions of AR 635-200, Chapter 14, for misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

17. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

18. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. He contends he was experiencing a mental health condition that mitigates his misconduct.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 30 June 1979; 2) On 20 May 1992, the applicant accepted nonjudicial punishment for wrongfully using cocaine; 3) The

applicant was discharged on 22 October 1992, Chapter 14-12c, by reason of pattern of misconduct – abuse of illegal drugs. His service was characterized as UOTHC.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and available military service records. The VA's Joint Legacy Viewer (JLV) and VA medical documentation provided by the applicant were also examined.

d. The applicant noted mental health conditions as a contributing and mitigating factor in the circumstances that resulted in his separation. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition or has been awarded any service-connected disability.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant had condition or experience that mitigates his misconduct.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant reports experiencing a mental health condition while on active service, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reports experiencing a mental health condition while on active service.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition while on active service. The applicant did use illegal substances while on active service. Substance use could be an attempt to self-medicate to avoid negative emotions, but it is not sufficient to establish a history of a mental health condition during active service. However, the applicant contends he was experiencing a mental health condition that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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.

a. The applicant was discharged from active duty for commission of a serious offense after testing positive for the use of cocaine. He received an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical official's finding insufficient evidence to support the applicant had condition or experience that mitigated his misconduct.

b. Nevertheless, the Board also noted that the applicant completed 13 years and 8 months of active duty. Additionally, he provides several documents in support of a clemency determination, including multiple post discharge certificates of appreciation and training, letters of induction into the National Technical Honor Society, and a character reference letter speaking of the applicant's commitment to his family, church, and community. Thus, the Board determined that his service did not rise to the level required for an honorable characterization (given his cocaine use as a seasoned NCO); however, a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board determined that such upgrade did not change the underlying reason for separation and thus the narrative reason for separation and corresponding codes should not change.

2. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

In addition to the correction addressed in Administrative Note(s) below, the Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant a DD Form 214 for the period ending 22 October 1992, as follows:

- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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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):

A review of the applicant's record shows his DD Form 214, for the period ending 22 October 1992, is missing an important entry that may affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following entry in

item 18 (Remarks): "CONTINUOUS HONORABLE SERVICE FROM 19790130 UNTIL 19900618"

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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. AR 635-200 sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3, section II (Type of Characterization or Description) provides a description of the states the following types of characterization of service or description of service are authorized: separation with characterization of service as Honorable, Under Honorable Conditions (General), or Under Other Than Honorable Conditions, and Uncharacterized (for entry level status) are authorized. These separation types will be used in appropriate circumstances unless limited by the reason for separation.

(1) Paragraph 3-7a states 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.

(2) Paragraph 3-7b states an under honorable conditions (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.

b. Chapter 14 (Separation for Misconduct) establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave.

(1) 14-12c(2) – Soldiers are subject to discharge for Commission of a serious offense. Commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Court-Martial. Specific instances of serious offenses include abuse of illegal drugs or alcohol.

(2) A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct an under honorable conditions (general) discharge if such is merited by the Soldier's overall record.

4. 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. 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.

5. 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. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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//