

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 May 2024

DOCKET NUMBER: AR20230011132

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (general) discharge to honorable
- to change his narrative reason for separation from unacceptable conduct to Secretarial Authority
- to change his separation code to a corresponding code for Secretarial Authority

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

- DD Form 149 (Application for Correction of Military Record)
- Brief in Support of Application for Correction of Records
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Memorandum Allegations of Misconduct Involving the Applicant
- Memorandum Request for Appointment of Informal Investigating Officer (IO)
- Memorandum Commander's Inquiry Report
- DA Form 2823 (Sworn Statement)
- Reprimand
- Acknowledgement of Receipt of Reprimand
- Reprimand Considerations
- Statements of Character References
- Filing of Reprimand
- Recommendations for Discharge in lieu of (ILO) Elimination Proceedings
- Self-Authored letter
- Applicant's letter on his background
- Letters of Support

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 defers to his attorney regarding his request.

3. The applicant's attorney, on behalf of the applicant, states:

a. The applicant respectfully submits this application to upgrade his discharge status from under honorable conditions (general) to honorable, upgrade his narrative reason for separation from unacceptable conduct to secretarial authority, and to change his separation code to a corresponding code. The brief is for the purpose of the Board's consideration of evidence, while conducting a review of the applicant's discharge.

b. Statement of Facts: The applicant enlisted [commissioned] in the Army on 7 July 1992 and served for a period of seven years and eight days. For his service, he was awarded the Army Commendation Medal, Joint Meritorious Unit Award, National Defense Service Medal, Armed Forces Expeditionary Medal, Humanitarian Service Medal, Army Service Ribbon, United Nations Medal, Expert Marksmanship Qualification Badge with Rifle Bar, Army Aviator Badge, and Parachutist Badge. The applicant completed the Army Medical Department (AMEDD) Officer Basic Course in 1992, the Rotary Wing Aviator Course, in 1993, the Aviation Maintenance Management Course in 1996, and the Maintenance Test Pilot Course in 1998.

c. The applicant was a member of the Army Medical Service Corps. He served in his primary specialty of an Aeromedical Evacuation Officer for 5 years and 10 months.

d. On 10 November 1998, a commander's inquiry report was issued and found that the applicant had violated Article 134, Uniform Code of Military Justice (UCMJ), by engaging in an inappropriate relationship with a junior enlisted Soldier, by making a threat to the career and position of a specialist in the 57th Medical Company, and by making an implied physical threat to that specialist's spouse. The report recommended that the applicant be administratively suspended from his assigned duties and reassigned to the Headquarters and Headquarters Detachment (HHD), 56th Medical Evacuation Battalion until the investigation was completed.

e. On 16 November 1998, a request for appointment of an informal investigation officer (IO) was issued. The purpose of the request was the initiation of an informal investigation to investigate the possible improprieties and violations of the UCMJ about the applicant's relationship with the junior enlisted Soldier. The request also asked that the IO to determine whether the relationship between the applicant and the junior enlisted Soldier was sexual, whether the applicant had been involved with other enlisted Soldiers in the battalion, the level of any fraternization that had occurred between the applicant and enlisted Soldiers in his battalion, and whether any other officers had engaged in inappropriate relationships with enlisted Soldiers.

f. On 21 December 1998, the Commander's Inquiry Report was reviewed by Lieutenant Colonel (LTC) T- M. B-. LTC B- who concluded that there was substantial evidence that the applicant had not been truthful in his sworn statements and that his relationships with certain enlisted Soldiers in his company had an actual adverse impact upon good order and discipline. LTC B- recommended that:

(1) The applicant be formally relieved of his duties and issued a relief for cause Officer Evaluation Report (OER).

(2) The applicant be issued a General Officer Memorandum of Reprimand (GOMOR).

(3) Initiation of the applicant's administrative separation be considered.

g. On 5 February 1999, Major General J- J. R- issued a reprimand to the applicant. The reprimand specifically stated that the applicant had engaged in an inappropriate relationship with a female subordinate in his company, was untruthful about the nature of their relationship, and threatened harm to a subordinate and her husband if the subordinate provided truthful adverse information against the applicant. The reprimand also states the applicant had attended several social functions with enlisted Soldiers in his company and became familiar to them on a first name basis.

h. On 16 February 1999, the applicant filed a request that the reprimand not be filed in his Official Military Personnel File (OMPF). In March 1999, the applicant's request was denied and the reprimand was filed in his OMPF.

i. On 11 March 1999, elimination proceedings against the applicant commenced. On 3 April 1999, the applicant submitted a request for discharge in lieu of elimination proceedings. The applicant's request for his discharge was granted and he was subsequently separated on 14 July 1991 [sic] with an under honorable conditions (general) characterization of service and unacceptable conduct as the narrative reason for separation.

j. Argument: The Secretary of the Army may correct any military record when it is necessary to correct an error or remove an injustice. A motion to correct a military record must be made within three years of the discovery of the alleged error or injustice; however, the Board has the authority to waive the time requirement if it would serve the interests of justice to decide a case on the merits. Here, the filing is untimely; however, the applicant respectfully states that it is in the best interest of justice that this matter be heard.

k. For relief to be granted, an applicant must demonstrate the existence of a material injustice that can be remedied effectively through correction of the applicant's

military record. The applicant has the burden of providing sufficient evidence of material injustice.

l. The United States Court of Federal Claims, Military Appellate Courts, and Federal District Courts have all recognized the punitive nature of negative service characterizations. For example, the Court of Federal Claims has noted since the vast majority of discharges from the Armed Forces are honorable, the issuance of any other type of discharge stigmatizes the ex-serviceman. It robs him of his good name. It injures his economic and social potential as a member of the general community.

m. The unambiguous language of these decisions demonstrates the mentality of how anything other than an honorable discharge is viewed by individuals outside of the military. Here the applicant has been deprived of his honor and good name, which continues to cause him undue harm more than 20 years after his discharge from the U.S. Army.

n. It is respectfully submitted that the applicant deserves an honorable discharge based on his post-service achievements. After he was discharged, the applicant began treatment for alcohol addiction and has maintained his sobriety for 12 years. The applicant writes he was able to fully function and achieve his duties and responsibilities as an officer. He also writes:

"Unfortunately, my disease ultimately resulted in a complete departure from my true nature and character. The consequence of my behavior resulting in my discharge from the military service...This single episode, as my performance records indicates, is in no way reflective of a theme or trend of conduct or behavior before or after this event. Outside of this single incidence, my military career was unblemished."

o. Following his separation, the applicant was employed as a regional consumer bank manager in Portland, Oregon. In his role as a bank manager, the applicant used the skills he learned from the Army and led by example, provided support, feedback, and growth opportunities to bank members.

p. In support of this application, several individuals drafted character references. These reference letters reflect the applicant's outstanding accomplishments, work ethic, and character. L- B- , the applicant's committed partner for nearly ten years wrote:

"He is a loving, steadfast, respectful, and supportive partner - and my best and most trusted friend...M- helps me live my best life - to be a better mother, daughter, business leader, and friend. He is a principal man of honor who has a huge heart and always steps up to support family, friends, and co-workers...M- has always expressed deep appreciation for

his experiences as a MEDEVAC pilot, platoon leader, along with other missions and responsibilities. But what he speaks of most often was the opportunity to help mentor and coach his troops to find their best selves and lives. In my experience, M- has consistently brought that commitment forward across his personal and professional life."

q. A second letter attesting to the applicant's character and work ethic was written by C- C-, a friend and former professional associate of the applicant. C- C- wrote:

"I am 26 years old and met M- in the spring of 2013; it is no exaggeration to say that I have known him for the majority of my adult life. Nor is it an exaggeration to say that my relationship with him has been one of the most formative of that period....M- is the single most dependable person that I know, and I have and will continue to rely on him to live up to his word under any circumstances. Whether it is rescuing a drowning kayaker, handling the logistical details of an extreme sport performed in remote locations, or simply providing life advice, M- has never let me down....He steered me away from many poor decisions (and attempted to steer me away from many poor decisions that I ended up making anyways), and was in general an outstanding role model for how to live a responsible and admirable life...M- was also generous enough to invite me into his professional sphere when I needed a job after graduating college...He closed the accounts of lucrative customers who were rude to his employees and opened unprofitable accounts for customers that needed a helping hand. I heard him express genuine pride in being able to consolidate the debt of a struggling family or guide a marginal employee back on track.. I learned about how alcohol led him to the conflict with his fellow service members that resulted in his discharge, and heard M- express sincere remorse for how a proud chapter of his life had ended in such an ignominious way. I also heard about how he mustered the strength and resolve to turn away from that addiction, to accept help from others, attend Alcoholics Anonymous meetings, and improve his life."

r. A third letter from J- I-, another close friend of the applicant shares insight into the applicant's character and journey to recovery. J- I- wrote:

"I am a sober alcoholic in recovery since 8 November 2009. On that day, I met M- B- who began his journey in recovery about six weeks before me...Without M-, I would not be in a position today to claim more than 12 years of continuous sobriety. He changed my life for the better. He also positively impacted the life trajectory of my wife and my daughters...M-'s contributions here clearly qualify as exemplary service to our country. When reevaluating his discharge status, the U.S. should also recognize

this, M-'s many other contributions to American life over more than a decade...For years, I have urged M- to petition to upgrade his military discharge status to match the honorable man and citizen he is today. I urge you to evaluate M-'s request with the same sincerity and determination that M- has brought to his recovery from alcoholism and service to others."

s. The applicant has been clean and sober for more than 12 years and has dedicated his life to professional excellence, team development and support, and service to others. He has proven, as can be attested by the many character references, that he is proud to have served his country and continues to positively contribute to society by lifting those around him. The fact that he will forever be plagued by an under honorable conditions (general) discharge status is a stain on his character that he desperately desires to be removed. Leaving this blemish on his life will cause him to suffer a material injustice to his honor for the rest of his remaining years. It is only fair and equitable that the Board grant him the relief he seeks.

t. In light of the facts and circumstances provided, the applicant respectfully requests that his discharge be corrected to reflect an honorable characterization of service and his narrative reason for separation be upgraded from unacceptable conduct to miscellaneous and to upgrade his separation code to a corresponding code. The applicant's chain of command made a material error of discretion by not getting him treatment for his alcoholism. Furthermore, his outstanding service, accomplishments, character, and work ethic after his discharge warrant an honorable discharge under the equitable principle of law.

4. The applicant provides the following documents:

a. DA Form 2823 (Sworn Statement) from Private First Class M- C-, dated 3 November, which states she was in a personal relationship with the applicant. The relationship started either in July or early August of 1998 and ended on 2 November 1998 as a result of a direct order from the commanders.

b. Self-authored letter from the applicant, dated 21 December 2021, which states:

(1) On 14 June 1999, he received a discharge in lieu of elimination as a captain (CPT) in the U.S. Army after 10 years of service. He respectfully asks the Board to consider upgrading his status to an honorable discharge including an update to his military records. He seeks reinstatement so that he can receive full retirement and medical benefits under the care of the Department of Veterans Affairs (VA) for the continued treatment and therapy for his illness.

(2) The characterization and authority for his separation cited "misconduct, moral, or professional dereliction" in accordance with Army Regulation (AR) 635-5-1 Personnel Separations – Separation Program Designator (SPD) Codes) for separation code BNC. He was subsequently issued an under honorable conditions (general) discharge. The conduct and behavior that led to this elimination was inconsistent with his performance of duties and responsibilities, during his military career. This was a career committed to excellence, performance of duties, responsibility, and troop and team development.

(3) Throughout his military career, the applicant sought out the most difficult training courses and assignments to ensure that he and his troops were competitively strategic and tactically ready to deploy, fight, and succeed. He completed coursework with merit and assignments with professionalism, including those beyond his rank and outside his primary military operations specialty as a 67J (Aeromedical Officer) in the Medical Service Corps of the U.S. Army.

(4) For example, he completed the AMEDD Officer Basic Course, U.S. Army Infantry Airborne Course, and the Initial Entry Rotary Wing Aviators Course enroute to his first duty station with the 1st Infantry Division and the 82nd Medical Detachment. At Fort Riley, Kansas, he quickly advanced in his aviation training and was promoted to pilot-in-command well ahead of his peers. As flight platoon leader, he trained 65 personnel including pilots, crew chiefs, and medics with skills including field maintenance, field based medical triage, and integrated multidisciplinary joint operations with other U.S. military services and foreign military assets to help them operate seamlessly and efficiently in both foreign and domestic operation environments. His flight platoon maintained 24-hour MEDEVAC responsibility for the state of Kansas and the U.S. Army base in Fort Sill, Oklahoma. As a first lieutenant (1LT) and detachment commander, he was deployed with an aviation detachment to the United Nations mission in Haiti and relieved a U.S. Army major as detachment commander responsible for all MEDEVAC operations in theater for eight months.

(5) Upon the applicant's return from Haiti, his unit converted from UH-1 to UH-60 aircraft in adherence to the Medical Force 2000 Modified Table of Organization and Equipment template and he was moved to maintenance platoon leader after completion of the UH-60 qualification course and aviation maintenance manager course. During his deployment in Fort Riley, he received the Army Commendation Medal (2nd Award), Joint Meritorious Unit Award, National Defense Service Medal, Armed Forces Expeditionary Medal, Humanitarian Service Medal, Army Service Ribbon, United Nations Medal, and the Expert Marksmanship Qualification Badge (with Rifle Bar). Each of these commendations were achieved in the course of seeking challenges that constantly improved his leadership skills and by seeking opportunities to train and support others, by serving the U.S. Army, and through his commitment to staff development.

(6) The applicant's final duty assignment was the 57th Medical Company, Fort Bragg, North Carolina. He was assigned as the maintenance platoon leader and sent to the UH-60 Maintenance Test Pilot Course. He was the only commissioned officer in the unit to attend this course. Commissioned officers, as a rule, are not selected for this course. This is in consideration of the technical proficiency necessary, and the time demand this certification requires in its execution as it adds exponentially to the responsibility of unit leadership. In general, only warrant officers are selected for a technical course of this level as they do not carry the added responsibility of unit command pressure. During his deployment at Fort Bragg, he conducted MEDEVAC missions as a flight platoon pilot and maintenance test flights as the unit maintenance officer, in addition to managing the UH-60 phase maintenance program. The level of responsibility and authority entrusted him throughout his military career has been largely atypical to the career progression of most Army officers.

(7) And the applicant is an alcoholic. While the progression of his disease continued through his military career, he was still able to perform his duties as a highly functioning officer, achieve objectives, and fulfill his duties and responsibilities. Unfortunately, his disease ultimately resulted in a complete departure from his true nature and character. The consequences of his behavior resulted in his discharge from military service. The characterization of his ultimate discharge was under honorable conditions (general) with the specific identification of misconduct, moral, or professional dereliction in accordance with chapter 4, AR 600-8-24 (Officer Transfers and Discharge). This single episode, as his performance record indicates, is in no way reflective of a theme or trend of conduct or behavior before or after this event. Outside of this single incident, his military career was unblemished.

(8) Upon leaving the military, the applicant sought treatment, independent of any VA support, and has dedicated his life to professional excellence, team development and support, and service to others.

(9) Since his departure from the U.S. Army, he has served as a regional bank manager in Portland, Oregon. For the past 12 years, he managed revenue growth for eight different bank branches, and helped branch employees learn skills to help them meet rapidly changing consumer demand and keep pace with global financial market dynamics. He created numerous business development and training programs, which received industry recognition including a complete revision to consumer level retail investment banking and mortgage processing, organic business partner development and alignment protocols, and entry level employee professional development programs. These initiatives aligned business, investment, and mortgage banking within the retail consumer banking environment.

(10) The common thread in his military and professional careers is his commitment to being a coach and mentor, facilitating personal development and

professional advancement in support of realizing successful mission outcomes. He led by example, providing support, feedback, and growth opportunities to his troops. He helped bank team members advance into management positions and increased compensation opportunities.

(11) The applicant dedicated his life and put himself in harm's way in service to his country. He has been entrusted with the lives of hundreds of military men and women, regarding both their physical well-being and their personal and professional development. He never failed them or his command. In military and civilian posts, he has helped those around him achieve their goals and live their best lives.

(12) The applicant has been clean and sober for more than 12 years; living his best life. He asks that his record, before and after this event, stand on its own merit. The applicant included a document entitled Additional Background, which is his academic history prior to commissioning and his commitment to excellence in the military and pursuit of the toughest challenges, which is available for the Board's review.

c. Letters of support, which state, in effect:

(1) From L- J- B- who has been in a committed relationship with the applicant for nearly 10 years. The applicant has helped the author meet and balance the demands of simultaneously single parenting her daughter, providing elder care for her parents, working full-time, overcoming the fallout of a brutal divorce, and dealing with a difficult ex-spouse. The applicant helps her live her best life. He has the courage to disagree and challenge those around him to consider other views and paths, and to have the difficult conversations that lead to better outcomes. The applicant has grown and matured in his capacity as a leader in the financial services industry, innovate new enterprise programs and initiatives, and build and develop teams that deliver results. L- B- respectfully asked the Board to consider making a correction to the applicant's military records and upgrade his discharge to honorable. The entire letter is available for the Board's review.

(2) From C- C- who met the applicant in 2013 at a swift water rescue training course. Their friendship quickly grew in the context of their shared interest in kayaking. The applicant is the single most dependable person C- C- knows and C- C- has and will continue to rely on the applicant to live up to his word under any circumstances. The applicant provided C- C- invaluable guidance as he grew and matured. Providing guidance was something the applicant did for C- C- and others very effectively. The applicant is responsible, trustworthy, and an upstanding citizen and business person. C- C- firmly believes the unprofessional acts, which earned the applicant his discharge, were the result of his battle with alcoholism and do not reflect the applicant's true character. The applicant has won that fight, and has served his community in other

ways just as he once served this country as a Soldier. The entire letter is available for the Board's review.

(3) From J- I- who is a sober alcoholic in recovery since 8 November 2009, the day he met the applicant. The applicant has been a constant source of support and encouragement in J- I-'s life. The applicant has positively intervened on numerous occasions to help J- I- remain on his recovery path. When reevaluating the applicant's discharge status, the U.S. should also recognize the applicant's many other contributions to American life over more than a decade. The entire letter is available for the Board's review.

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

a. DA Form 71 (Oath of Office - Military Personnel) shows the applicant took the oath of office as a Reserve commissioned officer in the rank of second lieutenant (2LT) on 12 June 1992.

b. Officer Evaluation Reports (OER) shows the following information:

(1) From 16 September 1993 to 14 January 1994 as a 2LT: He always exceeded requirements and promote ahead of contemporaries. His senior rater stated the applicant continued to perform his duties in a singularly outstanding manner.

(2) From 15 January 1994 to 14 January 1995 as a 1LT: He always exceeded requirements and promote ahead of contemporaries. His senior rater states the applicant's performance marked him as one of the top two lieutenants the senior rater had served with in twelve years.

(3) From 11 March 1995 to 8 June 1996 as a 1LT: He always exceeded requirements and promote ahead of contemporaries. His senior rater stated the applicant provided outstanding support to the field hospital and the United Nations Mission in Haiti.

(4) From 9 June 1996 to 15 February 1996 as a 1LT: He always exceeded requirements and promote ahead of contemporaries. His senior rater stated a tremendous performance by a superior officer.

(5) From 16 February 1996 to 15 July 1996 as a 1LT: He always exceeded requirements and promote ahead of contemporaries. His senior rater stated the applicant had continued to perform his duties in a superb manner.

(6) From 14 August 1996 to 2 June 1997, as a CPT: He always exceeded requirements and promote ahead of contemporaries. His senior rater stated the applicant had performed in a solid manner throughout the period.

(7) Form 3 June 1997 to 30 September 1997 as a CPT. He always exceeded requirements and promote ahead of contemporaries. His senior rater stated the applicant was a welcome addition to the unit.

(8) From 1 October 1997 to 6 August 1998 as a CPT: He always exceeded requirements and promote ahead of contemporaries. His senior rater stated the applicant was a physically fit officer who was tremendously concerned with the welfare of his subordinates.

(9) From 7 August 1998 to 1 April 1999 as a CPT: He received unsatisfactory performance, do not promote. He was rated below center of mass do not retain. His senior rater stated the applicants inappropriate relationship with a junior enlisted Soldier showed a total disregard for Army regulations and values. His senior rater could not recommend the applicant for positions of great responsibility or promotion to major. The applicant acknowledged receipt of the referred OER.

c. Memorandum Commander's Inquiry Report, dated 10 November 1998, states the applicant's commander conducted an information investigation and recommended the applicant be allowed to resign his commission in lieu of a formal investigation and possible violations of Article 134 of the UCMJ. He also recommended the applicant be administratively suspended from his assigned duties and reassigned to HHD, 56th Medical Evacuation Hospital, pending his resignation and discharge from the Army. The applicant had engaged in an inappropriate relationship with junior enlisted Soldiers within his unit and that he implied threat to the physical well-being of one of the Soldier's husband and the career and position of the Soldier in the unit. The entire memorandum and sworn statements are available for the Board's review.

d. Memorandum from the applicant's battalion commander, dated 16 November 1998, reflects the applicant's command requested the appointment of an informal IO to investigate his inappropriate relationships.

e. Memorandum from the Medical Group Commander (MGC), dated 17 November 1998, reflects the MGC ordered the applicant's commander to reopen his commander's inquiry into the allegations of improper superior-subordinate relationships involving the applicant and enlisted Soldiers.

f. Memorandum from the applicant's commander, dated 30 November 1998, wherein the commander had reopened the commander's inquiry. The commander found it was readily apparent all parties involved were/are on a first name basis while in "off-

duty" social settings. These social settings were not limited to those interviewed, but to many other Soldiers. The commander recommended an Army Regulation 15-6 (IO's Guide) investigation using informal procedures be conducted and both junior enlisted Soldier be transferred upon completion of the matter. The entire memorandum, telephone transcript between the applicant and a junior enlisted Soldier, and sworn statements are available for the Board's review.

g. Memorandum from the battalion commander, dated 21 December 1998 wherein the battalion commander had reviewed the commander's inquiry into the allegations of improper superior-subordinate relationships involving the applicant. The battalion commander concluded there was substantial evidence the applicant had not been truthful in his sworn statements and that his relationships with certain enlisted Soldiers in his company had an actual adverse impact upon good order and discipline. His conduct had violated the standards of professional behavior demanded of a commissioned officer and warranted adverse administrative action. The battalion commander recommended the applicant be formally relieved of his duties and issued a relief for cause OER, the report of inquiry be forwarded with a recommendation the applicant receive a GOMOR, and consideration be given to initiate administrative elimination proceedings against the applicant.

h. Reprimand, dated 5 February 1999, to the applicant states from August 1998 to November 1998 the applicant engaged in an inappropriate relationship with a female subordinate in his company. Subordinates in the applicant's platoon saw him holding the Soldier about the waist and kissing her. The applicant spent the night with her in the home of one of the applicant's enlisted Soldiers. When questioned about the relationship, the applicant lied. Further, the applicant telephoned a subordinate and threatened that harm would come to her and her husband if she provided truthful adverse information against the applicant. Additionally, the applicant attended several social functions with enlisted Soldiers in his company and became familiar to them on a first name basis. The applicant pursued these improper relationships on terms of military equality, and in violation of the customs of the service. The applicant was reprimanded for his inexcusable and utterly unprofessional misconduct. On 11 February 1999, the applicant acknowledged receipt of the reprimand and stated he would submit statements and documents in his own behalf.

i. Memorandum from the applicant reprimand considerations, dated 16 February 1999, states:

(1) He requested the letter of reprimand not be filed in his OMPF. He had read and understood the unfavorable information presented against him and submitted the statement and other documents on his behalf.

(2) He served the United States Army with honor and distinction since 12 June 1992 when he received his commission as a 2LT. He spent four years in the 82nd Medical Company at Fort Riley, Kansas. The remainder of his military time had been spent in Army schools and on Fort Bragg, North Carolina as the Maintenance Platoon Leader of the 57th Medical Company. In that time, he had been entrusted with the lives of hundreds of Soldiers and millions of dollars' worth of equipment. As a very young officer, he deployed Soldiers and equipment all over the United States, the National Training Center, Joint Task Force VI (drug interdiction), and Haiti under the United Nations command. His mission was to provide 24-hour aeromedical evacuation support of very extreme and unpredictable aviation environments. He spent virtually all of his military career deployed away from family and friends at great sacrifice, giving up the opportunity to have a family of his own. He performed his duties without regret or reservation, and had never failed an aeromedical evacuation mission. He never had a Soldier injured or charged under the UCMJ nor had he lost a single piece of equipment entrusted to him. He was one of very few Medical Service Corps UH-60 Maintenance Test Pilot Course graduates. Each and every one of his OER he had received, placed his performance and professionalism far above that of his peers. He enclosed five references of character from several officers, noncommissioned officers, and a contract civilian who had worked both for and with the applicant over 18 months. These references attested to the applicant's abilities as a leader of Soldiers and to the professionalism with which he conducted his daily life. He proved himself as a Soldier and a leader beyond any reasonable doubt.

(3) The applicant followed orders within the bounds of the UCMJ and adhered strictly to the regulations and policies governing the performance of his military duties. His concern was no longer for himself, but for the officers that were to follow him and for the Soldiers that they would lead. Prior to making the decisions, which led to his circumstances, he asked questions of his command and researched the appropriate courses of action. His conduct was in accordance with the guidelines and principles established in AR [DA Pam] 600-35 (Relationship of Soldiers between Different Ranks) and AR 600-20 (Army Command Policy). Additionally, there were no policy letters whatsoever regarding what was considered to be the parameters of "fraternization" in the XVIII Airborne Corps, the 4th Medical Brigade, the 55th Medical Group, the 56th Evacuation Battalion, and the 57th Medical Company. The applicant attended a wedding between a warrant officer and junior enlisted Soldier within their unit that had maintained a very public relationship for several months. The wedding was attended by the entire chain of command. The applicant presented this information not to dismiss the severity of the consequences of his actions. He provided this information in his defense only in that he felt it should be known that he attempted to make a reasonable decision regarding his behavior based on the command climate and existing written guidance and felt that it was appropriate, at the time. He made the decision without the benefit of the experience of senior officers who had endured the circumstances he

found himself in and hoped that this experience could serve as an example to the young officers who were to follow him in the absence of written guidance.

(4) The applicant submitted the rebuttal not to clear his name and reputation, but to provide understanding as to his conduct. He was an effective leader of Soldiers and proved that in many previous assignments. His lapse in judgement was inexcusable and reprehensible, and for that, he offered no plea on his behalf. He asked only that the commander appreciate the time and effort the Army had invested in him and the personal sacrifices he made to serve the U.S. Army and his country. He asked that he be offered the opportunity to turn the lessons he learned from the unfortunate circumstances into a leadership tool for young Soldiers and officers so they might learn from his mistakes. He hoped to teach them to preserve the standards of conduct and values upon which the Army was founded; loyalty, duty, respect, selfless-service, honor, integrity, and personal courage.

(5) The applicant understood he was ultimately responsible for his actions and their consequences. He had been removed from his unit and platoon. He had been administratively restricted from performing flying duties. All of his efforts were dedicated to upholding the Army officer standard of conduct and professionalism in both his personal and professional life. He believed he owed a great debt to the service for all it had provided him and felt he would be an asset to the U.S. Army. The behavior in question was clearly out of character with his previous conduct, which he submitted to the commander as a basis for consideration of his request. He requested the reprimand not be filed in his OMPF. He hoped his commendable historical performance, his heartfelt regret, and unlimited potential for continued service were taken into consideration in what was ultimately the commander's decision.

j. Character statements that accompanied the applicant's memorandum regarding his reprimand are available for the Board's consideration.

k. The applicant's chain of command recommended the reprimand be filed in his OMPF. On 9 March 1999, the reprimand issuing authority stated he had reviewed the supporting documents and reprimand of the applicant. He considered the circumstances surrounding the incident for which the applicant was reprimanded, alternate non-punitive measures, and the matters which the applicant submitted in rebuttal. The commander determined the reprimand should be filed in the applicant's OMPF permanently.

l. Memorandum Initiation of Elimination of the applicant, dated 11 March 1999 states the applicant was required to show cause for retention on active duty. The action was based on the applicant's inappropriate relationship with a female subordinate in his company and for telephoning a subordinate and threatening to harm her and her

husband. On 12 March 1999, the applicant acknowledged receipt of the initiation of elimination and understood his rights regarding the initiation of elimination.

m. On 3 April 1999, the applicant requested discharge in lieu of elimination. He had been advised that prior to submitting his request for discharge he had the option to consult with and be represented by legally qualified counsel. He fully understood the implications of his voluntary action. The applicant elected to waive his right to appear before a board of officers to present matters in explanation, rebuttal, or defense concerning the allegations of his case. He understood if he was discharged under other than honorable conditions, he would not be entitled to compensation for unused accrued leave and he may be barred from all rights.

n. The applicant's chain of command recommended approval of that applicant's request for discharge in lieu of elimination and that he be issued an under honorable conditions (general) discharge. Memorandum discharge in lieu of elimination, dated 21 June 1999 states the unanimous recommendation of the Department of the Army Ad Hoc Review Board to accept the discharge in lieu of elimination for misconduct, morale, or professional dereliction, tendered by the applicant was approved. The unanimous recommendation of the board to issue the applicant an under honorable conditions (general) discharge was approved.

o. A memorandum from Commander, Personnel Command, dated 25 June 1999 advised the applicant that his discharge in lieu of elimination was approved with the issuance an under honorable conditions (general) discharge.

p. On 14 July 1999, the applicant was discharged accordingly. His DD Form 214 shows he had completed 7 years and 8 days of net active duty service. He was discharged for unacceptable conduct, his separation code was BNC (Unacceptable Conduct) and he did not receive a reentry code. He was discharged under the provisions of AR 600-8-24 paragraph 4-2b and paragraph 4-24a(1). His character of service was under honorable conditions (general). He was awarded or authorized the following awards:

- Army Commendation Medal
- Joint Meritorious Unit Award
- National Defense Service Medal
- Armed Forces Expeditionary Medal
- Humanitarian Service Medal
- Army Service Ribbon
- United Nations Medal
- Expert Marksmanship Qualification Badge with Rifle Bar
- Army Aviator Badge
- Parachutist Badge

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge to honorable and changing his narrative reason for separation from unacceptable conduct to Secretarial Authority. He contends he experienced mental health conditions 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 took the oath of office as a Reserve commissioned officer on 12 June 1992; 2) Memorandum from the battalion commander, dated 21 December 1998 wherein the battalion commander had reviewed the commander's inquiry into the allegations of improper superior-subordinate relationships involving the applicant. The battalion commander concluded there was substantial evidence the applicant had not been truthful in his sworn statements and that his relationships with certain enlisted Soldiers in his company had an actual adverse impact upon good order and discipline. His conduct had violated the standards of professional behavior demanded of a commissioned officer and warranted adverse administrative action. The battalion commander recommended the applicant be formally relieved of his duties and issued a relief for cause OER, the report of inquiry be forwarded with a recommendation the applicant receive a GOMOR, and consideration be given to initiate administrative elimination proceedings against the applicant; 3) On 14 July 1999, the applicant was discharged for unacceptable conduct, his separation code was BNC (Unacceptable Conduct) and he did not receive a reentry code. His character of service was under honorable conditions (general).

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

d. The applicant asserts he was experiencing alcoholism while on active service, which mitigates his misconduct. There is insufficient evidence the applicant ever 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 and or treated for service-connected any mental health condition by the VA. He also does not receive any service-connected disability.

e. Based on the available information, it is the opinion of the Agency Behavioral Health 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 asserts he experienced a mental health condition that mitigates his misconduct. Specifically, he stated he was experiencing alcoholism.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced a mental health condition that mitigates his misconduct. Specifically, he stated he was experiencing alcoholism.

(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 including a substance abuse disorder. Also, there is no nexus between his reported alcoholism and the applicant's misconduct in that: 1) these types of misconduct are not a part of the natural history or sequelae of the applicant's reported alcoholism; 2) the applicant's reported alcoholism does not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated 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 not warranted. The Board through counsel 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 through counsel of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding insufficient evidence to support the applicant had condition or experience that mitigates his misconduct. The opine noted there is insufficient evidence the applicant ever reported or was diagnosed with a mental health condition while on active service.

2. The Board determined the applicant's counsel has not demonstrated an error or injustice warranting the requested relief of an upgrade of his under honorable conditions (general) discharge to honorable. The Board agreed because the applicant was a commissioned officer at the time, he had adequate training and experience necessary to avoid severe misconduct and was entrusted to set the example for subordinate Soldiers to emulate, and therefore, the discharge characterization was proper and fitting for the misconduct. The applicant was discharged for unacceptable conduct and was provided an under honorable conditions (General) characterization of service. The

Board found the applicant's post service accomplishments, his extensive community service since his discharge. and his character letters to be noteworthy and compelling. but determined there was insufficient evidence to overcome his misconduct and violation of trust.

3. the Board determined under liberal consideration changes to the applicant's narrative reason are not warranted. Furthermore, the Board found there was insufficient evidence of an error or injustice which would warrant a change in the applicant's separation code. The Board noted, the applicant's discharge 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. Thus, the Board denied relief.

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. AR 600-8-24, in effect at the time, prescribed the officer transfers from active duty to the Reserve Component and discharge functions for all officers on active duty for 30 days or more. It provides principles of support, standards of service, policies, tasks, rules, and steps governing all work required to support officer transfers and discharges. It states in:

a. Chapter 1-21 (Types of administrative discharge/character of service states):

(1) An officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty for an officer.

(2) An officer will normally receive an under honorable conditions (general) characterization of service when the officer's military records is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

b. Chapter 4-2b, reasons for elimination are misconduct, moral or professional dereliction or in the interest s of national security include:

(1) Discreditable or intentional failure to meet personal financial obligations.

(2) Mismanagement of personal affairs that are unfavorably affecting the officer's performance of duty.

(3) Mismanagement of personal affairs to the discredit of the Army.

(4) Intentional omission or misstatement of fact in official statements or records for the purpose of misrepresentation.

(5) Acts of personal misconduct (including but not limited to acts committed while in a drunken or drug intoxicated state).

(6) Homosexual conduct.

(7) Intentional neglect of or failure to perform duties.

(8) Conduct unbecoming an officer.

(9) Conduct or actions that result in the loss of a professional status, such as withdrawal, suspension or abandonment of professional license, endorsement, or certification that is directly or indirectly connected with or is necessary for the performance of one's military duties.

(10) Acts or behavior not clearly consistent with the interests of national security.

c. Chapter 4-24a(1) states an officer identified for elimination may, at any time during or prior to the final action in the elimination case elect to submit a resignation ILO elimination.

d. AR 600-8-24, in effect at the time, did not have a provision to separate an officer with the narrative reason of secretarial authority.

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 BNC is used for unacceptable conduct.

4. 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.

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 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.

6. 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.

7. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.

//NOTHING FOLLOWS//