

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 14 May 2024

DOCKET NUMBER: AR20230011423

APPLICANT REQUESTS: his under honorable conditions (general) discharge be upgraded. Additionally, he requests an appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)(two)
- Letter of Recommendation, dated 22 March 2013
- Army Achievement Medal Certificate
- DA Form 2166-9-1 (Noncommissioned Officer's Evaluation Report)
- Character Letter, dated 10 July 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 has been serving in the New York Army National Guard (NYARNG) since 2006 and has deployed 3 times to Iraq, Afghanistan, and Guantanamo Bay, Cuba. He is 2 years from retirement. He joined the NYARNG to deploy to Iraq with his brother and to prove to himself that he made a mistake when he was active and wasn't mature enough. It has always bothered him how he left the service in 1998 and he wanted to make up for that.
3. The applicant enlisted in the Regular Army on 23 July 1996 for 3 years. His military occupational specialty was 11B (Infantryman).
4. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on:

- 13 March 1997, for without authority, failing to go to his appointed place of duty, sick call on or about 12 March 1997; his punishment consisted of extra duty, and restriction
- 6 February 1998, without authority, failing to go to his appointed place of duty, staff duty on or about 18 January 1998; his punishment consisted of reduction to private/E-1, forfeiture of \$216.00 (suspended), extra duty, and restriction
- the punishment of forfeiture was vacated on 19 February 1998, for failure to go at the time prescribed to his appointed place of duty, extra duty on or about 13 February 1998

5. The applicant received various negative counseling between 7 October 1997 and 17 February 1998 for failing to be at appointed place of duty, last chance counseling, failure to report (six), recommendation for separation; little or no courtesy and tried to ignore his squad leader; failure to obey a lawful order (four).

6. A Report of Mental Status Evaluation, dated 5 February 1998, shows the applicant was evaluated by Division Mental Health service and had no evidence of a psychiatric condition which would prevent him from participating in any legal or administrative actions. There was no evidence of an emotional or mental condition of sufficient severity to warrant disposition through medical channels and the applicant was cleared for administrative action.

7. The applicant's immediate commander notified him on 20 March 1998 he was initiating action to separate the applicant under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 14-12b, patterns of misconduct for Article 15s and various negative counseling statements. His commander recommended he receive a under honorable conditions (general) discharge. The applicant acknowledged receipt on the same date.

8. The applicant consulted with legal counsel on 23 March 1998 and was advised of the basis for the proposed separation under the provisions of AR 635-200, Chapter 14-12b for patterns of misconduct, and the procedures and rights that were available to him.

a. He waived consideration of his case by an administrative separation board, and he waived personal appearance before an administrative separation board. He acknowledged that he may expect to encounter substantial prejudice in civilian life if discharged under honorable conditions (general).

b. He elected not to submit statements in his own behalf.

9. The applicant's immediate commander formally recommended the applicant be separated from active military service. The commander recommended the applicant's period of service be characterized as under honorable conditions (general).

10. His chain of command recommended the applicant be discharge with a under honorable conditions (general) discharge.

11. The separation authority approved the recommended discharge action, under the provisions of AR 635-200, Chapter 14-12b, on 19 June 1998 and directed that the applicant's service be characterized as under honorable conditions (general).

12. The applicant was discharged on 15 July 1998. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 14-12b, for misconduct-pattern of misconduct, with Separation Code JKA and Reentry Code 3. His service was characterized as under honorable conditions (general). He completed 1 year, 11 months, and 23 days of net active service this period. His awards include the: Army Service Ribbon (ASR), Overseas Service Ribbon (OSR), and the Air Assault Badge (AAB).

13. After a break in service the applicant enlisted in the NYANG on 30 January 2006.

14. The applicant entered active duty on 11 June 2006. He was honorably released from active duty (REFRAD) on 2 November 2007 and transferred to ARNG. His DD Form 214 shows he was REFRAD for completion of required active service. He completed 1 year, 4 months, and 22 days of net active service. He was awarded or authorized the: National Defense service Medal (NDSM), Global War on Terrorism Service Medal (GWOTWM), Iraq Campaign Medal (ICM), ASR, OSR (2nd award), Armed Forces Reserve Medal with M device, AAB.

15. The applicant entered active duty on 4 March 2010. He was honorably REFRAD on 17 December 2010 and transferred to ARNG. His DD Form 214 shows he was REFRAD for completion of required active service. He completed 9 months and 14 days of net active service. He was awarded or authorized the: NDSM, GWOTWM, ICM with campaign star, ASR, OSR (2nd award), Armed Forces Reserve Medal with M device, AAB.

16. The applicant entered active duty on 16 August 2012. He was honorably REFRAD on 6 July 2013 and transferred to ARNG. His DD Form 214 shows he was REFRAD for completion of required active service. He completed 10 months and 21 days of net active service. He was awarded or authorized the: NDSM, GWOTWM, ICM with campaign star, ASR, OSR (2nd award), Armed Forces Reserve Medal with M device, AAB.

17. His NGB Form 22 (Report of Separation and Record of Service) shows the applicant was honorably discharged from the NYARNG on 12 February 2014.

18. The applicant reenlisted in the NYANG on 14 April 2014.

19. The applicant entered active duty on 2 January 2016. He was honorably REFRAD on 8 December 2016 and transferred to ARNG. His DD Form 214 shows he was REFRAD for completion of required active service. He completed 11 months and 7 days of net active service. He was awarded or authorized the: Afghanistan Campaign Medal with campaign star, ICM with two campaign stars, NDSM, Global War on Terrorism Expeditionary Medal, GWOTW Medal, ICM with campaign star, ASR, OSR (2nd award), Armed Forces Reserve Medal with M device, AAB.

20. The applicant provides:

a. A copy of two of his DD Form 214s discussed above.

b. A letter of recommendation from his commander, dated 22 March 2013, shows the applicant provided personnel internet service to all the Soldiers, greatly increasing the moral, by researching and coordinating internet delivery. He went above and beyond by installing eh network. The applicant was among the best.

c. His NCOER for the period 6 April 2021 through 5 April 2022 shows the applicant was qualified and a widely trusted noncommissioned officer with great potential who should be promoted and worth every effort to retain.

d. His AAM for exceptionally meritorious service during annual training form 9 July 2022, to 23 July 2022.

e. Character Reference letter, dated 10 July 2023 that attest to the applicant's having held several positions across many different technical fields. He operated in positions above his grade and has done so with maximum efficiency and made it look effortless. The applicant does the right thing all the time in every situation regardless of who is or is not looking, and regardless of the situation. He treats his subordinates with care, respect, and dignity, and in doing so has earned unwavering loyalty from many.

21. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The applicant served on active duty from July 1996 to July 1998. He was discharged from active duty due to misconduct following receipt of three Company Grade Article 15s,

one Summary Grade Article 15, and various negative counseling statements. He received a general, under honorable conditions discharge. The Board found no error or injustice in his separation processing and based on this service, a general discharge is appropriate. The Board also considered – and commends him for - his subsequent service; but determined it had no impact on the discharge he previously received. As such, the Board determined that relief is not warranted.

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, USC, 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) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered

appropriate. However, the separation authority could direct a general discharge if merited by the Soldier's overall record.

4. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records (BCM/NRs) on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, 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//