

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 April 2024

DOCKET NUMBER: AR20230011668

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- Certificate of Achievement, 24 April 1998
- DA Form 873 (Certificate of Clearance and/or Security Determination), 20 May 1999
- Professional of the Quarter Award, June 1999
- Certificate of Achievement, 31 December 1999
- Certificate of Commendation, 23 March 2000
- DA Form 1059 (Service School Academic Evaluation Report) Intermediate Communications Signals Analysis Course, 1 August 2000
- DA Form 1059 Primary Leadership Development Course, 15 December 2000
- DA Form 2166-7 (Noncommissioned Officer Evaluation Report (NCOER), January 2001
- DA Form 2166-7, May 2001, September 2001, February 2002, & February 2003
- DD form 214 (Certificate of Release or Discharge from Active Duty), 26 February 2004
- The Register of Exercise Professional UK Certificate, 10 November 2008
- Level 2 Certificate in Swimming Pool Supervision and Rescue, 5 February 2009
- Level 1 Certificate in Coaching Football, 25 August 2010
- Level 3 Certificate in Personal Training, 2 October 2010
- Certificate in Advanced Fitness Instructing - Gym, 2 October 2010
- Level 1 Novice Strength and Conditional Coach, 15 May 2011
- Level 2 Certificate in Coaching Rugby League, 25 May 2011
- Bachelor of Science Certificate, 25 July 2011
- Letter Registered Exercise Professional, 25 February 2013
- Certificate in Education and Training, 31 July 2014
- Professional Graduate Certificate in Education, 10 July 2015
- Certificate Managing Safely, 20 February 2020

- Postgraduate Diploma in Strength and Conditioning
- Letter from National Personnel Records Center, 14 June 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:

a. His discharge was based on one event. He asks the Board to review the documents he provided as evidence and justification to upgrade his discharge. He asks the Board to upgrade his discharge based on the merits of his service and to allow the applicant to return to service in a reserve capacity or on active duty.

b. He requests a review of his current under honorable conditions (general) discharge with the hopes of it being upgraded. He served from June 1997 to February 2004. The main reason for discharge and its conditions was due to a Driving Under the Influence (DUI) in 2002. He acknowledges and accepts the consequences of his actions and took full responsibility. He is requesting an upgrade to his discharge because he is seeking to rejoin the U.S. military Reserves. He has spoken with recruiters and met the needs of three different services and age requirements in the medical field.

c. The recovery or rehabilitation process was somewhat biased before his discharge. His detachment officer in charge (OIC), at the time, acknowledged he was previously a volunteer medic at a fire station and had lost a close friend to a drunk driver. From the applicant's records, the Board could see that his rehabilitation timeframe, at the time, was no longer than most, considering the infraction (2002-2004). While the OIC acknowledged the applicant's skills warranted retention, the applicant believes the process was not reasonable and led to his discharge. This was due to the applicant's ignorance as a young man and frustrations for not being able to reasonably see that the OIC did not give the applicant an opportunity to recover from this incident.

d. He acknowledges he was a very young staff sergeant (SSG), having been promoted to the rank with only four years and eight months of service. He was good at his role but made one careless mistake that ultimately cost the applicant his military career. The applicant's service record will show he was a good Soldier in all aspects, except for this one incident.

e. Since leaving the military, he has always used his skills and values that he gained from his time in the service. He left the military with no recognized qualifications

and has worked diligently to advance himself. He served as a United States Association of Rugby League director and director of Wheelchair Ruby League (WhRL) and Rugby League Development for the U.S. Additionally, he was the general manager for the WhRL National Team. They had seven Veterans on the team and qualified for the Rugby League World Cup in England.

f. He has pursued his education and has an undergraduate degree with honors, a post-graduate certificate in education, post-graduate diploma, and he is working on his professional doctorate. He has worked overseas for 20 years, seven as a university and college lecturer in sports. Furthermore, the applicant has worked as a strength and conditioning specialist and coach with professional English Rugby League teams. The applicant is also a Fellow of the Higher Education Authority in the UK. Since returning the U.S., in January of 2022, the applicant began teaching at the University of South Carolina in the Physical Education department. While he could add more information, he felt what he asserted demonstrates that he was a young, naive Soldier who made one wrong decision. He wishes to make this right and humbly requests the Board consider his request to upgrade his discharge.

3. The applicant provides the following documents:

a. National Security Agency Certificate of Achievement, dated 24 April 1998, for outstanding achievement while working on the station Quality of Life Survey Team.

b. National Security Agency Professional of the Quarter Award, from April to June 1999.

c. National Security Agency Certificate of Achievement, for outstanding performance of duty as a member of the Joint Color Guard from 1 January 1999 to 31 December 1999.

d. National Security Agency Certificate of Commendation, dated 23 March 2000, for the applicant's selection as a finalist for the Menwith Hill Station Joint Servicemember of the Year competition for calendar year 1999.

e. DA Form 1059, Intermediate Communications Signals Analysis Course, dated 1 August 2000, shows the applicant successfully completed the course with an overall grade point average of 87.61 percent.

f. DA Form 1059, PLDC, dated 15 December 2000, shows he achieved course standards.

g. DA Form 2166-7, February 2003, reflects he was in the rank of sergeant (SGT), and it shows he received a "no" in "honor: Lives up to all the Army values" and

"integrity: does what is right - legally and morally". He received success ratings in competence and training, excellence in physical fitness and military bearing, and needs some improvement in leadership and responsibility and accountability. His senior rater rated him as marginal and as fair in overall performance and overall potential.

h. The applicant includes certificates and diplomas he has received as a civilian. All documents are available for the Board's consideration.

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

a. The applicant's DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows the applicant enlisted and entered active duty on 27 June 1997, and remained in the Army through reenlistments and extensions.

b. DA Forms 2166-7 show the applicant received NCOERs on:

(1) January 2001, in the rank of SGT. He was rated as success in competence, physical fitness and military bearing, leadership, training, and responsibility and accountability. His rater rated him as fully capable and his senior rater rated him as successful in overall performance and superior in overall potential.

(2) May 2001, in the rank of SGT. He was rated as success in competence, training and responsibility, and accountability and excellence in physical fitness and military bearing and leadership. His rater rated him as among the best and his senior rater rated him as successful in overall performance and superior in overall potential.

(3) September 2001, in the rank of SGT. He was rated as excellence in competence and leadership and success in physical fitness and military bearing, training, and responsibility and accountability. His rater rated him as among the best and his senior rater rated him as successful in overall performance and superior in overall potential.

c. Orders 24-83, published by U.S. Army Garrison, Fort George G. Meade, dated 24 January 2002 promoted the applicant to the rank of SSG effective 1 February 2002.

d. DA Form 2166-7 shows the applicant received an NCOER, in the rank of SSG in February 2002. He was rated as success in competence, physical fitness and military bearing, training, and responsibility and accountability and excellence in leadership. His rater rated him as fully capable and his senior rater rated him as successful in overall performance and superior in overall potential.

e. DA Forms 4856 (Developmental Counseling Form) show the applicant was counseled on:

(1) 20 June 2002 for DUI on 17 June 2002. The applicant agreed with the counseling and signed the form.

(2) 8 August 2002, to let the applicant know where he stood with regards to his Article 15, Uniform Code of Military Justice. The applicant agreed with the counseling and signed the form.

f. Memorandum of Reprimand, dated 19 August 2002, shows he was reprimanded for operating a motor vehicle, while intoxicated. On 19 August 2002, the applicant acknowledged receipt of the memorandum of reprimand and declined to submit matters on his own behalf. The reprimand issuing authority ordered the reprimand be locally filed for a period of two years.

g. DA Forms 4856, show the applicant was counseled on:

(1) 22 August 2002, for failure to follow instructions and time management. The applicant agreed with the counseling and signed the form.

(2) 5 September 2002, for missing formation. The applicant agreed with the counseling and signed the form. He included a statement stating, in pertinent part, he contacted two Soldiers to coordinate a ride to formation; however, the coordination failed and he missed the formation.

h. DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice(UCMJ)), dated 6 September 2002 shows the applicant accepted nonjudicial punishment for DUI on or about 17 June 2002. The applicant's punishment included reduction to SGT and forfeiture of \$914 for one month. The applicant did not appeal his punishment.

i. DA Forms 4856 show the applicant was counseled on:

(1) 22 October 2002 for failing to report to formation. The applicant agreed with the counseling and signed the form.

(2) 1 November 2002 for being late for physical training (PT). The applicant agreed with the counseling and signed the form.

(3) 19 March 2003 for missing PT formation. The applicant agreed with the counseling and signed the form.

(4) 14 April 2003 for being late to PT formation. The applicant agreed with the counseling and signed the form.

(6) 16 September 2003, he was made aware of his early return from temporary duty and notification of recommendation for UCMJ action. The applicant agreed with the counseling and signed the form.

(7) 6 October 2003, the applicant had demonstrated a repeated inability to take and follow directions from his superiors. The applicant would be processed for an administrative separation. The applicant agreed with the counseling and signed the form.

j. DD Form 2808 (Report of Medical Examination), dated 17 November 2003 shows the applicant had no medical issues and was qualified for retention or separation.

k. Memorandum subject separation under Army Regulation (AR) 635-200 (Personnel Separation - Enlisted Personnel) chapter 14, paragraph 14-12b, dated 9 December 2003, informed the applicant his commander was initiating separation of the applicant. The reasons for the commander's proposed action were the applicant received a field grade Article 15 for DUI, and for the counseling statements the applicant had received. The commander was recommending the applicant receive an under other than honorable conditions (UOTHC) discharge. The separation authority could direct the applicant's service be characterized as honorable, under honorable conditions (general), or UOTHC. On 9 December 2003, the applicant acknowledged receipt of the initiation of separation.

l. On 20 January 2003 [sic] the applicant submitted a conditional waiver, stating he would waive his right to a hearing by an administrative separation board on the condition that he receive a discharge characterization not less than an under honorable conditions (general). He was making the request of his own free will. The applicant exercised his right to consult with counsel and had been advised by his consulting counsel of the basis for the contemplated action to separate the applicant for patterns of misconduct and its effects. The applicant waived his right to submit written statements on his own behalf.

m. The applicant's chain of command and the Staff Judge Advocate recommended the approval authority approve the applicant's conditional waiver. On 27 January 2004, the appropriate approval authority, approved the applicant's conditional waiver and directed the applicant's characterization of service be under honorable conditions (general).

n. On 26 February 2004, the applicant, in the rank of SGT, was discharged accordingly. His DD Form 214 shows he was discharged in accordance with chapter 14-12b of AR 635-200, due to misconduct with a general, under honorable conditions characterization of service (Separation Code JKA and Reentry Code 3). He completed 6 years and 8 months of active duty service.

(1) Block 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) shows he was awarded or authorized:

- Joint Service Commendation Medal
- Army Commendation Medal
- Army Achievement Medal
- Good Conduct Medal
- National Defense Service Medal
- NCO Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon

(2) Block 18 (Remarks) listed his reenlistment and that he completed his first term of service. However, it did not list his continuous honorable service.

5. There is no indication the applicant petitioned the Army Discharge Review Board for review of his discharge processing within that board's 15-year statute of limitations.

6. In reaching its determination, the Board can consider the applicant's petition and his 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 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 Board considered the applicant's statement, the applicant's record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was discharged from active duty following a pattern of misconduct consisting of a memorandum of reprimand for operating a motor vehicle while intoxicated, NJP for DUI, and a long history of counseling for various administrative infractions. He received a general discharge. The Board found no error or injustice in his separation processing. However, the applicant has expressed remorse for his actions and has since made significant changes in his life, receiving various certificates of coaching, training, achievements, and appreciations from various organizations, as well as professional education degrees and diplomas. As a result, the Board determined that an honorable characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board also determined that such upgrade did not change the underlying reason for his separation, and that there would be no change to the narrative reason for separation and/or corresponding codes.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

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's DD Form 214 for the period ending 26 February 2004, showing:

- Block 24, Character of Service: Honorable
- Block 26, Separation Authority: No Change
- Block 27, Separation Code: No Change
- Block 28, Reentry Code: No Change
- Block 29, Narrative Reason for Separation: No Change
- Block 18 (Remarks), add "Continuous Honorable Service from 27 June 1997 to 6 October 1999"

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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 635-200 (Active Duty Enlisted Administrative Separations) prescribed policies and procedures for the administrative separation of enlisted personnel.

a. An honorable discharge was a separation with honor. The honorable characterization was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and duty performance.

b. Chapter 14 (Separation for Misconduct) addressed separation for misconduct, to include for a pattern of misconduct and the commission of a serious offense. Paragraph 14-12b stated members were subject to separation under this provision when they showed a pattern of misconduct involving acts of discreditable involvement with civil or military authorities, and/or displayed conduct that was prejudicial to good order and discipline.

3. AR 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), in effect at the time, 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 JKA is used for discharge for misconduct.

4. AR 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

5. 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.

//NOTHING FOLLOWS//