

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 July 2024

DOCKET NUMBER: AR20230012188

APPLICANT REQUESTS:

- an upgrade his under honorable conditions (General) discharge
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show in:
 - item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Sharpshooter Marksmanship Qualification Badge
 - item 14 (Military Education): Combat Lifesaver Course
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of Active Duty)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states he performed all of his duties without any issues pertaining to his job. He drove and operated the wrecker/recovery vehicle and was the most sought after mechanic in Germany. Additionally, stress led him to spiral into a mistake that led to his discharge. The applicant annotated post-traumatic stress disorder (PTSD) and other mental health as issues/conditions related to his request.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 23 June 1998.

b. His DA Form 2-1 (Personnel Qualification Record – Part II) shows:

- he served in Germany from 4 January 1999 to 3 January 2002
- he was awarded or authorized the Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16) and the Sharpshooter Marksmanship Qualification Badge with Hand Grenade Bar

c. He accepted nonjudicial punishment on 18 August 2000 for violating Article 112a (Wrongful use, possession, etc., of controlled substances) by wrongfully using ecstasy, a controlled substance. His punishment included reduction to private (PVT)/E-1.

d. On 8 November 2000, the applicant's immediate commander notified him of his intent to separate him in accordance with Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c, for commission of a serious offense. The reason for his proposed action was based on his wrongful use of ecstasy, failure to report, failure to pay debts, and writing bad checks on numerous occasions. The applicant signed an acknowledgement of receipt of the proposed separation.

e. He acknowledged that:

- he was advised by consulting counsel of the basis for the contemplated action to separate him for unsatisfactory performance under AR 635-200, Chapter 14, and its effects, the rights available to him, and the effect of any action taken by him in waiving his rights
- he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him
- he may apply to the Army Discharge Review Board or the Army Board of Correction of Military Records for a discharge upgrade
- he will be ineligible to apply for enlistment in the United States Army for a period of 2 years after discharge

f. On 16 November 2000, the intermediate commander concurred with the immediate commander's recommendation to approve separation of the applicant with an under honorable conditions (General) characterization of service.

g. On 29 November 2000, the separation authority directed separation of the applicant with an under honorable conditions (General) characterization of service.

h. He was discharged under the provisions of AR 635-200, Chapter 14-12c(2) on 16 December 2000. His DD Form 214 shows a narrative reason for separation as "misconduct" and an under honorable conditions (General) characterization of service. His DD Form 214 also shows he completed 2 years, 4 months, and 11 days of active service. It also shows in:

- item 13: Army Service Ribbon and Driver and Mechanic Badge
- item 14: None

4. The applicant's military service record was void of documentation pertaining to the applicant's attendance in the combat lifesaver course.

5. On 4 April 2003, the Army Discharge Review Board (ADRB) informed the applicant that his discharge was both proper and equitable. The ADRB denied upgrading his character of service or changing the reason for discharge. The ADRB stated his discharge was appropriate because the quality of his service was not consistent with the Army's standard for acceptable personal conduct and performance of duty by military personnel. By his misconduct, the applicant diminished the quality of his service below that meriting a fully honorable discharge.

6. By regulation, AR 635-200, in effect at the time, states that action will be taken to separate a Soldier for misconduct, such as commission of a serious offense, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

7. Also by regulation, all formal, in-service training courses successfully completing during the period of service covered by the DD Form 214 will be listed of at least 1 week or 40 hours duration. This information is assist the Soldier in job placement and counseling; therefore, training courses for combat skills will not be listed on the DD Form 214.

8. 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:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for commission of a serious offense with the commander citing his nonjudicial punishment for repeatedly failing to report to formations, failure to pay a debt, and writing bad checks. The Board found no error or injustice in the separation proceedings and designated characterization of service

assigned during separation. The Board noted the applicant provided no documentation to support his request, including post-service achievements or letters of reference to support clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. As it relates to the applicant's request for award of the Sharpshooter Marksmanship Qualification Badge, the Board determined the evidence of record, including the applicant's personnel qualification record shows he is entitled to the award of the Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16) and Sharpshooter Marksmanship Qualification Badge with Hand Grenade Bar.

3. As it relates to the applicant's request for military education, specifically the Combat Lifesaver Course, the Board determined there is no provision in regulatory guidance to add the combat-related course to the separation document. Additionally, the applicant provided no documentary evidence showing completion of the course.

4. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

■ ■ ■ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial 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 16 December 2000 to show award of the Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16) and Sharpshooter Marksmanship Qualification Badge with Hand Grenade Bar.

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to an upgrade of his characterization of service or correction of his records to show completion of the Combat Lifesaver Course.

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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 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 may, in its discretion, hold a hearing or request additional evidence or opinions. 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 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

4. Army Regulation 635-5 (Separation Documents), in effect at the time, prescribes the separation documents that must be prepared for Soldiers upon retirement, discharge, or release from active duty service or control of the Active Army.

a. It established standardized policy for preparing and distributing the DD Form 214. The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

b. It states for Military Education of the DD Form 214, list formal in-service (full-time attendance) training courses successfully completed during the period of service covered by title, length in weeks, and month and year completed. This information is to assist the Soldier after separation in job placement and counseling; therefore, training courses for combat skills will not be listed.

5. 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 post-traumatic stress disorder (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.

6. 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, sexual assault, or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based, in whole or in part, 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.

7. 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.
 - 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 based on 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//