

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 July 2024

DOCKET NUMBER: AR20230012929

APPLICANT REQUESTS:

- an upgrade of his characterization of service from under honorable conditions (General)
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Bachelor of Social Work Degree from University of Alaska Anchorage
- Master of Social Work Degree from University of Southern California
- State of Alaska License Details

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:

a. His achievements and dedication since his discharge demonstrate a significant transformation in his character and potential as a contributing member of society. He has successfully earned a master's degree in social work, which represents a personal triumph and testament to his commitment to personal growth and the desire to impact others positively. As a Licensed Clinical Social Worker (LCSW) it has enabled him to support individuals facing mental health and substance abuse conditions, making a difference in the lives of his clients each day. Additionally, he has actively engaged with several community organizations, offering his expertise and guidance to vulnerable populations.

b. He acknowledges his past mistakes and takes full responsibility for any shortcomings reflected in his original discharge. However, his subsequent achievements and ongoing dedication to helping others illustrate his personal growth, transformation, and unwavering commitment to living a life guided by honor, integrity, and service principles. By upgrading his discharge status to honorable, it would open new doors of opportunity for me to continue serving his community and country, an increased sense of purpose, and a chance to make an even more substantial impact in his field.

3. The applicant provides:

a. A diploma from the University of Alaska Anchorage that shows he was awarded the degree of Bachelor of Social Work in August of 2016.

b. A diploma from the University of Southern California that shows he was awarded the degree of Master of Social Work on 18 December 2019.

c. A printout from the State of Alaska's Department of Commerce, Community, and Economic Development website that shows his license number and active standing as a Clinical Social Worker, with an expiration date of 30 June 2024.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 11 November 1997. He reenlisted on 5 April 2000.

b. A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), dated 11 April 2002, shows the applicant accepted nonjudicial punishment (NJP) for violating Article 86 (Absent without Leave (AWOL)) by absenting himself from his unit on or about 7 February 2002, and did so remain absent until on or about 15 February 2002. His punishment included reduction to private (PVT)/E-2.

c. Two DA Forms 4187 (Personnel Action) shows the applicant's duty status went from present for duty (PDY) to AWOL effective 4 June 2002, and from AWOL to PDY effective 5 June 2002.

d. On 5 June 2002, court-martial charges were preferred against the applicant for violation of Article 86 (AWOL) and Article 91 (Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer) of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with:

(1) absenting himself from his unit; to wit: 173d Brigade Reconnaissance Company, from on or about 3 June 2002 to on or about 5 June 2002.

(2) on or about 5 June 2002, was disrespectful in language and deportment toward Sergeant First Class Dxxx B. Bxxx, a noncommissioned officer, then known by the said to be a superior noncommissioned officer, who was in the execution of his office, by refusing to go to the position of parade rest and replying in a disrespectful tone.

e. A DA Form 4430-R (Department of the Army Report of the Result of Trial) shows that the applicant was tried by Summary Court-Martial on 13 June 2002 and found guilty of AWOL and guilty, except the words "in language" of the excepted words not guilty of the remaining words, guilty. His sentence included reduction to PVT/E-1.

f. 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 an assault that occurred on 10 May 2002, AWOL from 3 June to 5 June 2002, and disrespect to a senior noncommissioned officer. On 31 July 2002, the applicant signed an acknowledgement of receipt of the proposed separation.

g. 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

h. The battalion commander concurred with the immediate commander's recommendation to approve separation of the applicant, but with an other than honorable characterization of service. The brigade commander concurred with the immediate commander's recommendation approve to separation with an under honorable conditions (General) characterization of service.

i. On 27 September 2002, the separation authority directed separation of the applicant with an under honorable conditions (General) characterization of service.

j. He was discharged on 2 October 2002 under the provisions of AR 635-200, Chapter 14-12c, with a narrative reason for separation of "misconduct" and an under honorable conditions (General) characterization of service. He completed 4 years, 10

months, and 10 days of active service. He was awarded or authorized: National Defense Service Medal, NCO Professional Development Ribbon, Army Service Ribbon, Overseas Service Ribbon, Parachutist Badge.

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

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. 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. The Board determined 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.

2. 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 evidence shows the applicant committed a serious offense (AWOL, disrespect). As a result, his chain of command initiated separation action against him. He was discharged with a general, under honorable conditions characterization of service. The Board found no error or injustice in his separation processing.

a. A majority of the Board noted that the applicant provided documentation in support of a clemency determination. The majority note that as a Licensed Clinical Social Worker, his higher education has enabled him to support individuals with mental health and substance abuse conditions, making a difference in the lives of his clients each day. Based on this finding, the Board determined an honorable characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board further determined that such upgrade did not change the underlying reason for his separation and thus the narrative reason for separation and corresponding codes should not change.

b. The member in the minority also noted the applicant's clemency submission. However, the member in the minority determined that given his NJP for the first AWOL

and his court-martial conviction for the second AWOL, his service did not rise to the level of an honorable characterization of service. Notwithstanding the post-discharge achievements he provides, the member in the minority determined a general discharge is the appropriate characterization of service for the applicant. The member in the minority did note, however, that a listing of the applicant's continuous honorable service is appropriate.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

█	█	:	GRANT FULL RELIEF
:	:	:	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 a DD Form 214 for the period ending 2 October 2002 as follows:

- Character of Service: Honorable
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

█

█ █

---

█

█

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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. 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 (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. 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//