

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 July 2024

DOCKET NUMBER: AR20230013094

APPLICANT REQUESTS:

- reconsideration of his previous request for an upgrade of his under other than honorable conditions discharge to under honorable conditions (General)
- a personal appearance before the Board

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

DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20130001639 on 12 September 2013.

2. The applicant does not make a statement. He annotates "sexual assault" as an issue/condition related to his request.

3. A review of the applicant's service records show:

a. Having had prior U.S. Marine Corps Reserve enlisted service, the applicant was appointed as a Reserve commissioned officer of the Army on 11 May 1986 and entered active duty on 8 March 1987. He was assigned to Fort Benning, GA.

b. On 2 September 1987, he was reprimanded by his commanding officer for failing to return from a pass that was authorized pursuant to receipt of a Red Cross message conveying a death in the family, being absent without leave (AWOL), and disobeying a lawful order. The applicant acknowledged receipt.

c. During September and October 1987, the applicant was frequently counseled by members of his chain of command for various infractions including:

- multiple instances of missing formation

- multiple instances of missing physical training
- being unshaven during formation
- being AWOL from 2 to 5 October 1987
- failing to attend recall formation
- failing to attend an Article 15 hearing of one of his Soldiers
- failing to be available when one of his Soldiers attempted suicide
- missing movement
- failing to participate in training
- having an extensive record of dishonored checks and failing to pay debts

c. On 30 September 1987, he was temporarily relieved from his duties as a platoon leader due to his continued misconduct.

d. On 2 October 1987, the applicant's unit reported him AWOL and on 1 November 1987, he was dropped from the Army rolls as a deserter.

e. On 5 October 1987, the applicant's immediate commander initiated a recommendation to eliminate him from the Army by reason of misconduct. The specific reasons: Consistent record of mediocre service with 18 incidents of substandard performance of duty and misconduct, including failure to exercise necessary leadership expected of an officer of his grade, apathy and unwillingness to expend efforts, discreditable failure to meet financial obligations, mismanagement of personal affairs, acts of personal misconduct, and conduct unbecoming an officer.

f. On 5 November 1987, court-martial charges were preferred against the applicant. The relevant DD Form 45 (Charge Sheet) shows he was charged with one specification of being AWOL from 2 October 1987 to an unspecified date.

g. On 8 November 1988, the applicant was apprehended by civil authorities in St. Petersburg, FL, and he returned to military control on the same date. He was assigned to the Personnel Control Facility, Fort Knox, KY, for administration and legal action.

h. The complete facts and circumstances surrounding the applicant's separation are unavailable for review.

i. On 22 March 1991, the applicant consulted with legal counsel, and he was advised of the basis for the contemplated action to eliminate him from the Army. He requested voluntary resignation from the Army in lieu of elimination under the provisions of Army Regulation (AR) 635-120 (Personnel Separations – Officer Resignations and Discharges), chapter 4. He further waived his right to appear before a board of officers or to submit matters in explanation, rebuttal, or defense of the allegations in his case. He acknowledged he understood:

- if his resignation were accepted under other than honorable conditions, he would not be entitled to compensation for unused leave
- he would be barred from all rights under any laws administered by the VA based on the period of service from which he would be separated
- if his discharge request were approved, he could be deprived of many or all Army benefits and he could be ineligible for many or all benefits administered by the VA

j. On 29 July 1991, the U.S. Total Army Personnel Command approved the applicant's resignation in lieu of elimination for misconduct, moral or professional dereliction, under the provisions of AR 635-120 and directed the issuance of orders effecting his discharge under other than honorable conditions by order of the Secretary of the Army.

k. He was discharged under other than honorable conditions on 13 August 1991. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged in lieu of or as a result of elimination proceedings under the provisions of AR 635-120, Chapter 4. He completed 1 year, 7 months, and 14 days of active service with lost time from 2 October to 1 November 1987 and from 22 November 1988 to 13 August 1991.

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

m. on 12 September 2013, the Board considered his application or an upgrade of his discharge and denied it. The Board stated:

6. In reaching its determination, the Board can consider the applicant's petition, his service record, and his statements in light of the published Department of Defense guidance on equity, injustice, or clemency.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request for an upgrade of his under other than honorable conditions discharge. He contends he experienced military sexual trauma (MST) that mitigates his misconduct. 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) Having had prior U.S. Marine Corps Reserve enlisted service, the applicant was appointed as a Reserve commissioned officer of the Army on 11 May 1986 and entered active duty on 8 March 1987; 2) On 5 October 1987, the applicant's immediate commander initiated a recommendation to eliminate him from the Army by reason of misconduct. The specific reasons: Consistent record of mediocre service with 18 incidents of substandard

performance of duty and misconduct, including failure to exercise necessary leadership expected of an officer of his grade, apathy and unwillingness to expend efforts, discreditable failure to meet financial obligations, mismanagement of personal affairs, acts of personal misconduct, and conduct unbecoming an officer; 3) On 5 November 1987, court-martial charges were preferred against the applicant for being AWOL starting 2 October 1987. He was later apprehended by civil authorities on 8 November 1988 and returned to military control; 4) The applicant was discharged on 13 August 1991 in lieu of or as a result of elimination proceedings, chapter 4. His service was characterized as under other than honorable conditions.

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

c. The applicant asserts he was experienced MST while on active service, which mitigates his misconduct. He did not provide any additional information in regard to this reported experience on active service. There is insufficient evidence the applicant reported MST or any resultant mental health condition while on active service.

d. A review of JLV provided evidence the applicant has been provided assistance for homelessness, vocational rehabilitation, legal problems, physical problems, and poly-substance dependence by the VA starting 1999. There was insufficient evidence the applicant reported experiencing MST to the VA, and he has not been diagnosed with a mental health condition beyond poly-substance dependence and Anti-Social Personality disorder.

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 a condition or experience that mitigates his misconduct which led to his discharge. However, the applicant marked on his application that he did experience sexual assault/harassment at some point during his active service. Therefore, per Liberal Consideration, his contention alone is sufficient for the board's consideration.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant noted on his application that he experienced MST at some point during his active service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant noted on his application that he experienced MST at some point during his active service.

(3) Does the condition experience actually excuse or mitigate the discharge? No, the applicant noted on his application that he experienced MST at some point during his

active service. However, despite the applicant being actively engaged with the VA for assistance for homelessness, legal problems, vocational rehabilitation, physical problems, and poly-substance dependence since 1999; there is insufficient evidence he reported experiencing MST or reported any resultant mental health symptoms. In addition, he has not been diagnosed with a mental health condition beyond Anti-Social Personality Disorder. However, per Liberal Consideration, his contention of MST on his application alone 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 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 conduct and the reason for separation. Separation was initiated on the applicant for substandard performance of duty and misconduct. Specifically, his commander cited a consistent record of mediocre service and sleeping in during live fire. The applicant subsequently requested resignation in lieu of elimination proceedings, which the command approved. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted the medical review's opinion finding insufficient evidence to support the applicant's contention. The applicant provided no documentation to support his request, including post-service achievements or letters 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. 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:

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 amendment of the ABCMR decision rendered in Docket Number AR20130001639 on 12 September 2013.

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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. Army Regulation 635-120 implements the statutory provisions of Title 10, U.S. Code, governing officer separations and provides policies and procedures for separating officers from active duty. Chapter 4 prescribes procedures to eliminate officers from the Army for substandard performance of duty. It states that officers whose performance of duty which has fallen below standards prescribed by the Secretary of the Army may be separated. The existence of apathy, defective attitudes, or other character disorders, to include inability or unwillingness to expend effort, unless successfully rebutted, authorizes elimination of an officer due to substandard performance of duty. Commanders will ensure that there is no element of coercion in connection with a resignation in lieu of elimination.
2. 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. 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. 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.
3. 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. 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. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, 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.

//NOTHING FOLLOWS//