

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 August 2024

DOCKET NUMBER: AR20230015132

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General).

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

- DD Form 293 (Application for the Review of Discharge)
- Self-Authored Statement
- Permanent Orders Number 11-6, 22 January 1990
- Four DA Forms 4856 (General Counseling Form), dated 31 October 1990, 15 November 1990, 2 January 1991 and 30 April 1991
- Two Letters of Recognition, dated 3 and 25 October 1991
- Four Letters of Appreciation, dated 11 and 25 March 1993, 28 April 1993, and 17 May 1993,
- Memorandum, Verification of Military Service, 18 May 1993
- Two Character References, dated 26 and 27 April 1995
- DA Form 2-1 (Personnel Qualification Record), section I and II

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. He served in the U.S. Army from 1987 to 1996. He served in the infantry for 5 years. One of his duties was in 5th Infantry at Fort Polk, LA. During his time there they were deployed to Panama for Operation Just Cause. Some people do not remember the invasion but it was pretty ugly. He did not know that he came home with more issues than he left with. He struggled for a very long time with what he did. He did it in silence. He turned his back on everything including getting help because he thought he had it all figured out. He was very wrong.

b. After getting re-classed to a Graphic Design Specialist, he was sent to the Pentagon without getting the help that he needed. His wife left in the middle of the night with their four-month-old daughter because of what he had become. He was arrested for assault and resisting arrest. His wife said that she could not sit by and watch him self-destruct any longer.

c. Instead of getting help he continued to believe that it was everyone else's fault. He did not want to live. He turned to drinking and drugs to dull the pain. Failing a urinalysis was his biggest regret. He was a good Soldier, and he made a mistake that changed the course of his life. He lost job opportunities due to losing his clearance.

d. He has used this to teach his children that actions have consequences. He has found God and sought the help that he apparently needed. He owns a business that hires veterans, and he also helps run a non-profit for veterans coming home that need help adjusting.

3. The applicant provides:

a. Permanent Orders Number 11-6, 22 January 1990, shows the applicant was awarded the Combat Infantryman Badge for the period 20 December 1989 to 28 December 1989.

b. Four DA Form 4856's (General Counseling Forms) that show in part the following:

- his outstanding job as a team leader, and that he demonstrated the willingness to take initiative
- his outstanding job performance, attitude, professionalism, and personal appearance

c. Two letters of recognition, issued by Lieutenant K____ L____ and Colonel R____ N____ jr. that show in part the applicant's outstanding performance as Class Leader of Class 910717, course: Apprentice Graphics Specialist. The letter's state the applicant performed his duties in an outstanding and professional manner. As a dedicated team performer, he was instrumental in maintaining positive attitudes and high morale throughout the weeks of instruction.

d. Three letters of appreciation, that show the following:

(1) Two letters issued by Lieutenant P____ T____, and Chief R____ S____, that state the applicant had outstanding performance in support of the Office of the Secretary of Defense for Women's History Month.

(2) J____ E____ the Assistant Deputy Director of Acquisition Career Management states, the applicant provided superb support during the period December 1992 to February 1993. During this period, they had to prepare over 100 hard copy graphs and charts. The charts were complex and were in support of statutory requirements as found in the Defense Acquisition Workforce Improvement Act and Department of Defense implementing regulations. As a result, the office was able to obtain important and timely decisions.

e. Two Character Reference letters that show:

(1) Sergeant First Class J____ B____, states:

a. He arrived at the United States Army Visual Information Center, Television Division, Pentagon in early September 1995. He was introduced to the applicant, and informed that the applicant was their Computer Graphic Specialist and Paintbox Artist. The applicant was the only one with the highest degree of technical knowledge with their highly complex systems.

b. He watched him create graphics, using his imagination, stunning his clients ranging from the Department of Defense, Department of the Army and other local MDW Commands. The applicant was always dedicated to the mission. His military bearing and tactfulness were at the highest. With the drawdown of military personnel, they were going through a tremendous amount of changes and the applicant always took control and consistently trained other Soldiers in areas of concern to meet their mission requirements.

c. He was informed of the situation that happened to the applicant; he was speechless. This Soldier had so much going for him that he really could not understand what went wrong. He personally counseled the applicant and he was very concerned about his future. The applicant had plans of getting out of the service and working for a Computer Graphic Firm in Maryland and it seemed like he got unjust guidance.

d. The applicant always had excellent work experience and knowledge of his military occupation specialty (MOS) 25M, maintaining standards and influencing others to do the same. He allowed Soldiers to be placed in leadership roles or situations and be evaluated, keeping the standards high, but equal.

(2) B____ M____ the Branch Chief, for Tech Operations stated that the applicant took pride in his ability to perform as a Graphics Specialist. He was able to complete all projects assigned to him, and he taught subordinate Soldiers the operation of the complex graphic equipment installed in the Television Division.

(3) A memorandum for verification of military service, dated 18 May 1993, that shows the applicant's service from 19 August 1987 to [18 May 1993], 5 years, 8 months, and 20 days, with a "honorable" character of service.

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

a. On 19 August 1987, the applicant enlisted in the Regular Army. He completed Advanced Initial Training and he was awarded the MOS 11B (Infantryman).

b. His DA Form 2-1 (Personnel Qualification Record) shows in item 5 (Oversea Service) – he served in Korea from 13 January 1988 to 12 January 1989.

c. On or about 2 October 1991, he completed AIT and was awarded the MOS 25M (Multimedia Illustrator).

d. He was immediately assigned to Pentagon, VA, with a principal duty of Graphics Documentation Specialist.

e. A DA Form 2624 (Specimen Custody Document – Drug Testing) completed on 27 January 1995 shows the applicant tested positive for cocaine.

f. On 30 March 1995, the applicant accepted nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ) for wrongful use of cocaine, on or about 25 January 1995 and about 27 January 1995. His punishment consisted of reduction to specialist/(E-4).

g. On a date unknown, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12c, for misconduct - commission of a serious offense. The reason for his proposed action is due to the applicant testing positive for cocaine on 21 February 1995. He recommended an under other than honorable conditions characterization of service and advised the applicant of his rights.

h. The applicant acknowledged receipt of his commander's intent to separate him for commission of a serious offense.

i. The applicant's immediate commander-initiated separation action against the applicant under Chapter 14-12c of AR 635-200 for misconduct - commission of a serious offense. He recommended an under other than honorable conditions discharge. The intermediate commander recommended approval.

j. On an unknown date, the applicant consulted with counsel who advised him of the basis for the contemplated action to separate him under AR 635-200, Chapter 14-12c, and its effect; of the rights available to him; and the effect of the rights available to him, and the effect of any action taken by him in waiving his rights. He acknowledged:

(1) He is entitled to have his case considered before an administrative separation board.

(2) He was given the opportunity to consult with counsel.

(3) He requested consideration of his case by an administrative separation board contingent upon him receiving a general discharge.

(4) Statement in his own behalf was submitted herewith.

(5) He requested consulting counsel and representation by military counsel.

(6) He understood that if the separation authority refuses to accept this conditional waiver of a hearing before an administrative separation board that my case will be referred to an administrative separation board. In that case:

- he requested personal appearance before an administrative separation board
- he requested consulting counsel and representation by counsel for representation as his military counsel
- he understood that his willful failure to appear before the administrative separation board by absenting myself without leave will constitute a waiver of my rights to personal appearance before the board

(7) He understood he may expect to encounter substantial prejudice in civilian life if a discharge/character of service any less favorable than honorable is issued to him and he understood that, as the result of issuance of a discharge certificate/ character of service which is less than honorable, he may make application to the Army Discharge Review Board or the Army Board for Correction of Military Records for upgrading; however, he realizes that consideration by either board does not automatically imply upgrading. He also understood that he is ineligible to apply for enlistment in the U.S. Army for a period of two years after discharge.

k. On 3 May 1995, he submitted a statement on his own behalf that shows in part, his request to receive an under honorable conditions (General) discharge. The applicant states he served as an Infantry Soldier from August 1987 to 1991. He was stationed in Korea for 3 months as border patrol. He was reassigned to Fort Polk, LA and during that assignment he was deployed for six months to Panama during Operation Just Cause.

He was awarded the Army Commendation Medal and the Combat Infantryman Badge for his efforts. He reclassified as an Apprentice Graphics Specialist and from March 1991 to May 1995 and had various assignments in the Pentagon.

l. On 28 June 1995, the separation authority approved his discharge under the provisions of AR 635-200, Chapter 14, paragraph 12c, and directed the issuance of a General Discharge Certificate.

m. On 11 July 1995, the applicant was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c, for misconduct. The applicant completed 7 years, 10 months, and 23 days of active service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows:

(1) He was awarded or authorized the Army Commendation Medal, Army Achievement Medal, Army Good Conduct Medal, National Defense Service Medal, Armed Forces Expeditionary Medal, Army Service Ribbon, Overseas Service Ribbon, Combat Infantryman Badge, Driver and the Mechanic Badge with driver wheeled bar.

(2) A separation code of "JKK," And a reentry code of "4."

(3) Item 18 (Remarks) listed his reenlistment periods as "19870819-19910117; 19910118-19931017; 19931018-19950711," but did not list his continuous honorable service.

5. There is no indication that the applicant requested an upgrade of his discharge from the Army Discharge Review Board within its 15-year statute of limitations.

6. Regulatory guidance states action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

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. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and

regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board determined there is sufficient evidence to overcome the misconduct. The Board under liberal consideration, found the misconduct a one-time incident during his seven (7) year stellar career.

2. The Board noted, the applicant's post service achievements of starting his own business to help veterans and his character letters of support attesting to the applicant's work ethic, character and how this one misconduct changed him. The Board noted, the applicant's three prior periods of continuous honorable service from 19870819-19910117; 19910118-19931017; 19931018-19950711. The Board agreed the applicant accepts responsibility for his actions and was remorseful with his application, demonstrating he understands his actions were not that of all Soldiers. The Board found an upgrade of the applicant's characterization of service is warranted. Therefore, the Board voted to grant relief to upgrade his discharge to honorable.

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 reissuing the applicant a DD Form 214 showing his characterization of service as honorable.

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.

ADMINISTRATIVE NOTE(S): N/A

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. Army Regulation 635-200 (Personnel Separations) sets forth the basic authority for the separation of enlisted personnel. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline), commission of a serious offense, and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.
 - 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.

3. 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 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.

4. 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; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to 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 that misconduct which led to the discharge.

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//