

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 August 2024

DOCKET NUMBER: AR20230015173

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge to honorable
- reinstate his rank to private first class (PFC)/E-3

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

- DD Form 149 (Application for Correction of Military Record)
- Massachusetts Army National Guard (MAARNG) Enlistment Waiver Recommendation Memorandum dated 30 August 2001
- Certifications and Licenses (5 pages)
- State Issued Driver License
- Three Letters of Support
- DA Form 87 (Certificate of Training) 19 August 1990 – 31 August 1990
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 1 March 1985
- DD Form 214 for the period ending 24 June 1992
- Honorable Discharge Certificate dated 18 December 2002

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 would like the Board to correct and upgrade his prior to honorable conditions. Additionally, he seeks reinstatement to his prior rank of E3. He would like the Board to consider his prior service before the incident and his accomplishments in civilian life. He has since attended college and owned/operated a pest control and wildlife removal service, attained a commercial pilot's license, advanced ground instructor instruments, and operated a professional limousine service. Most notably, he served in the Army National Guard (ARNG) following 9/11 and was

honorably discharged. He took action at the time he believed was correct due to his mother needing assistance.

3. The applicant provides:

a. A DA Form 87 shows the applicant completed the One Station Unit Training (OSUT) and was awarded military occupational specialty (MOS) 11B, Infantryman.

b. A waiver request dated 30 August 2001, submitted by the Massachusetts Army National Guard (MAARNG) recommending approval of the applicant's request to enlist in spite of his prior discharge in lieu of trial by courts-martial.

c. A number of certifications and licenses he attained after the service to highlight his accomplishments in civilian life:

- Department of Transportation (DOT) Federal Aviation Administration (FAA) Ground Instructor certification, date of issue 24 January 2013
- DOT FAA Remote Pilot certification, date of issue 11 December 2017
- DOT FAA Commercial Pilot certification, date of issue 16 July 2013
- Private Pilot/Helicopter Certification
- Massachusetts Department of Agricultural Resources Pesticide Certification/License, date of issue 21 December 2019
- Certificate of Completion Pilot Safety Course dated 20 October 2011
- Certificate of Completion notification from the Loomares Wildlife Management's Advanced Airport Wildlife Hazard Management Training Course dated 28 September 2012

d. A State of Massachusetts commercial driver's license issued on 7 May 2019.

e. Three Letters of Support:

- Mr. A.P.L. provides a support letter for the police department for the applicant expressing his good moral character. He states the applicant would make an excellent police officer and be an asset to the department due to the fact he speaks Portuguese and Spanish.
- A district sales manager of Verizon says to MAARNG, that she has worked with the applicant for over a year, and he is an excellent employee, and she would not hesitate to recommend him for any position that he is interested in. She states he consistently performs well, is positive and pleasant on the phone and is well respected by his peers. He reports to work on time and has an excellent attendance record.

- Officer A.S. states in a letter to the police department that he has known the applicant for 10 years and have always found him to be well respected in the community. He says he would make an excellent police officer and highly recommends him.

f. Two DD Forms 214 for the service periods ending 1 March 1985 and 24 June 1992, to be referenced in the service record.

g. An Honorable Discharge Certificate from the MAARNG effective 18 December 2002.

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

a. Having had prior service in the Army National Guard (ARNG). He enlisted in the Regular Army on 28 September 1990.

d. Three DA Forms 4187 (Personnel Action) change the applicant's duty status as follows:

- 10 August 1991 – present for duty (PDY) to absent without leave (AWOL)
- 10 September 1991 – AWOL to dropped from rolls (DFR)
- 24 February 1992 – DFR to PDY

e. The available service record is void of the separation proceedings with the exception of the separation authority approval memorandum.

f. On 20 May 1992, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted pay grade.

g. On 24 June 1992, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 1 year, 2 months, and 13 days of active service with 198 days of lost time. Block 18 (Remarks) shows he served in Southwest Asia from 13 February 1991 through 20 April 1991. He was assigned separation code KFS and the narrative reason for separation is listed as "For the Good of the Service – In Lieu of Court-Martial," with reentry code 3. It also shows he was awarded or authorized:

- Army Service Ribbon
- Southwest Asia Service Medal with one bronze service star
- Expert Marksmanship Qualification Badge with Hand Grenade

- Sharpshooter Marksmanship Qualification Badge with Rifle Bar
- Kuwait Liberation Medal

h. He enlisted in the MAARNG on 14 November 2001 as Private First Class (E3).

i. On 18 December 2002, he was honorably released from. His NGB Form 22 (Report of Separation and Record of Service) shows he completed 1 year, 1 month, and 5 days of net service for the period. He was assigned separation code EG and the authority and reason for separation is listed as "Erroneous Enlistment or Extension," with reentry code 3.

5. There is no evidence the applicant has 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 635-5), 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.

7. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or in lieu of trial by court-martial.

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 charged with being absent without leave from 10 August 1991 to 24 February 1992, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board noted the

applicant's post-service accomplishments and based on equity and clemency determined partial relief was appropriate.

2. The Board found no error or injustice in the designated characterization of service assigned by his commander during separation. The Board noted the applicant's post-service achievements; however, determined they were not enough to grant relief to the characterization of service based on clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

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 19 November 2003, to show his characterization of service as under honorable conditions (General).
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 amending his rank to private first class (PFC)/E-3



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. Army Regulation 635-5 (Separation Documents), in effect at the time, states 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.
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - a. 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.
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. 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 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//