

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 September 2024

DOCKET NUMBER: AR20240000840

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 AR20070003569 on 6 September 2007.

2. The applicant states he was discharged on the grounds that he wrote a bad check. To his knowledge, it was something that he could not correct while he was serving in the Republic of Panama. The judge advocate had him believe that he would be sent to Leavenworth prison and it would be better to just get out of the military. He was also assigned to two companies. While he was being reprimanded, he received the punishment twice from the commanding officers of both companies. He was stripped of his rank as a specialist (SPC)/E-4 promotable to private (PVT)/E-1 and was restricted to the barracks. He was accused of sodomy off the base, but because he was placed on restriction, it was dropped. He believes his record should be corrected because of the injustice that he was given. His record prior was very good. He waited so long because for years he felt hopeless carrying the weight of all that happened to him.

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

- a. He enlisted in the Regular Army on 9 July 1984.
- b. He served in the Republic of Panama for a period of 1 year, 10 months, and 15 days.

c. His record contains a DA Form 4126-R (Bar to Reenlistment Certificate) that shows his commander initiated a bar to reenlist on the applicant in the rank/grade of SPC/E-4 on 19 September 1989. The form shows in pertinent part,

- Record of court-martial convictions: none
- Record of nonjudicial punishment: none
- Record of non-payment of just debts: 4 April 1989, Letter of Late Payments; 31 May 1989, Letter of Indebtedness; 23 August 1989, Dishonored Check Notification; and 7 September 1989, Dishonored Check Notification
- Other factual indicators: Soldier is being barred for positive urinalysis and letters of indebtedness; 11 July 1989, Positive urine sample for unprescribed drugs

d. The complete facts and circumstances surrounding the applicant's separation are unavailable for the Board to review, specifically, the relevant DD Form 458 (Charge Sheet) and subsequent request for discharge for the good of the service in lieu of trial by court-martial.

e. On 25 January 1990, the applicant was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10 for the good of the service in lieu of court-martial with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 5 years, 6 months, and 7 days of active service. It also shows:

(1) he was awarded or authorized:

- Army Service Ribbon
- Overseas Service Ribbon (2nd Award)
- Army Achievement Medal (2nd Oak Leaf Cluster)
- Army Good Conduct Medal
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)
- Air Assault Badge

(2) Enlistment this Period: 9 July 1984 to 14 December 1987

4. The applicant petitioned the ABCMR for an upgrade of his characterization of service. On 6 September 2007 in AR20070003569, the Board determined the applicant tested positive for unprescribed drugs and had dishonored checks and despite the separation packet being unavailable, he was discharged for the good of the service. The Board denied relief.

5. 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 carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, his bar to reenlistment, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency.

2. Although the charges against the applicant that led him to request discharge in lieu of trial by court-martial are not included in the available evidence, the Board gave greater weight to the applicant's statement and, in light of the Department of Defense guidance, found the evidence supports relief. The Board also considered the applicant's overall service record, which included three awards of the Army Achievement Medal and award of the Army Good Conduct Medal, and found the character of service he received to be too harsh. Based on a preponderance of the evidence, the Board determined the applicant's character of service should be changed to under honorable conditions (general).

3. The Board concurred with the corrections described in Administrative Note(s) below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined that the evidence presented was sufficient to warrant amendment of the ABCMR's decision in Docket Number AR20070003569 on 6 September 2007. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- Reissuing his DD Form 214 to show his character of service as under honorable conditions (general)
- incorporating the corrections described in Administrative Note(s) below

X

CHAIRPERSON

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): The applicant's DD Form 214 is missing required administrative entries. Correct the DD Form 214 by adding the following to item 18 (Remarks):

- Continuous honorable active service from 19840709 to 19871214
- Member has completed first full term of service

REFERENCES:

1. Army Regulation 632-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 1-9d (Honorable Discharge) states an honorable discharge is a separation with honor. Issuance of an honorable discharge will be conditioned upon proper military behavior and proficient performance of duty during the member's current enlistment of current period of service with due consideration for the member's age, length of service, grade, and general aptitude.

b. Paragraph 1-9e (General Discharge) states a general discharge is a separation from the Army under honorable conditions of an individual whose military record is not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 (Discharge for the Good of the Service) states an individual who has committed an offense or offenses, the punishment for which, under the Uniform Code of Military Justice, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service.

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. 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//