

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 August 2024

DOCKET NUMBER: AR20240000905

APPLICANT REQUESTS: his under honorable conditions (general) discharge be upgraded. Additionally, he requests an appearance before the Board via video/telephone.

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

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

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 when he reenlisted, his guaranteed contract stated he was to remain on Fort Lewis, WA, for at least 2 years and 6 months. Before his 2 years were up, they cut him orders for Mount Sinai, Egypt. He contested this and they kicked him out of the office and directed him to go see his first sergeant. He gave him the choice to go or get out. He contested again, and within 48 hours he was processed out of the Army. He had his contract in his hands, and they refused to honor it.
3. The applicant enlisted in the Regular Army on 7 November 1985. His military occupational specialty was 88M (Motor Transport Operator).
4. The applicant reenlisted on 31 March 1989. His DD Form 4 (Enlistment /Reenlistment Document) shows Continental United States (CONUS) to CONUS Station of Choice Reenlistment Option Fort Lewis.
5. He served in Germany from 6 April 1986 through on or about 26 March 1988.

6. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on 19 April 1990 for absenting himself from his place of duty on or about 6 April 1990. His punishment consisted of extra duty.

7. The applicant was counseled on multiple occasions between 23 March 1990 and 12 June 1991 for:

- unauthorized absence during duty hours
- failure to return to work
- reckless driving a 5 Ton Truck
- dishonored check
- disobeying an order
- monthly counseling
- failed to be at his place of duty at the appointed time
- missing formation and missing movement
- failure to repair (three)
- substandard performance
- poor performance
- not doing as he was told and trying to use his section leader and team leader to get what he needed

8. The applicant accepted NJP under Article 15 of the UCMJ on 13 February 1991 for through neglect missing his unit's movement, which he was required in the course of duty to move on or about 13 January 1991. His punishment consisted of reduction to private first class/E-3 (suspended), forfeiture of \$217.00 (suspended) and extra duty.

9. The applicant received counseling on 25 February 1991 for disobeying an order. He was told not to drive his privately owned vehicle on post, but he drove his car on post on 23 February 1991 so he could do his extra duty.

10. The applicant's NJP under Article 15 of the UCMJ was vacated on 8 April 1991, based on the applicant missing formation on 27 March 1991.

11. The applicant was medically qualified for discharge on 26 May 1991.

12. The Report of Mental Status Evaluation, dated 24 June 1991 shows he was psychiatrically cleared for any administrative action deemed appropriate by command.

13. On 24 July 1991, the applicant's immediate commander notified him of his intent to initiate action to separate him from the Army under the provisions of Army Regulation (AR) 635-200 (Personnel Separations- Enlisted Personnel), Chapter 14, for patterns of misconduct. The applicant established a pattern of misconduct, after formal counseling which clearly established that further attempts to develop him as a satisfactory Soldier

are unlikely to succeed. His commander recommended he receive a under honorable conditions (general) discharge.

14. The applicant consulted with legal counsel on 25 July 1991 and was advised of the basis for his separation and the procedures and rights that were available to him. He declined consideration of his case by a board of officers, and he waived personal appearance before an administrative separation board. He elected not to submit statements in his own behalf.

15. The applicant's immediate commander formally recommended the applicant be separated from the Army and receive an under honorable conditions (general) discharge. His chain of command recommended approval.

16. The separation authority approved the recommended discharge action on 5 August 1991 and directed that the applicant be issued a under honorable conditions (general) discharge.

17. The applicant was discharged on 9 August 1991, in the rank/grade of private first class/E-3. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 14-12b, for misconduct-pattern of misconduct, with Separation Code JKM and Reentry Code RE-3. His service was characterized as under honorable conditions (general). He completed 5 years, 9 months, and 3 days of net active service this period. His awards include the: Army Service Ribbon, National Defense Service Medal, Overseas service Ribbon, Army Achievement Medal, and Army Good Conduct Medal.

18. Soldiers are subject to separation under the provisions AR 635-200, Chapter 14, for misconduct. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the overall record.

19. In reaching its determination, the Board can consider the applicant's petition and 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 not 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 insufficient evidence of in-service mitigating factors to overcome the misconduct of reckless driving of a military 5-Ton truck, disobeying an order and uttering worthless checks.

2. The Board noted, the applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board determined the applicant's service record exhibits numerous instances of misconduct during his enlistment period of 5 years, 9 months, and 3 days of net active service this period. The Board noted, the applicant was discharged for misconduct and was provided an under honorable conditions (General) characterization of service. The Board agreed the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an honorable discharge. Based on this, the Board found the applicant's contentions unwarranted and denied relief.

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 correction of the records of the individual concerned.



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, USC, 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.
  - a. 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.
  - b. 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) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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.

c. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if merited by the Soldier's overall record.

4. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NR) on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, Boards 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//