

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 October 2024

DOCKET NUMBER: AR20240001382

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

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

- DD Form 149 (Application for Correction of Military Record), 26 December 2023
- Self-authored Statement, 18 December 2023

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 started his career as a private in the Army National Guard and decided to go into active duty service 6 months later. He was classified as 12C (Bridge Builder) to a 91D (Certified Surgical Technician) which allowed him to pursue his dream.

b. When he passed his field exercises, he felt very accomplished and lucky considering he had received a lower back injury. He was part of a four-man stretcher carry with three young men and a young woman. The young woman was very petite and commented that she could not handle the weight of the Soldier who was 6-feet, 330-pounds, and solid.

c. They were instructed to move the Soldier through a simulated combat scenario and the female Soldier dropped the Soldier, abruptly putting all the weight on his side and causing injury to his lower back. The applicant reported the incident to his sergeant who witnessed the incident and was warned by this sergeant not to report the incident. He was told if he sought medical attention he could potentially be discharged from active duty.

d. He subsequently sought help from a chiropractor who had helped other Soldiers with similar issues. This was a temporary fix that was costly on him as his wages as a private first class did not afford him the cost.

e. The applicant was eventually stationed at Fort Lewis where his lower back issues continued. He sought help from another chiropractor in the area. He had trouble keeping up with the long physical training runs and it was noticed by his sergeant. He was warned if it continued, he would be put out of the Army. He explained his chiropractor adjustments were helping but he could no longer afford the care. He recommended the applicant see a Doctor of Osteopathic Medicine at Madigan Army Medical Center and these treatments helped his physical fitness runs improve.

f. Another sergeant noticed the applicant coming out of the office from those treatments and seemed annoyed with his explanation and said he should be chaptered out of the Army. The next day he was standing in front of his commanding officer and his first sergeant explaining his situation and was told he would be chaptered out. He explained his physical fitness had improved because of his treatments. He explained the situation to his doctor, but he said there was nothing he could do.

g. Within a few months his chapter paperwork was drawn up and he was given a choice to either sign the papers or he would be given a dishonorable discharge. The number of documents given to him was enormous and he could not read all of them in the time frame allotted to him, so he signed the documents out of fear of receiving the dishonorable discharge.

h. He had no idea his Montgomery G.I. Bill would be taken from him once he signed to documents. He served his country proudly and was forced out due to an injury. For many months after his discharge, he struggled with life until he decided to go to school. The Veterans Administration did not give him his G.I. benefits. He hopes he can regain his benefits with honest judgement.

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

a. On 10 April 1998, he enlisted in the Connecticut Army National Guard (CTARNG) for 8 years.

b. On 14 June 1998, he was ordered to active duty for basic combat training and advanced individual training.

c. On 17 September 1998, he was released from active duty training. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was released with uncharacterized service after completing 3 months and 4 days of active

duty (AD), he was awarded military occupational specialty (MOS) 12C (Bridge Crewmember), and he was returned to control of the CTARNG.

d. On 28 April 1999, he was honorably discharged from the CTARNG in order to enlist in the Regular Army. His NGB Form 22 (Report of the Separation and Record of Service) shows he completed 1 year and 19 days of net service this period.

c. On 29 April 1999, he enlisted in the Regular Army for 6 years beginning at rank/pay grade private 2/E-2. He was awarded MOS 92B (Operating Room Specialist) and he attained the rank/pay grade of specialist 4/E-4.

d. On 13 February 2002, Bravo Detachment, 22d Personnel Services Battalion issued Permanent Orders 044-035, awarding him the Army Good Conduct Medal for the period 25 January 1999 to 24 January 2002.

e. On 8 April 2002, he was counseled for failing the APFT, and notified during this counseling that separation action may be initiated against him if his behavior or conduct continued. On the same date, he was enrolled in the special physical fitness program (SPFP).

f. On the same date, a FLAG was imposed against him by reason of Army Physical Fitness Test (APFT) failure.

g. On 28 June 2002, he was counseled for failing the APFT, and again notified that separation action may be initiated against him if his behavior or conduct continued.

h. An APFT score card 'record' result, dated 28 June 2002, reflects a "no-go" score of 182 points.

i. On 31 July 2002, he was counseled for failing a 'record' APFT after completing a "no-go" score of 192. He was advised his run score had not improved since he was assigned to the SPFT.

j. An APFT scorecard notes that during record APFTs on 31 July 2002 and 8 August 2002, he completed APFT scores of 192 and 200 respectively.

k. On 28 August 2002, he was counseled for failing a 'record' APFT on 28 August 2002, for completing a 'no-go' score of 198.

l. On 24 September 2002, he underwent a medical examination. The DD Form 2808 (Report of Medical Examination) shows, in part, no lower extremity, spinal, or other musculoskeletal abnormalities. The examining physician noted he was qualified for service.

m. On 24 September 2002, he gave a report of medical history. The DD Form 2807-1 (Report of Medical History) reflects he noted he had recurrent back pain, he had numbness or tingling, and he had knee trouble.

n. On 27 September 2002, he underwent a mental status evaluation. A DA Form 3822-R shows he had normal behavior, he was fully alert and fully oriented; his mood or affect was unremarkable, and he had clear thinking process and normal thought content. In the opinion of the examining clinical psychologist, he had the mental capacity to understand and participate in proceedings, he was mentally responsible, he could distinguish right from wrong, and he possessed sufficient mental capacity to participate in administrative proceedings. The examining psychologist cleared him for any administrative actions deemed appropriate by command.

o. On 8 October 2002, his company commander notified him he was initiating action to separate him for unsatisfactory performance under the provisions of Army Regulation 635-200 (Administrative Separations – Enlisted Personnel), Chapter 13, for unsatisfactory performance, with a general, characterization of service, and advised him of his rights. The reason for his proposed action was that he failed two consecutive APFTs. He understood he had the right to consult with consulting counsel or civilian counsel at his own expense; he may submit written statements in his own behalf; and he may obtain copies of documents that would be sent to the separation authority supporting the proposed separation.

p. On 9 October 2002, he met with military appointed counsel, and he elected his rights. He elected not to submit statements in his own behalf, and he requested consulting counsel. He understood that he may expect to encounter substantial prejudice in civilian life if a general, under honorable conditions discharge were issued to him; he may be ineligible for many or all benefits as a veteran under both Federal and State laws; and he may expect to encounter substantial prejudice in civilian life. He further understood that he may make application to the Army Discharge Review Board or the Army Board for Correction of Military Records if a general, under honorable conditions discharge were issued to him but consideration by either Board did not imply that his discharge would be upgraded.

q. On the same date, his commander forwarded his recommendation to the separation approval authority. In his recommendation, his commander noted he had no reductions, he had received no nonjudicial punishment, and otherwise noted no record of misconduct in his record.

r. On 10 October 2002, the separation authority approved his discharge under the provisions of Army Regulation 635-200, Chapter 13, waived the requirement for rehabilitative transfer in his case, and directed issuance of a General, under Honorable Conditions Discharge Certificate.

s. On 26 December 2002 he was discharged. His DD Form 214 shows he was discharged under provisions of Army Regulation 635-200, paragraph 13-2e, by reason of physical standards. It further shows he completed 3 years, 7 months, and 28 days of active service; with 3 months and 4 days of total prior active service; and no time lost. It further shows in:

(1) Block 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized):

- Army Achievement Medal
- National Defense Service Medal
- Army Service Ribbon
- Army Good Conduct Medal
- Expert Marksmanship Qualification Badge with Grenade Bar
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)

(2) Block 26 (Separation Code) – JFT;

(3) Block 27 (Reentry Code) – 3.

4. There is no evidence indicating he applied to the Army Discharge Review Board for an upgrade of his discharge within that board's 15-year statute of limitations.

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:

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 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. The applicant was separated for failure of two consecutive Army Physical Fitness Tests (APFT). The Board noted the applicant's provided documentation to support his request, including his personal statement indicating his high performance despite failing his APFTs. Additionally, the Board noted the applicant's is currently enrolled in college with a 3.92 grade point average in reference to his post-service achievements. Based on a preponderance of the evidence and totality of the applicant's

military service, the Board concluded that an upgrade from under honorable conditions (General) to honorable was warranted.

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 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 26 December 2002 to show an honorable characterization of service.

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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.

ADMINISTRATIVE NOTE PARAGRAPH

The applicant completed a period of initial active duty for training (IADT). He was awarded a MOS at the completion of training and was transferred back to the CTARNG. Army Regulation 635-200 provides that when a Reserve Component Soldier successfully completes IADT, the characterization of service is honorable unless directed otherwise by the separation authority. Please reissue him a DD Form 214 for the period ending 17 September 1998 showing his character of service as honorable.

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 – Enlisted Personnel) in effect at the time (1 November 2000), set policies, standards, and procedures to insure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons.

a. Paragraph 3-7a provided that an honorable characterization of service was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b provided that a general (under honorable conditions) characterization of service was warranted when significant negative aspects of the Soldier's conduct or performance of duty outweighed positive aspects of the Soldier's military record.

c. Chapter 13 provided that a member may be separated under this chapter when it is determined that he or she is unqualified for further military service because of unsatisfactory performance.

(1) Commanders will initiate separation when it is clearly established that the member will not develop sufficiently to participate satisfactorily in further training and or become a satisfactory Soldier; the seriousness of the circumstances is such that the member's retention would have an adverse impact on military discipline, good order, and morale; it is likely that the member will be a disruptive influence in present or future duty assignments; it is likely that the circumstances forming the basis for initiation of separation proceedings will continue to recur; and the ability of the member to perform duties effectively in the future, including potential for advancement or leadership is unlikely.

(2) Service members separated because of unsatisfactory service will be characterized as honorable or under honorable conditions as warranted by the military record.

(3) Before initiating separation action against a soldier, commanders will ensure that the soldier has received adequate counseling and rehabilitation. Because military

service is a calling different from any civilian occupation, a soldier should not be separated when unsatisfactory performance is the sole reason for separation unless there have been efforts at rehabilitation.

d. Paragraph 13-2e. Criteria. Initiation of separation proceedings is required for Soldiers without medical limitations who have two consecutive failures of the Army Physical Fitness Test (APFT).

3. Army Regulation 635-5-1 (Separation Program Designators (SPD)), in effect at the time, listed the specific authorities and reasons for separation of all members of the Active Army, Army National Guard, and U.S. Army Reserve. The SPD "JFT" corresponded to the authority Army Regulation 635-200, Paragraph 13-2e, and the narrative reason, "Physical Standards."

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/NR) 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.

//NOTHING FOLLOWS//