

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 October 2024

DOCKET NUMBER: AR20240001659

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) discharge to honorable. In addition:

- an upgrade to his "JKM" separation code to something better
- an upgrade to his "RE-3" code to something better
- an upgrade to his narrative reason for separation from "Misconduct – Pattern of Misconduct" to something better

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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, in effect, he is requesting for an upgrade to his general discharge, his separation and RE codes and lastly to his narrative reason for separation. During his service he developed an alcohol use disorder that his leadership was made aware of. He does not believe he was ever offered the opportunity to receive help and/or treatment for his addiction to alcohol. It is his opinion that, had he received treatment or assistance, his behavioral health conditions would have improved. Prior to his alcohol dependency, his record will show that he served honorably.
3. The applicant's service record reflects the following:
 - a. He enlisted in the Regular Army on 21 August 1987.
 - b. DA Form 2627 (Record of Proceedings Under Article 15, UCMJ), 5 May 1988, reflects the applicant received non-judicial punishment under the provisions of Article 15, UCMJ for on or about 26 April 1988, having knowledge of his duties, was derelict in

the performance of those duties, as it was his duty to do. He was found guilty. His punishment consisted of forfeiture of pay of \$100.00, and 10 days extra duty. He did not demand a trial by court-martial, and he declined to have a person speak on his behalf. He did not appeal.

c. DA Forms 2823 (Sworn Statements) that are available in their entirety for the Board's review provide the following:

(1) On 5 July 1988, Private First Class (PFC) L. C. states, in effect, he witnessed a car driving on the sidewalk. He tried to approach the car in order to confront the driver (the applicant) when he saw him exit the car and attempt to assault a third party that was standing nearby. By the time PFC L. C. made his way over, the applicant was subdued by two other bystanders. PFC L. C. instructed them to release him, and it was then when he noticed he was intoxicated with slurred speech. He attempted to defuse the situation, but the applicant got back in his car and sped off. PFC L. C. called the Military Police (MPs) to report him and returned to the scene only to find the applicant had assaulted a fellow Soldier. Once again, he attempted to calm him down, but the applicant attacked him this time after making threats towards him for being an MP. PFC L. C. detained him until the MPs on duty arrived.

(2) On 6 July 1988, PFC P. K. states, in effect, he confronted the applicant about money he owed him, for which he became hostile and the two began to fight. After the fight was terminated, but the applicant drove back with the intent to assault PFC P. K., and this fight was also terminated, this time by the MP in the aforementioned statement. The applicant returned at the scene for the third time, and the two fought yet again, finally by this point the MPs on duty arrived.

(3) On 6 July 1988, Private (PV2) P. B. states, in effect, he witnessed the applicant speeding, and upon exiting his vehicle he pursued an argument over money owed with another Soldier, that quickly escalated into a physical altercation. PV2 P. B. became involved by restraining the applicant with the assistance of an MP. During this time however, the applicant managed to free himself and he also assaulted PV2 P. B. After this, PV2 P. B. walked to his room so he can cool off, and latter returned so he can talk to the MPs, and that is when he witnessed the applicant being placed in the back of a patrol car.

(4) On 6 July 1988, PV2 W. A. states, in effect, he was dispatched to a disturbance, and upon arrival he witnessed the applicant was being restrained by another individual. He was informed that the applicant had been drinking and that he had physically assaulted three individuals, and during the arrest he resisted and even became violent.

(5) On 6 July 1988, Staff Sergeant (SSG) H. P. states, in effect, he was dispatched to a disturbance, and upon arrival he encountered the applicant, that was very talkative and uncooperative. He would not follow instructions so at this time, he apprehended him for disorderly conduct.

(6) On 6 July 1988, PV2 J. V. states, in effect, he was dispatched to a disturbance, and upon arrival he found the applicant apprehended by an MP already at the scene. Once he instructed his release, the applicant began to push people around all while looking for his keys. It required four MPs to place hand cuffs on him and restrain him.

d. DD Form 629 (Receipt for Prisoner or Detained Person), 6 July 1988, shows, the applicant was detained for assault.

e. Commonwealth of Virginia - Certificate of Breath of Alcohol Analysis, 6 July 1988, shows the applicant's blood alcohol level at .14.

f. DD Form 1920 (Alcoholic Influence Report), 6 July 1988, shows the following regarding the applicant:

- His condition was disorderly, and he was soiled
- His breath presented a moderate amount of alcoholic odor
- His attitude was cocky, and he used profanity
- He was fighting
- His speech was mumbled and thick tongued

g. DA Forms 3881 (Rights Warning Procedure/Waiver Certificate), 6 July 1988, shows he signed a non-waiver in which he acknowledged and understood his rights. He was not willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with him.

h. DA Form 3975 (Military Police Report), 6 July 1988, shows the applicant and a second party were involved in a verbal altercation, which later turned violent. The applicant also attacked two additional bystanders that attempted to intervene. The applicant along with the second party of the altercation were both apprehended, transported to the MP station, advised of their legal rights, and administered a breathalyzer.

i. DA Form 4856 (General Counseling Form), 7 July 1988, shows he was counselled for being drunk and disorderly.

j. Witness statements that are available in their entirety, for the Boards review, provide the following:

(1) On 19 August 1988, Sergeant (SGT) B. M. states, the applicant disobeyed a lawful order he was given, to replace another Soldier on kitchen patrol (KP), and a direct order given by the platoon SGT, SSG S.

(2) On 20 August 1988, SPC R. O. states he was present when the applicant received his direct order and instructions given to him by SGT B. M. and SSG S. in regard to the KP duty.

(3) On 20 August 1988, SPC S. S. states he heard the direct order and instructions given to the applicant by SGT B. M. and SSG S. for KP. The applicant responded with "f**k it, I'm short, I'm going to aggress".

(4) On 20 August 1988, PFC V. K. was supposed to be relieved from KP duty by the applicant, by when he was told to do so the applicant responded with "f**k that, I am not doing KP". SGT B. M., at this point advised him, he was acting on the platoon SGT's orders, for which the applicant's response was the same.

(5) On 20 August 1988, SPC B. R. states the applicant was told to relieve another Soldier from KP, he responded with "he would not do it". He was then told he would receive non-judicial punishment under the provisions of Article 15, UCMJ, the applicant simply walked out.

(6) On 20 August 1988, PFC J. M. states he heard SGT B. M. order the applicant he had KP duty. The applicant argued he didn't have the duty and walked away.

k. A partially illegible DA Form 2627 reflects the applicant received non-judicial punishment under the provisions of Article 15, UCMJ for having received a lawful order from a noncommissioned officer (NCO), then known by the applicant to be an NCO, which was his duty to obey, did willfully disobey the same. The remaining details of the form are unclear.

l. DA Form 2627, 23 September 1988, reflects the applicant received non-judicial punishment under the provisions of Article 15, UCMJ for on or about 19 August 1988, without authority fail to go at the time prescribed to his appointed place of duty. He was found guilty. His punishment consisted of forfeiture of pay of \$150.00, and seven-days restriction and extra duty. He did not demand a trial by court-martial, and he declined to have a person speak on his behalf. He did not appeal.

m. On 9 November 1988, his commanding officer initiated separation under the provisions of Army Regulation 635-200 (Personnel Separations Enlisted Personnel), Chapter 14-12b, for misconduct, with an under other than honorable conditions (UOTHC) discharge. After consulting with legal counsel on 10 November 1988, for his

separation action and its effects of the rights available to him, and the effect of any action taken by him in waiving his rights. He further acknowledged:

- he waived the right to consult with consulting counsel as his military counsel and/or civilian counsel at no expense to the government
- he was advised he could submit any statements he desired in his own behalf, he decided not to do so
- he could be ineligible for many, or all benefits administered by the VA
- he could be deprived of many, or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he could expect to encounter substantial prejudice in civilian life by reason of a general under honorable conditions discharge

n. On 14 November 1988, his commanding officer recommended the applicant be discharged prior to his expiration of his term of service (ETS) from the United States Army under the provisions of Army Regulation 635-200, Chapter 14-12b, and that he is issued a UOTHC discharge certificate.

o. On 14 November 1988, the battalion commander recommended that the applicant be discharged under the provisions of AR 635-200, Chapter 14, and issued a general discharge in the interest of having him separated in the most expeditious manner possible.

p. On 5 December 1988, the separation authority approved the applicant's discharge and directed the issuance of a general discharge.

q. Orders 241-1, 23 December 1988, show the applicant was to be discharged from the Regular Army, with an effective date of 29 December 1988.

r. His DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 29 December 1988, shows he was discharged pursuant to Army Regulation 635-200, Chapter 14-12b with a general discharge, due to Misconduct-Pattern of Misconduct. He received a separation code of "JKM" and a reentry code of "RE-3". He completed 1 year, 4 months, and 9 days of active service. His grade at the time of discharge was PVT. He was awarded the Army Service Ribbon.

4. There is no evidence in the applicant's service record that shows he was referred for any alcohol rehabilitation treatment or that he accepted or decline treatment.

5. There is no evidence the applicant applied to the Army Discharge Review Board within 15 years of his discharge for an upgrade to his character of service.

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.
2. The Board carefully considered the applicant's request, supporting documents and applicable regulatory guidance. The Board considered the applicant's statement, his length and record of service, the frequency and nature of his misconduct, the counseling record and the reason for his separation. The Board did not find evidence of referral to ASAP. The Board did not find evidence of mitigating factors and the applicant provided no evidence of a condition to be considered in mitigation. The Board found that the applicant provided not evidence of post-service achievements or letter references in support of a clemency consideration. Based on a preponderance of evidence, the Board determined that the applicant's separation, characterization, reason and reentry code were not in error or unjust.

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 (Armed Forces), 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 15-185 (Army Board for Correction of Military Records), currently in effect, 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
3. Army Regulation AR 635-200 (Personnel Separations Enlisted Personnel), in effect at the time, sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.
 - 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. Chapter 14-12b A pattern of misconduct. A pattern of misconduct consisting of Discreditable involvement with civil or military authorities. Conduct prejudicial to good order and discipline. Discreditable conduct and conduct prejudicial to good order and discipline includes conduct violative of the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. Chapter 9 contains the authority and outlines the procedures for discharging individuals because of alcohol or other drug abuse. A member who has been referred to Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) for alcohol/drug abuse may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there is a lack of potential for continued Army service and rehabilitation efforts are no longer practical. At the time of separation an honorable or general discharge was authorized.

5. Army Regulation 635-5-1 (Separation Program Designator Codes) states that the Separation Program Designator (SPD) codes are three-character alphabetic combinations which identify reasons for, and types of, separation from active duty. SPD code "JKM" and RE code 3 are the appropriate codes to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200, Chapter 14, based on Misconduct – Patterns of Misconduct.

6. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE code "1" applies to personnel who have completed their obligated term of active service and are considered qualified to reenter the U.S. Army if all other criteria are met
- RE code "2" Applies to persons not eligible for immediate reenlistment
- RE code "3" applies to personnel who are not considered fully qualified for reentry or continuous service at time of separation, but whose disqualification is waivable. They are ineligible unless a waiver is granted
- RE code "4" applies to personnel separated from last period of active-duty service with a nonwaivable disqualification

7. Army Regulation 635-5 (Personnel Separations Separation Documents). 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 REFRAD, retirement, or discharge. The DD Form 214 is not intended to have any legal effect on termination of a Soldier's service.

8. 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.

9. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

10. 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. 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. 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//