

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 October 2024

DOCKET NUMBER: AR20240001755

APPLICANT REQUESTS: an upgrade of his general, under honorable conditions to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- Two Commendation Letters
- Marriage Certificate
- Fire Fighter ID
- College Transcripts
- Earning Statement
- Department of Veterans Affairs (VA)

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 acknowledges that 32 years ago, he made a terrible decision by going AWOL (absent without leave), which led to his early discharge. At the time, he was young, scared, and foolish. He deeply regrets his actions and has carried the shame of letting down the military, his country, and himself. He takes full responsibility for his past and is sincerely sorry for what he did. He has worked hard to turn his life around. In 2017, he survived oral cancer, which strengthened his resolve to become a better person. He graduated Cum Laude with a B.S. in Criminal Justice from Kennesaw State University while working over 55 hours a week. He is happily married, a father of three, and employed by his county as a certified firefighter. He strives to be a better father, employee, and community member every day, and is active in his church. He deeply regrets his past mistakes and, if given the chance, would have honored his commitment to the military. He is grateful for the time and consideration given to his application.

3. The applicant provides:

- A letter of commendation for being designated the honor graduate of basic combat training.
- A letter of commendation for exceptional performance, while assigned as a squad leader.
- A certified copy of his Georgia marriage certificate.
- An Oconee County Fire Rescue ID card.
- A copy of the applicant firefighter certifications of training.
- College transcripts from the university of Kennesaw state.
- Oconee County earnings Statement dated, 15 July 2022.
- VA benefit's dated, 6 December 2023.

4. A review of the applicant's service record shows he enlisted in the Regular Army on 22 January 1988.

a. On 23 October 1990, he accepted nonjudicial punishment (NJP) for two counts of being absent from unit on or about 17 October 1990 to on or about 18 October 1990 and on about 3 September 1990. His punishment included reduction to private first class (PFC)/E-3 and suspended forfeiture of \$207.00 to be automatically remitted if not vacated before 24 April 1991.

b. On 12 February 1991, he accepted NJP for one count of being absent from unit on or about 29 December 1990 to on or about 5 February 1991. His punishment included reduction to private (PV2)/E-2 and forfeiture of \$400.00 for two months.

c. On 20 February 1991, the applicant underwent a mental evaluation. The DA Form 3822-R (Report of Mental Status Evaluation) shows he was psychiatrically cleared for any administrative and disciplinary action deemed appropriate by the command.

d. The applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 14-12c, for being AWOL. He recommended the applicant to be issued a other than honorable discharge. The applicant acknowledged receipt on the same day.

e. The applicant waived consultation with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a character of service that is less than honorable was issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading

- he will be ineligible to apply for enlistment for a period of 2 years after discharge

f. On 26 March 1991, the immediate commander initiated separation action against the applicant under the provisions of AR 635-200, Chapter 14-12c, for commission of a serious offense/AWOL. The commander recommended a general, under honorable conditions discharge.

g. The separation authority approved the discharge recommendation for separation under the provisions of Chapter 14-12c (1), AR 635-200 (Personnel Separations – Enlisted Personnel). The applicant would be issued a General Discharge Certificate.

h. On 22 April 1991, the applicant was discharged from active duty. His DD Form 214 shows he was discharged under the provisions of Chapter 14-12c (1), AR 635-200, with a general, under honorable conditions characterization of service. He completed 2 years, 6 months, and 8 days of active service with 35 days of lost time. He was assigned separation code JKD and the narrative reason for separation listed as “Misconduct (Serious Offense – AWOL),” with reentry code 3B. It also shows he was awarded or authorized:

- Army Service Ribbon
- Army Achievement Medal
- National Defense Service Medal
- Expert Marksmanship Qualification Badge with Rifle Bar (M16)
- Sharpshooter Marksmanship Badge with Hand Grenade

i. The records are void of the following documentations, medical evaluation and intermediate commander recommend.

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of her discharge within that board's 15-year statute of limitations.

6. By regulation AR 635-200, action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

7. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his general, under honorable conditions characterization of service to honorable. More specifically, the applicant indicated that while he was TDY he witnessed someone get killed and asserted that his performance declined after that event. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) the applicant enlisted in the Regular Army (RA) on 22 January 1988, 2) he received nonjudicial punishment (NJP) on 23 October 1990 for two specifications of being absent from his unit (03 September 1990; 17-18 October 1990). On 12 February 1991, he received NJP for one specification of being absent from his unit (29 December 1990 to 05 February 1991), 3) the applicant underwent a mental status evaluation (MSE) on 20 February 1991 and was psychiatrically cleared for any administrative action deemed appropriate by his command, 4) the applicant was discharged on 22 April 1991 under the provisions of Army Regulation (AR) 635-200, Chapter 14-12c (1) with a separation code of JKD and the narrative reason for separation listed as Misconduct (Serious Offense-AWOL) with a reentry code of 3B.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. A report of Medical Examination dated 19 December 1987 for the purposes of enlistment shows item number 42, psychiatric, as normal on clinical evaluation. A DA Form 3822 Report of Mental Status Evaluation dated 20 February 1991 shows the applicant was referred for an MSE for the purposes of administrative separation. The provider noted that the applicant did not have any BH conditions that required treatment or disposition through medical channels, was administratively cleared, and that he met retention standards in accordance with (IAW) AR 40-501.

d. A review of JLV shows the applicant is 100% service-connected through the VA, 30% for Posttraumatic Stress Disorder (PTSD). He completed a BH Compensation and Pension (C&P) examination on 19 October 2023 and was diagnosed with PTSD. The stressor associated with the applicant's diagnosis of PTSD was documented as witnessing a truck crash into a parked trailer which resulted in the death of a civilian in 1990 while in Jacksonville. It was also documented that the applicant reported after he witnessed this event, his work performance declined, and he reported going AWOL due to difficulties adjusting after the event. He also endorsed a history of alcohol abuse following the event, consuming alcohol 4-7 days per week, and noted that he was arrested for underage drinking.

e. The applicant is applying to the ABCMR requesting an upgrade of his general, under honorable conditions characterization of service to honorable. Available in-service records were void of any BH diagnosis or treatment history. Post-discharge, the applicant has been diagnosed and 30% service-connected through the VA with PTSD due to an event that occurred while he was in the military.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed and 30% service-connected for PTSD through the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed and 30% service-connected for PTSD through the VA.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Review of available in-service records were void of any BH diagnosis or treatment history. Since his discharge from the military, the applicant has been diagnosed and 30% service-connected through the VA with PTSD. As there is an association between avoidance behaviors and going AWOL, there is a nexus between the applicant's diagnosis of PTSD and the misconduct that led to his discharge. As such, BH mitigation is supported.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows the applicant committed a serious offense (AWOL). As a result, his chain of command initiated separation action against him. He was discharged with a general, under honorable conditions character of service. The Board found no error or injustice in his separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding sufficient evidence to support the applicant had condition or experience that mitigated his misconduct. Based on this mitigation, and coupled with his post discharge achievements, the Board determined that an honorable characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board determined that such upgrade did not change the underlying reason for his separation and thus the narrative reason for separation and corresponding codes should not change.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant a DD Form 214 for the period ending 22 April 1991, as follows:

- Character of Service: Honorable
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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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.

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, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states 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. Paragraph 3-7b (General Discharge) states 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 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

3. 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//