

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 25 September 2024

DOCKET NUMBER: AR20240002277

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 30 November 2023
- Army Achievement Medal Certificate, 9 October 2005
- DA Form 1059 (Service School Academic Evaluation Report), 9 June 2006 and 23 June 2006 (two)
- Military Police School Diploma, 23 June 2006
- Certificate of Commendation, 13 December 2006
- Basic Police Officer Training Program Certificate of Graduation, 13 December 2006
- DA Form 4187 (Personnel Action), 19 December 2006
- Army National Guard Honorable Discharge Certificate, 31 December 2006
- National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service), 31 December 2006
- Criminal Investigator Training Program Certificate of Graduation, 25 August 2010
- Mississippi Information Liaison Officer Program Certificate, 31 March 2016
- Employment Reference, from Director G.B., C__ Police Department, date unknown

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 enlisted in the Mississippi Army National Guard and completed his enlistment with an honorable discharge at the rank of Specialist/E-4. He deployed to Panama for "Operation Just Cause;" however, he did not receive any awards for the deployment. He was informed by a Veterans Affairs health care

representative that he may be eligible for health care benefits and has filed a claim with his status pending for a review of his characterization of service.

3. The applicant enlisted in the Regular Army on 9 September 1987, for a 4-year period. He was awarded the military occupational specialty of 96R (Ground Surveillance System Operator). The highest rank he attained was private first class/E-3.

4. Two DA Forms 4187 (Personnel Action) show the applicant's duty status changed from present for duty to absent without leave (AWOL) effective 9 September 1988 and then AWOL to present for duty, effective 13 September 1988. Additionally stating the applicant surrendered on 13 September 1988.

5. On 21 September 1988, the applicant accepted non-judicial punishment (NJP), under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) for going AWOL on or about 9 September 1988 and remaining AWOL until on or about 13 September 1988. His punishment imposed was reduction to the grade of E-2, 45 days of extra duty, and restriction for 45 days.

6. Four additional DA Forms 4187 (Personnel Action) shows the applicant's duty status changed as follows:

- from present for duty to AWOL, effective 19 February 1989
- from AWOL to present for duty, effective 20 February 1989
- from present for duty to AWOL, effective 18 October 1989
- from AWOL to dropped from rolls, effective 17 November 1989

7. A DA Form 4187 (Personnel Action) shows the applicant's duty status changed from dropped from rolls to present for duty on 2 May 1990. The applicant was apprehended by civilian authorities and returned to military control on 2 May 1990.

8. Court-martial charges were preferred against the applicant for violation of the UCMJ. The relevant DA Form 458 (Charge Sheet) shows the applicant was charged with being AWOL from on or about 18 October 1989 and remaining AWOL until on or about 2 May 1990.

9. The applicant consulted with legal counsel on 14 May 1990, and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service). He acknowledged his understanding of the following in his request:

a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an UOTHC character of service, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he elected not to submit a statement in his own behalf and understood he may encounter substantial prejudice in civilian life.

10. On 16 May 1990, the applicant's immediate and intermediate commander's recommended approval of the requested discharge and further recommended the applicant be separated with a UOTHC characterization of service.

11. The separation authority approved the applicant's request for discharge for the good of the service on 25 May 1990. He further directed the applicant be reduced to the lowest enlisted grade and furnished an UOTHC discharge.

12. The applicant was discharged on 19 July 1990, under the provisions of AR 635-200, Chapter 10, for the good of the service - in lieu of court-martial, in the grade of E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his character of service was UOTHC. He was credited with completion of 2 years, 3 months, and 23 days of net active service, with lost time from 9 September 1988 to 12 September 1988, on or about 19 February 1989, and from 18 October 1989 to 1 May 1990. His awards include the Army Service Ribbon and the Parachutist Badge.

13. He enlisted in the Army National Guard of the United States on 9 December 2004, for a period of 5 years and 33 weeks and then extended his enlistment on 3 December 2005, for an additional one month.

14. His National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows he was honorably discharged on 31 December 2006. He served 2 years and 22 days of net service and received a reenlistment eligibility code of RE-1. He was awarded the Humanitarian Service Medal and the Army Service Ribbon.

15. The applicant additionally provides:

a. The Army Achievement Medal Certificate awarded to him on 9 October 2005.

b. Two DA Forms 1059 (Service School Academic Evaluation Reports) which show he completed the military occupational specialty course for 31B, Basic Military Police Phase I and Phase II.

c. His diploma for the Basic Military Police Phase I and Phase II, a certificate of commendation in special recognition of his exemplary services rendered while serving as a squad leader on 13 December 2006, his certificate of graduation from the Indian Police Academy for completing the requirements in the Basic Police Officer Training Program on 13 December 2006.

d. A DA Form 4187 (Personnel Action) showing he elected to not extend his enlistment, his Army National Guard Honorable Discharge Certificate, and his NGB Form 22 confirming his honorable discharge on 31 December 2006.

e. His certificate of graduation for completing the Criminal Investigator Training Program awarded on 25 August 2010, certificate of completion for the course study for the Mississippi Information Liaison Officer Program awarded 31 March 2016, and an employment reference stating that he, the applicant, has been employed for 16 years with the C__ Police Department.

16. Administrative separations under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of trial by court-martial. An under other than honorable conditions character of service is normally considered appropriate.

17. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

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, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and further found the applicant's honorable service in the Army National Guard years after his discharge from the Regular Army is not a basis for clemency in this case. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon discharge in 1990 was not in error or unjust.

2. The Board found no evidence corroborating the applicant's claim that he deployed in support of Operation Just Cause and therefore determined the evidence does not support adding any decorations to his record.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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, 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, provided guidance for the administrative separation of enlisted personnel:

a. Chapter 10 of this regulation provided a member who has committed an offense or offenses, the punishment for which, under the UCMJ and the Manual for Courts-Martial, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the member, or, until final action on the case by the court-martial convening authority. A member who is under a suspended sentence of a punitive discharge may also submit a request for discharge for the good of the Service. An under other than honorable conditions discharge certificate normally is appropriate for a member who is discharged for the good of the Service. However, the separation authority may direct a general discharge certificate if such is merited by the member's overall record during the current enlistment.

b. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability, and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. An under honorable conditions (general), discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. An under other than honorable conditions discharge is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and the good of the service.

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/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.

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.

4. Army Regulation 600-8-22 provides that the Armed Forces Expeditionary Medal is authorized for qualifying periods of service in Panama during Operation Just Cause.

//NOTHING FOLLOWS//