

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 November 2024

DOCKET NUMBER: AR20240002478

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (General) discharge
- in effect, issuance of a combat medal

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 ABCMR corrects records; the Board does not issue medals or badges. Any questions or concerns regarding replacement medals and badges should be referred to the appropriate agency. Requests for the issuance or replacement of military service medals, decorations, awards, badges, and corresponding accouterments should be directed to the National Personnel Records Center who will verify the awards to which a veteran is entitled and forward the request with the verification to the appropriate service department for issuance of the medals. The applicant's request for issuance of a combat medal will not be discussed further in this Record of Proceedings. The Board will consider the applicant's request for a discharge upgrade.
3. The applicant states he served in the Army as an outstanding Soldier with honorable intentions and honorable work. He is now 100 percent service disabled due to the U.S. Army. He has worked for the railroad for 20 years and has no felony convictions.
4. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 17 May 1989.

b. His DA Form 2-1 (Personnel Qualification Record – Part II) shows in item 5 (Oversea Service): none and in item 35 (Record of Assignments): Fort Jackson, SC and Fort Hood, TX; no service overseas.

c. He accepted nonjudicial punishment on/for:

(1) 10 August 1990 for making a false official statement, with intent to deceive and failing to go at the time prescribed to his appointed place of duty; his punishment consisted of reduction to the grade of E-1 (suspended to be remitted if not vacated before 9 February 1991); forfeiture of \$189 pay per month for one month (suspended to be remitted if not vacated before 9 February 1991); 14 days restriction, and 14 days extra duty.

(2) On 7 October 1990, the suspension of punishment of reduction to the grade of E-2 imposed on 10 August 1990 was vacated based on the applicant leaving his rifle unsecured and unattended.

(3) On 10 November 1990 for violating a lawful general regulation by leaving his weapon unsecured and unattended on 7 October 1990. His punishment included reduction to the grade of E-1 (suspended, to be remitted if not vacated before 2 March 1991).

d. On 4 December 1990, his immediate commander notified him of his intent to initiate separation action for a pattern of misconduct under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, paragraph 14-12b. The reasons for his proposed action are the following specific allegations: your history indebtedness, bounced checks, spouse abuse, disrespect toward your superior noncommissioned officers and officers, failure to repair, making false official statements and disobeying orders. He recommended an under honorable conditions (General) discharge. He advised him of his rights.

e. The applicant refused to sign on 4 December 1990. The commander noted this on the bottom of the notification and acknowledgement portion.

f. On 5 December 1990, the applicant consulted with counsel. He was advised of the basis for the contemplated action to separate him for a pattern of misconduct under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12b and its effects, of the rights available to him, and the effect of any action taken by him in waiving his rights. He acknowledged:

- he was not entitled to an administrative separation board
- statements in his own behalf are submitted; however, the statement is unavailable for the Board to review

- he understood that an under honorable conditions (General) discharge is the least favorable characterization of service he may receive
- he understood he may expect to encounter substantial prejudice in civilian life is an under honorable conditions (General) discharge is issued to him
- he understood that if he received a discharge certificate or characterization which is less than honorable, he may apply to the Army Discharge Review Board or the Army Board for Correction of Military Records for upgrading

g. On 17 December 1990, consistent with the chain of command recommendations, the separation authority approved the applicant's discharge. His service will be characterized as under honorable conditions (General).

h. On 22 January 1991, he was discharged accordingly. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 years, 9 months and 6 days of active service. He was awarded or authorized the Army Service Ribbon and Sharpshooter Marksmanship Qualification Badge with Rifle Bar. It also shows in:

- item 12f (Foreign Service): none
- item 24 (Character of Service): under honorable conditions (General)
- item 25 (Separation Authority): paragraph 14-12b, Army Regulation 635-200
- item 26 (Separation Code): JKM
- item 27 (Reentry Code): 3
- item 28 (Narrative Reason for Separation): Misconduct – Pattern of Misconduct

5. 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.

6. By regulation, Soldiers are subject to separation for conduct prejudicial to good order and discipline including conduct violative of the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army Regulations, the civil law, and time-honored customs and traditions of the Army.

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 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 misconduct and the reason for separation as misconduct. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. The Board minority noted the applicant received nonjudicial punishment while in the Kingdom of Saudi Arabia and this service warranted award of the Southwest Asia Service Medal.

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.

3/28/2025

X

CHAIRPERSON

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. The ABCMR corrects records; the Board does not issue medals or badges. Any questions or concerns regarding replacement medals and badges should be referred to the appropriate agency. Requests for the issuance or replacement of military service medals, decorations, awards, badges, and corresponding accouterments should be directed to the National Personnel Records Center who will verify the awards to which a veteran is entitled and forward the request with the verification to the appropriate service department for issuance of the medals. Written requests with appropriate supporting evidence may be addressed to the National Personnel Records Center, 1 Archives Drive, St. Louis, MO 63138 or online at www.archives.gov/veterans/military-service-records.
3. 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 Soldier'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 14-12b (Pattern of Misconduct) states Soldiers are subject to separation per this section for the following:
 - (1) discreditable involvement with civil or military authorities.
 - (2) 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 Uniform Code of Military Justice, Army Regulations, the civil law, and time-honored customs and traditions of the Army.
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/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.

- 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 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.
- 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//