

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 November 2024

DOCKET NUMBER: AR20240002693

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

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

- DD Form 293 (Application for the Review of Discharge) with personal statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 19 April 1994

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 entered basic training as a private (PVT)/E-1. His first duty station was Seoul, Korea and the sergeant (SGT) asked him if he wanted to be a gunman on a tank in which he took the job, which was a SGT/E-5 slot and he was only a private first class (PFC)/E-3. He was a top gunman and would have scored 100 but his gun got jammed.

b. His trouble started when he was driving to visit a friend and was pulled over in Waco, Texas for a blown head light. The police saw his personal gun and took him to jail. He had a friend pick him up from the police station which led to him missing duty and demoted from specialist (SPC)/E-4 to PVT/E-1.

3. A review of the applicant's service record shows:

- a. He enlisted in the Regular Army on 2 October 1990.

b. His DA Form 2-1 (Personnel Qualification Record – Part II) shows in item 5 (Overseas Service) service in Korea from 4 February 1991 to 4 February 1992.

c. The applicant accepted nonjudicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on/for:

- on 28 December 1993, for failure to go at his appointed place of duty on or about 15 December 1993; his punishment included reduction to PFC/E-3
- on 15 February 1994, for being derelict in the performance of his duties in that he negligently failed to sign in off leave on or about 7 February 1994 and without authority fail to go to his appointed place of duty on or about 8 February 1994; his punishment included reduction to PVT/E-1

d. The applicant underwent a mental status evaluation on or about 7 February 1994. The relevant DA Form 3822-R (Report of Mental Status Evaluation) shows he was psychiatrically cleared for any administrative action deemed appropriate by command.

e. On 16 March 1994, the applicant's commander notified the applicant of his intent to initiate action to separate him from service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b, for patterns of misconduct. The commander specifically noted the applicant's failure to report and dereliction of duty.

f. On 24 March 1994, the applicant consulted with counsel and acknowledged receipt of the commander's contemplated action. He was advised of the basis for the proposed separation action, his available rights, and the effects of waiving those rights. He elected not to submit a statement in his own behalf.

g. On 29 March 1994, the applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 14, for patterns of misconduct, multiple violations of Article 86, UCMJ (Failure to Report), and violated Article 92, UCMJ (Dereliction of Duty). The chain of command recommended approval with an under honorable conditions (General) characterization of service.

h. On 29 March 1994 the separation authority approved the chain of command's recommendation for the applicant's discharge under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12b, and directed the issuance of an under honorable conditions (General) discharge.

i. On 19 April 1994, the applicant was discharged under the provisions of Army Regulation 635-200, paragraph 14-12b, by reason of misconduct, with an under honorable conditions (General) characterization of service, a separation code of "JKA" and a reentry code of "3." His DD Form 214 shows he was discharged in the rank/grade

of PVT/E-1. He completed 3 years, 6 months, and 18 days of active service. He was awarded and or authorized:

- Army Commendation Medal
- Army Achievement Medal with two Oak Leaf Clusters
- National Defense Service Medal
- NCO Professional Development Ribbon
- Overseas Service Ribbon
- Driver and Mechanic Badge (Driver-T)
- Expert Badge Pistol and Expert Badge Grenade

4. On 18 November 1996, the Army Discharge Review Board (ADRB) reviewed the applicant's petition for upgrade of his discharge. After careful consideration, the ADRB determined his discharge was proper and equitable and denied his request for relief.

5. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

BOARD DISCUSSION:

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. The applicant was separated for misconduct. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant's two records of nonjudicial punishment and no documentation to support his request, including post-service achievements or letters of reference to support clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

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.

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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 1556, provides, the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

2. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

3. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 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.

//NOTHING FOLLOWS//