

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 November 2024

DOCKET NUMBER: AR20240003187

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge from the United States Army Reserve (USAR).

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

- DD Form 149 (Application for Correction of Military Record)
- Enclosure 1 – DD Form 149, 15 December 2023
- Enclosure 2 – legal counsel statement
- Enclosure 3 – self-authored statement
- Enclosure 4 – Under Secretary Robert L. Wilkie Clemency memorandum, 25 July 2018
- Enclosure 5 – Character Letters
- Enclosure 6 – DD Form 214 (Certificate of Release or Discharge from Active Duty), United States Air Force (USAF), 10 August 1992
- Enclosure 7 – DD Form 214, United States Army, 7 April 2004
- Enclosure 8 – Washington Army National Guard Separation Order, 12 May 2004
- Enclosure 9 – Discharge order, 6 December 2006
- Enclosure 10 – National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service), 26 March 2004
- Enclosure 11 – Mobilization Order, 5 March 2005
- Enclosure 12 – Released from D-MED [Demobilization-Medical], April/May 2005
- Enclosure 13 – Major promotion status, 30 June 2006
- Enclosure 14 – Psychological Operations Letter of Commendation, 2 February 2005
- Enclosure 15 – Special Forces assignment document, 1 February 2002
- Enclosure 16 – Special Forces Order, 1 February 2002
- Enclosure 17 – complete Official Military Personnel File
- Enclosure 18 – Infantry Officer Basic Course welcome letter
- Enclosure 19 – 101st Airborne assignment paperwork
- Enclosure 20 – USAF documents
- Enclosure 21 – proof of attempts to obtain active-duty separation paperwork
- Enclosure 22 – firefighter certificate, awards, and documents
- Enclosure 23 – family photos

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 served his country honorably as a member in the USAF, Regular Army, and the USAR. His performance as a member of special operations was exemplary before being separated during a difficult but necessary transition in his personal life.

a. Before his service, he was involved in various sports and attended college on a track scholarship, although he admits due to his young age, he was not able to be successful in college and dropped out. He worked in a factory and on a farm, until he knew he was mature and decided to enlist in the USAF. During his enlistment in the USAF, he took numerous trainings and classes and became a certified USAF Survival Instructor. Some highlights included were that he was the only Airman to earn an early promotion, he was selected twice for Airman of the month, he earned his National Registry Emergency Medical Technician certification, and completed six college courses (18 credits) while working towards his bachelor's degree.

b. He pursued becoming a military officer through the Reserve Officer Training (ROTC) Program, applied for the ROTC Program, was accepted, and discharged from the USAF. He completed Airborne School, ROTC Advance Camp with an awarded top score of 5, was number one in his junior class and selected as the ROTC battalion's cadet first sergeant and was number one in his senior class and selected as the ROTC battalion's cadet commander. He attended the U.S. Army Infantry Officer's Basic Course, completed Air Assault Course, earned his Expert Infantry Badge, deployed to the Joint Readiness Training Center and the National Training Center twice. He was scheduled to attend the Special Forces Qualification Course.

c. He and his spouse moved from [REDACTED] and realized they both wanted to be closer to family. He departed from the Regular Army and went to the [REDACTED] National Guard where he was still able to attend the Special Forces Qualification Course. He was offered a position as a firefighter and started recruit school for the [REDACTED] Department. He attended his first drill and was informed he was unable to attend the Special Forces Qualification Course, due to the unit deploying to Iraq. He attended drills and was advised to transfer to another unit within the Special Forces Operations Community until his unit was no longer deployed. He transitioned from the [REDACTED] National Guard to the USAR and was sent and graduated the Psychological Operations Officer Course.

d. Once his original unit returned from Iraq, he requested a transition and was informed the unit could get him a slot at the Special Forces Qualification Course. Due to portions of his unit receiving orders to deploy to Iraq, he was unable to transfer units. He states, this was some of the worst decisions he made as an adult, he was upset and angry, he felt as though he was treated unfairly and targeted. He filed a congressional inquiry to assist him with transferring units, which made everything much worse. He deployed to Fort Bragg, for the train-up and preparation for movement to Iraq, during the train-up he failed his physical (due to his damaged knee) and was sent home for surgery.

e. Due to his knee, he returned home and received notice the Department of the Army gave him the option to return to Fort Bragg for a medical discharge board or resign in lieu of involuntary separation. He was angry and indignant over what had happened, disgusted with the Psychological Operations Battalion leaders, he remembers a phone call from Lieutenant Colonel [REDACTED] stating his career would not go further and he would regret his actions, to which Lieutenant Colonel [REDACTED] was correct.

e. He states, looking back he was embarrassed and ashamed of his actions, it cost him a chance to complete the Special Forces Qualification Course, cost him a promotion to Major, he threw it all away. This was the lowest part of his life, he vowed to do better and make up for what he had done. During his career as a firefighter, he has done his very best, he dedicated himself to be a better man, has been promoted to Battalion Chief and served over 22 years in different positions. He has completed paramedical school, was awarded the Advanced Life Support paramedic of the year, was awarded the Medal of Valor for rescuing a father from a burning house, was awarded the department's Purple Heart for falling through a floor in a commercial fire and has completed the Swift Water Specialist Course. He has served in various positions ranging from but not limited to Lieutenant, Captain, and now Battalion Chief where he oversees eight stations and 10 fire crews.

f. His wife and himself have raised two children, built a home, and he is in the process of getting his master's degree. He takes responsibility for his actions and is ashamed of them and does not want his children or family to be embarrassed of him. Living life with regret due to the decisions he made, because of the horrible positions he put his commanders in, and because of his "selfishness" leads him to being sorry.

3. Counsel provides an 8-page legal brief, available for the Board's review in its entirety, states in part:

a. The applicant had done nothing wrong other than sustaining a knee injury which was recognized when he answered the call to mobilize for Operation Iraqi Freedom. When the applicant was found unfit to deploy and sent home to receive further medical care, the applicant sought transfer to his previous Special Forces unit, to complete the

course once his knee injury had healed. The applicant's chain of command denied his request, even after he requested congressional involvement, his unit refused to let him transfer back to his Special Forces unit to attend the Special Forces Qualification Course, as planned. The command's denial of transfer made the applicant angry and frustrated. He had no misconduct, yet the applicant's chain of command discharged him with an UOTHC characterization of service.

b. Counsel addresses the applicant's feelings of being ashamed and embarrassed by how things turned out for him, even after such a promising and honorable career, referencing the applicant as the victim of retaliation for requesting a congressional inquiry about his circumstances. His UOTHC discharge has prevented him from serving in the military, he has gone from an honorable firefighter with many accolades, which include the Medal of Valor and Purple Heart Medal, and now he requests the Board correct the error or injustice in his military records by upgrading his characterization of service to Honorable, which is a more accurate reflection of his service to our great nation.

c. Counsel argues the upgrade of the applicant's characterization of service should reflect honorable due to the error or injustice being obvious in his case, stating he did not warrant a UOTHC discharge, additionally stating he had not committed misconduct while on or off military orders, and his service in both the USAF and Army was exceptional. Also, stating the applicant's unit failed to follow process and procedures for initiating involuntary separation against a commissioned officer, they deprived him of due process.

4. The applicant entered active duty in the USAF on 12 September 1988. He was honorably released from active duty on 10 August 1992. He served 3 years, 10 months, and 29 days of net active service. He was awarded or authorized the following decorations, medals, badges, citations, and campaign ribbons:

- Air Force Outstanding Unit Award with 1/Device
- Air Force Good Conduct Medal
- National Defense Service Medal
- Air Force Training Ribbon

5. He enlisted in the USAR on 29 September 1992 for a period of 8 years as a Cadet. On 7 April 2002, he was honorably discharged, in accordance with Army Regulation 600-8-24 (Personnel – General – Officer Transfers and Discharges), paragraph 3-5 (Resignations – Process Unqualified Resignation), in the grade of O-3. He served a total of 9 years, 8 months, and 21 days of net active service with 3 years, 10 months, and 29 days of prior active service. He was awarded or authorized the:

- Army Commendation Medal (2nd award)

- Air Force Commendation Medal
- Army Achievement Medal
- Air Force Achievement Medal
- Air Force Outstanding Unit Award
- National Defense Service Medal
- Army Service Ribbon
- Air Force Training Ribbon
- Air Force Good Conduct Medal
- Expert Infantryman Badge
- Parachutist Badge
- Air Assault Badge

6. He was issued a DD Form 215 (Correction to DD Form 214) which shows item 12a (Date entered Active Duty (AD) this Period) and 12c (Net Active Service this Period) were corrected, however this document is illegible.

7. He entered the Washington Army National Guard on 8 April 2002. After a period of active service, he received Orders 133-01, dated 12 May 2004, issued by the State of Washington, Office of the Adjutant General, showing he was separated from the Army National Guard honorably effective 26 March 2004. His NGB Form 22 shows he served 1 year, 11 months, and 19 days of net service with 9 years, 8 months, and 22 days of prior active federal service.

8. Orders 05-064-00111, dated 5 March 2005, show he was ordered to active duty as a member of the USAR, with the Civil Affairs and Psychological Operations Command, for a period of 545 days for mobilization in support of Iraqi Freedom (Iraq) with a report date of 11 April 2005.

9. He reported to Fort Bragg, NC in accordance with his mobilization orders. Orders 123-0265, dated 3 May 2005, show he was released from active duty on 5 May 2005, not by reason of physical disability.

10. On 30 June 2006, he received notification of promotion status, showing he was selected for promotion by the Department of the Army Reserve Components Selection Board which convened on 14 March 2006. Additionally showing the applicant needed to remain in an active status and meet promotion eligibility criteria, failure to comply with the instructions may result in his removal from the selection list.

11. The applicant's records are void of the facts and circumstances which led to his discharge. However, Orders D-12-629174, issued by the U.S. Army Human Resources Command, St. Louis MO on 6 December 2006, discharged him from the USAR in accordance with Army Regulation 135-175 (Army National Guard and Reserve -

Separation of Officers) effective 6 December 2006 with a UOTHC discharge characterization.

12. The applicant provides through counsel:

a. USAF documentation which includes various congratulation letters congratulating him on being awarded Airman of the Month for August and September 1990, and congratulating him on promotions to various ranks.

b. Medical documentation, releasing him from his mobilization, a Letter of Commendation from the Psychological Operations Officer Course, assignment documentation for the applicant being an incoming transitioning Soldier, and assignment orders to the special forces command.

c. 74 pages from his official military personnel file which include but is not limited to documentation showing his USAF time, various documentation showing awards earned and authorized, promotion orders, transcripts, multiple service school academic evaluation reports, ROTC contract, multiple officer evaluation reports, life insurance documentation, oaths of office, his officer record brief, and various separation documentation.

d. Numerous letters of congratulations for the applicant's commission and assignment to the 101st Airborne Division (Air Assault) and Fort Campbell. The applicant's proof of attempt to obtain an active duty separation, email correspondence showing a point of contact states the applicant was in for a medical profile and the specific account was designed to get him medically qualified for deployment, correspondence requesting medical records for the surgeons office to review.

e. Two-character reference statements, from Battalion Chiefs, both of whom work or have worked with the applicant, summarizing him as a fine leader, who is dedicated, knowledgeable, caring, and an altruistic member of the fire department. He has an unwavering commitment to public safety and is held in the highest regard among the command staff. He has taught others what hard work, passion, and dedication look like while working. He possesses a hard work ethic and is an example of how others should live their life. He is actively involved in community service and volunteers for various groups, camps, and school districts. They both attest to the applicant's character and request the Board award a favorable decision in his request to have his discharge upgraded.

f. 37 various firefighter certificates, awards, achievements, acknowledgments, accolades, certifications, and letter of congratulations, showing his positive attributes while serving in his career of firefighting. Additionally, family photos.

13. Army Regulation 135-175 (Army National Guard and Reserve – Separation of Officers), prescribes the officer transfers from active duty to the Reserve Component and discharge functions for all officers on active duty for 30 days or more. It provides principles of support, standards of service, policies, tasks, rules, and steps governing all work required to support officer transfers and discharges.

14. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

#### 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 Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The applicant states, "he returned home and received notice the Department of the Army gave him the option to return to Fort Bragg for a medical discharge board or resign in lieu of involuntary separation." Unfortunately, the applicant's records are void of the specific facts and circumstances that led to his discharge. However, orders issued by AHRC-St. Louis on 6 December 2006, discharged him from the USAR in accordance with AR 135-175 effective 6 December 2006 with an under other than honorable conditions discharge characterization. Although the applicant provides evidence of prior service in the USAF as well as multiple post discharge achievement letters and accomplishments in support of a clemency determination, without a separation packet or the specific reason for the separation, the Board presumes administrative regularity, i.e., what the Army did was correct. Nevertheless, the Board noted issues with the applicant being given run around by his units. As a Reservist it seemed like no-one cared about why he went into the USAR to ensure he could complete/be assigned with a psychological command. The Board believed the character of service he received appears to be too harsh, and given the significant post discharge achievements, the Board determined an honorable discharge is appropriate in the applicant's case.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending Orders D-12-629174, issued by the U.S. Army Human Resources Command, St. Louis MO on 6 December 2006, to show an honorable discharge characterization.

11/18/2024

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. Army Regulation 135-175 (Army National Guard and Reserve – Separation of Officers) prescribes the policies, criteria, and procedures governing the separation of Reserve officers of the Army.

a. An honorable discharge is a separation from the United States Army with honor. The issue of an honorable discharge is conditioned on proper military behavior and proficient and industrious performance of duty, giving due regard to the grade held and the capabilities of the officer concerned.

b. A general discharge is a separation from the United States Army under honorable conditions of an officer whose military record is not sufficiently meritorious to warrant an honorable discharge.

3. Army Regulation 600-8-24 (Personnel – General – Officer Transfers and Discharges) (Army National Guard and Reserve – Separation of Officers) prescribes the officer transfers from active duty to the Reserve Component and discharge functions for all officers on active duty for 30 days or more. It provides principles of support, standards of service, policies, tasks, rules, and steps governing all work required to support officer transfers and discharges.

a. An officer will normally receive an Honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty for an officer. The DD Form 256A (Honorable Discharge Certificate) will be furnished to a discharged officer; however, a certificate is not issued when an officer is released from active duty. When the separation is based solely on preservice activities or substandard performance of duty, it will be Honorable.

b. An officer will normally receive an Under Honorable Conditions characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an Honorable discharge. The DD Form 257A (General Discharge Certificate) will be furnished to a discharged officer; however, a certificate will not be issued when an officer is released from AD. A separation under honorable conditions will normally be appropriate when an officer—

(1) Submits an unqualified resignation or a request for release from active duty under circumstances involving misconduct.

(2) Is separated based on misconduct, including misconduct for which punishment was imposed, which renders the officer unsuitable for further service, unless an Under Other Than Honorable Conditions separation is appropriate.

(3) Is discharged for physical disability resulting from intentional misconduct or willful neglect, or which was incurred during a period of unauthorized absence.

(4) Is discharged under the Military Personnel Security Program if directed by Headquarters Department of the Army.

c. A discharge Under Other Than Honorable Conditions is an administrative separation from the service under conditions other than honorable. A discharge certificate will not be issued. An officer will normally receive an "Under Other Than Honorable Conditions" when he or she resigns for the good of the service, or is dropped from the rolls of the Army, or is involuntarily separated due to misconduct, moral or professional dereliction, or in the interest of national security, or is discharged following conviction by civil authorities.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Service 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.

//NOTHING FOLLOWS//