

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 October 2024

DOCKET NUMBER: AR20240003292

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

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- Email correspondence
- Bachelor of Science degree documents
- Notary Public documents
- Information technology certifications (2)
- Security Guard License
- Professional Investigator License

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 provides a self-authored statement which is available in its entirety for the Board's consideration. He states, in effect, he was discharged in June 1990 based on his failure to pass the Army Physical Fitness Test (APFT). His service was characterized as general, and he believes that was unfair and unjust. That was 31 years ago, and he is now 51 years of age. The world we live in today is a broken world. A world of unfavorable actions, which have unfavorable outcomes. This type of discharge has caused a continual struggle for him throughout his adult life. He has managed to achieve multiple victories in spite of his discriminatory, unfair, and biased discharge accompanying.

a. He is a notary public, licensed private investigator, and licensed security guard in the State of Michigan. He graduated from the California Institute of Arts and Technology with a certificate in Computer Information Systems-Networking Concentration. He also

obtained a Criminal Justice Degree from Ashworth College and plans to obtain more certifications for the in-demand career related to computers, cyber security, and networking.

b. His need for a discharge upgrade reached a turning point when he was denied financial assistance for repairs to his home in February 2021. The lenders advised him to seek a discharge upgrade because he was not considered to be a hero, warrior, or veteran who was worthy of assistance from them. He was also denied employment in the past due to the discharge type.

c. He is moving forward into the next area of his life and career which will require him to present an honorable discharge associated with his name.

3. On 14 August 1990, the applicant enlisted in the Regular Army in the rank/pay grade of private/E-1 for a period of 4 years. Upon completion of training, he was assigned to a unit at Fort Leonard Ward, MO. On 17 March 1991, he was promoted to private (PV2)/E-2 and that was the highest rank he held.

4. The applicant's duty status was changed from Ordinary Leave to Absent Without Leave (AWOL) on 11 May 1991, and from AWOL to Present for Duty on 16 May 1991.

5. A DA Form 4856 (General Counseling Form) shows the applicant was counseled on 21 May 1991 regarding his failure to:

- return from leave on the proper day
- check his DA Form 31 (Request and Authority for Leave) to ensure the proper dates
- properly request an extension of his approved leave

6. A memorandum, dated 14 July 1991, shows the applicant was informed by his company commander that he had failed to achieve a passing score on the APFT. As a result, an administrative flag was imposed upon him to prevent him from receiving personnel actions, and he was enrolled in the unit's Special Fitness Program effective immediately. He was informed he would participate in the program until he achieved a passing score on the APFT. He would take the APFT at the end of each month and take a record test not later than 3 months after his initial failure. If he failed to pass the record test, his commander would initiate separation proceedings in accordance with Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 13, for unsatisfactory performance. If he passed the APFT under the Special Fitness Program and then failed a subsequent APFT, he would be reenrolled in the program and considered for a bar to reenlistment.

7. On 5 March 1992, the applicant was advised by his company commander that if he continued in his current pattern of performance and conduct, it could result in his elimination from the service for unsatisfactory performance or misconduct. He also advised the applicant of the potential consequences associated with the receipt of a less than honorable discharge. The specific reasons for this counseling were the applicant's:

- receipt of nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice for being AWOL
- being flagged on 6 June 1991 for failing to meet the minimum standards for passing a record APFT
- failing a record APFT on 4 March 1992 after the flag was lifted on 5 September 1991

8. The applicant underwent a separation medical examination and mental status evaluation on 30 March 1992 and was determined to be qualified for separation proceedings.

9. On 12 May 1992, the applicant's immediate commander notified the applicant of his intent to initiate actions to separate him from the Army, under the provisions of Army Regulation 635-200, Chapter 13, for unsatisfactory performance. The basis for this action were the applicant's period of AWOL and his failure to pass the APFT on several occasions. His commander stated this action could result in his service being characterized as either honorable or general (under honorable conditions). He would be recommended for an honorable discharge, but the separation authority would render the final decision. The applicant acknowledged receipt of the notification the same date.

10. On 15 May 1992, the applicant consulted with counsel and was advised of the basis for the contemplated actions to separate him and of the rights available to him. He requested consulting. Although he indicated he would submit statements in his own behalf, there are no such statements present in his available record.

11. On 26 May 1992, the applicant's immediate commander formally recommended the applicant's separation under the provisions of Army Regulation 635-200, Chapter 13, due to unsatisfactory performance.

12. The separation authority approved the recommended separation on 27 May 1992 with an under honorable conditions (general) characterization of service.

13. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) as amended by DD Form 215 (Correction to DD Form 214) show he was discharged in the rank/grade of PV2/E-2 on 15 June 1992 under the provisions of Army Regulation 635-200, Chapter 13, by reason of unsatisfactory performance. His service

was characterized as under honorable conditions (general). He was credited with completion of 1 year, 9 months, and 27 days of net active service. He had time lost due to AWOL from 11 May to 15 May 1991.

14. The applicant provides the following documents:

a. Email correspondence showing the applicant was denied financial assistance for repairing his home due the characterization of service reflected on his DD Form 214.

b. A diploma and transcript showing the applicant received Bachelor of Science degree in Criminal justice on 18 September 2020.

c. Documents showing the applicant was certified as a Notary Public in the State of Michigan on 5 April 2021.

d. A Computing Technology Industry Association certificate showing the applicant successfully completed the requirements to be recognized as ITF+ [Information Technology Fundamentals] certified on 2 January 2023.

e. A California Institute of Arts and Technology certificate which shows the applicant successfully completed Computer Information Systems - Networking Concentration on 2 September 2023.

f. A State of Michigan Security Guard License with an expiration date of 26 February 2025.

g. A State of Michigan Professional Investigator License with an expiration date of 30 June 2024.

15. Regulatory guidance provides that commanders could initiate separation action against Soldiers when, in the commanders' judgment:

- they would not develop sufficiently to participate in satisfactorily in training and/or become satisfactory Soldiers;
- the seriousness of the circumstances was such that the Soldier's retention would have an adverse impact on the military discipline, good order, and morale; and
- it was likely the Soldier would continue to be disruptive influences in present and future assignments
- it was likely that the circumstances forming the basis for initiation of separation procedures would continue or recur
- the ability of the Soldier to perform duties effectively in the future, including potential for advancement or leadership was unlikely

16. 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. Applicants do not have a right to a hearing before the ABCMR.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record and published DoD policy for consideration of discharge upgrade requests, the Board found that relief was warranted.

2. The Board carefully considered the applicant's contentions, his record and length of service, the frequency and nature and dates of his misconduct, his multiple physical readiness performance deficiencies, and the reasons for his separation. The Board considered the evidence of post-service achievements and conduct. The Board found that his achievements were sufficient to overcome the nature of the deficiencies that led to his separation. Based on a preponderance of evidence, the Board determined that the applicant's discharge warranted an upgrade as a matter of clemency.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 15 June 1992 to show in item 24 (Character of Service): Honorable



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, USC, 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 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, prescribed policies and procedures for enlisted administrative separations.
 - a. Paragraph 3-7a (Honorable Discharge) stated an honorable discharge was separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other

characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when the Soldier's subsequent honest and faithful service over a greater period outweighed the disqualifying entries found in his/her record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Chapter 13 provides:

(1) Commanders could initiate separation action against Soldiers when, in the commanders' judgment:

- they would not develop sufficiently to participate in satisfactorily in training and/or become satisfactory Soldiers;
- the seriousness of the circumstances was such that the Soldier's retention would have an adverse impact on the military discipline, good order, and morale; and
- it was likely the Soldier would continue to be disruptive influences in present and future assignments
- it was likely that the circumstances forming the basis for initiation of separation procedures would continue or recur
- the ability of the Soldier to perform duties effectively in the future, including potential for advancement or leadership was unlikely

(2) Prior to the initiation of separation action, the regulation stipulated that commanders ensure Soldiers had received adequate counseling and rehabilitation. The regulation pointed out that military service was a calling different from any civilian occupation, and as such, commanders were not to consider separation solely due to unsatisfactory performance unless the leadership had made efforts to rehabilitate the Soldiers.

(3) The regulation permitted separation authorities to furnish Soldiers separated under this provision with either an honorable or a general discharge under honorable conditions.

4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It states that the SPD code "JHJ" is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 13, by reason of Unsatisfactory Performance. Additionally, the SPD/RE Code Cross Reference Table established that RE code "3" was the proper reentry code to assign to Soldiers separated under this authority and for this reason.

5. 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, 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//