

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 November 2024

DOCKET NUMBER: AR20240003359

APPLICANT REQUESTS: His under honorable conditions (general) discharge be upgraded to an honorable discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Certificate of Training, 5 November 1986
- Memorandum of Commendation, 24 December 1987 and 24 February 1988
- Certificate of Achievement
- Certificate for Operation Just Cause
- Certificate in Appreciation for Special Olympics, 1988
- Letter of Appreciation, 15 May 1988
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 15 May 1990
- Character Reference Letters (three)

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 serving in the Army fundamentally changed his life, from being a Colonel's Driver, Chaplain's Assistant, participating in the Special Olympics, and a Gunner in Germany. His training prepared him to be of maximum benefit to his fellow Soldiers during Operation Just Cause. He still considers himself to a U.S. Army Soldier.
3. He enlisted in the Regular Army on 3 September 1986, for 3 years.
4. The applicant received a Letter of Reprimand (LOR) on 28 September 1989, which stated:

a. On 22 July 1989, the Fort Ord Military Police cited the applicant for operating motor vehicle his blood alcohol content was 0.21 percent. Anyone who drives a motor vehicle and has a blood alcohol content of .10 percent or more violates the law.

b. The applicant was reprimanded for misconduct. The LOR was administratively imposed and not as punishment under Article 15 of the Uniform Code of Military Justice. The imposing official stated he intended to file LOR in the applicant's official military personnel file (OMPF); however, prior to making his filing decision, he would consider any matters presented within 10 days of the date of the LOR.

c. The applicant acknowledged receipt on 2 October 1989.

5. The applicant did not submit a rebuttal; the LOR was filed in his OMPF.

6. He reenlisted in the Regular Army on 27 February 1990, for 2 years.

7. The available record is void of a separation packet containing the specific facts and circumstances surrounding the applicant's discharge processing.

8. The applicant was discharged on 15 May 1990. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-5, by reason of civilian conviction. His service was characterized as under honorable conditions (general), with separation code JKB and reentry code 3. He was credited with 3 years, 7 months, and 28 days of net active service this period. He had lost time from 25 March 1990 to 9 April 1990 [DD Form 215 (Correction to DD Form 214), dated 11 June 1991]. He was awarded or authorized the:

- Army Service Ribbon
- Overseas Service Ribbon
- Army Good Conduct Medal
- Armed Forces Expeditionary Medal

9. The Board should consider the applicant's overall record 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 not 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. Although the applicant's separation packet is not available, other evidence of record shows the applicant was convicted by a civil court of certain/unspecified charges. As a

result, his chain of command presumably initiated separation action against him due to his civil conviction. He was discharged with general discharge. The Board found no error or injustice in his available separation processing. Also, although the applicant provided character reference letters in support of a clemency determination, without knowing the specific civilian charge (or charges), the Board found such letters insufficient. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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 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 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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 (Separation for Misconduct) establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave. Paragraph 14-5 provides that a Soldier may be considered for discharge when initially convicted by civil authorities, or when action is taken that is tantamount to a finding of guilty, if one of the following conditions is present:

- A punitive discharge authorized for the same or a closely related offense under the Manual for Courts-Martial, as amended.
- The sentence by civil authorities includes confinement for six months or more, without regard to suspension or probation.
- A Soldier convicted by a civil court will be reduced to the lowest enlisted grade.

3. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

//NOTHING FOLLOWS//